

NEW LAW ON ENFORCEMENT PROCEDURE



Center for Liberal-Democratic Studies

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NEW LAW ON ENFORCEMENT PROCEDURE

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Contents

Foreword

ON THE DRAFT LAW ON ENFORCEMENT PROCEDURE 9

- I DISPUTED ISSUES OF ENFORCEMENT PROCEDURE LEGISLATION 11
 - Contested issues of basic concepts 11
 - Impact of the latest LoE amendments 39
 - Practical application and the need for revision of the enforcement procedure 44

- II NEW LAW ON ENFORCEMENT PROCEDURE OR A THOROUGH REVISION OF THE EXISTING ONE 49
 - Shall an entirely new law be submitted 49
 - Enforcement against (commercial) juristic persons – special procedure or departures from the basic rules 50
 - Enforcement in parental, marital and family matters 51

- III THE MOST IMPORTANT CHANGES INTRODUCED IN THE DRAFT LAW ON ENFORCEMENT PROCEDURE 53
 - Overview of novelties 53
 - Legal remedies 54
 - Enforcement of foreign decisions 55
 - Carrying the enforcement out 56
 - Enforcement for collection of money claims 57
 - Procedure in commercial matters 62
 - Security 63

DRAFT LAW ON ENFORCEMENT PROCEDURE 67

PART ONE

BASIC PROVISIONS (Art. 1-24) 69

PART TWO

GENERAL PROVISIONS ON EXECUTIVE PROCEDURE (Art. 25-63) 79

Chapter One: Introductory provisions (Art. 25-40) 79

Chapter Two: Fines and court penalties (Art. 41-43) 85

Chapter Three: Motion to enforce (Art. 44-49) 86

Chapter Four Carrying out of the enforcement (Art. 50–54) 88

Chapter Five Counter-enforcement (Art. 55-58) 89

Chapter Six: Postponement and abortion of the enforcement (Art. 59-63) 91

PART THREE

ENFORCEMENT OF MONEY CLAIMS (Art. 64-183) 95

Chapter One: Enforcement against chattels (Art. 64-86) 95

Chapter Two: Enforcement against real estate (Art. 87-141) 104

Chapter Three: Enforcement against debtor's claim (Art. 142-183) 122

PART FOUR

ENFORCEMENT FOR COMPENSATION OF A NON-MONEY CLAIM

(Art. 184-220) 135

Chapter One: Handover of chattels (Art. 184-189)

Chapter Two: Enforcement for vacation and handover of real estate (Art. 189-193) 137

Chapter Three: Enforcement for compensation of claims for performance, bearing of action or refraining from action (Art. 194-200) 138

Chapter Four: Enforcement of family law decisions (taking child away and handing it over) (Art. 201-205) 141

Chapter Five: Enforcement for returning employee to work or to service (Art. 206-209) 143

Chapter Six: Enforcement of a decision on division of items (Art. 210-213) 144

Chapter Seven: Entry of rights in public records (recording of the rights) and other public registries (Art. 214-218) 144

Chapter eight : Statement of will (Art. 219-220) 146

PART FIVE

SPECIAL ENFORCEMENT PROVISIONS IN COMMERCIAL AND

RELATED MATTERS (Art. 221-250) 147

Chapter One: Scope (Art. 221-223) 147

Chapter Two: General provisions (Art. 224-226) 148

Chapter three Enforcement against debtor's business account (Art. 227-235) 149

Chapter Four: Enforcement against shares in limited liability company (Art. 235-241) 152

Chapter Five: Summary enforcement procedure (Art. 242-251) 154

PART SIX

SECURITY (Art. 252-303) 157

Chapter One: General provisions (Art. 252-261) 157

Chapter Two: Preliminary compensation (Art. 262-266) 160

Chapter Three: Enforcement for security (Art. 267-269) 162

Chapter Four: Lien right (Art. 270-290) 163

Chapter five: Injunctions (temporary measures) (Art. 291-303) 170

Foreword

Thanks to the significant support of the IBM Business Consulting and the USAID, Center for Liberal-Democratic Studies (CLDS) has, together with the Center for Advanced Legal Studies, organized activities on preparation of the new Law on Enforcement Procedure.

The following have participated as core and additional members of the project team: Professor Dragor Hiber (head of the project), Professor Vesna Rakić Vodinelić, Dr. Leposava Karamarković, Gordana Mihajlović, Jelisaveta Vasilic, Dr. Vladimir Pavić, Professor Gašo Knežević, Professor Vladimir Vodinelić and economists Professor Boris Begović and Dr. Boško Mijatović. During the course of work, a number of experts have been consulted and they have provided valuable suggestions. Very useful suggestions have been collected at roundtables where judges, attorneys and other experts, as well as representatives of foreign organizations and investors in Serbia, have participated. CLDS hereby acknowledges help they all provided.

Exactly at the time of this ‘public discussion’ on the first draft of the Law, Ministry of Justice has established a working group and charged it with a task to prepare a draft Law on Enforcement Procedure. Justification of the work already done by the CLDS has been vindicated in view of the fact that the working group has decided to use this draft as a basis of its future work.

Alongside the draft of the Law, we hereby publish a preliminary analysis of certain issues surrounding Law on Enforcement Procedure, which served as a starting point of the work, assessment of application of enforcement legislation currently in force, fundamental policy choices and summary of the most important changes introduced by the new Law.

April 30, 2004

Dragor Hiber

ON THE DRAFT LAW
ON ENFORCEMENT PROCEDURE

I Disputed Issues of Enforcement Procedure Legislation¹

CONTESTED ISSUES OF BASIC CONCEPTS

Jurisdiction to enforce civil judgments

The power to enforce judicial decisions, including civil court decisions, has not always been vested in courts. Historically, court decisions have been carried out by other authorities (e.g. administrative), on many occasions this has been done by the police. Such was the case, for instance, in the 19th century Serbia, as well as in Montenegro. For the first two decades of the 20th century, their court decisions, including those of civil courts, have been enforced by the police. Thereafter, under the influence of reception of the Austrian procedural law, enforcement by the *courts* has been introduced.

Court enforcement procedure represents a system of legal rules that govern deliberation on compulsory enforcement, procedure of carrying enforcement out, as well as legitimation of participants, their procedural standing and the role of other subjects of the enforcement procedure. The scope of this procedure encompasses protective measures as well. Unlike the civil procedure, enforcement procedure does not have a ruling on substance of the issue as its objective. Enforcement procedure is always carried out only after the final and authoritative ruling on the dispute has already taken place and after the debtor has already been ordered to behave in a certain way. A very important characteristic of the enforcement procedure is the application of a direct or indirect coercion against the debtor who is not behaving in accordance with the final decision. Modern legal systems carry out enforcement on debtor's property and not on his/her personality. That means that some of the debtor's personal possessions (life, freedom, corporal integrity) are not subject to coercion. Coercion does not always have compensation as an objective. It may be directed towards securing (protecting) creditor's claim.

Beside the court decisions, court enforcement procedure enforces decisions of administrative organs or magistrates, unless some other authority has been designated as competent for the enforcement.

1 Critical analysis of the legislation in force has been prepared by dr Vesna Rakić-Vodineć.

On the basis of all basic features of court enforcement laid out above, one may claim that the enforcement procedure is mostly a *procedure of execution*, not directed to deliberation on rights, but devoted to a coercive enforcement of a decision that has already decided on rights.

Therefore, one should question whether a court has to be competent for enforcing court decisions? Our legal system vests enforcement of criminal sanctions to the courts only to a small degree. Such enforcement is within the competence of administrative authorities (police and penitentiaries), and the courts have supervising authorities. Our legal system has to undergo a serious revision of the system of criminal sanctions enforcement, especially from the point of view of its compatibility with the European Convention on Human Rights and Basic Freedoms. When it comes to civil court decisions, enforcement authority of the courts regarding such decisions has not been challenged in Serbia for more than 80 years. Contemporary competence for enforcing civil court decisions is formally based on the provisions of the Constitution, but it is substantially based on the view that it would be most convenient that the enforcement is carried out by the very authority that passed the decision in the first place, and that the interpretation of the civil court decision in the course of its enforcement needs the civil court expertise more than it is needed in the case of criminal court decisions, especially those that condemn the accused to imprisonment. The later argument is a consequence of prejudice and is not scientifically grounded, since the matter of enforcing imprisonment sentences has experienced such level of international development (through adoption of numerous conventions) that requires much more specialized legal knowledge than one might expect from domestic authorities that carry out imprisonment sentences. Therefore, from the prospective of law in force (except the formal constitutional legal basis), one could not submit that the decisions of a civil court **must** be enforced by the court – other authorities could do it instead. However, from the Council of Europe legal system's prospective, and in light of EU accession expectations, enforcement of the civil court decisions must be within the competences of the authority designated as *tribunal* by the European Convention on Human Rights and Basic Freedoms and by various EU directives. A *tribunal*, no matter which branch of government it belongs to, must have the attributes only court possesses at present. Therefore, this important viewpoint suggests that the enforcement competencies should stay with the courts. However, since the enforcement includes *coercion* for which a domestic court does not possess expertise and organizational structure, the following is needed:

- a reduction of scope of the court enforcement procedure (changing the meaning of the notion of execution title) in comparison with the current one, leaving out enforcement of administrative authorities;

- addressing the issue of whether the law on court enforcement procedure shall have as its object procedures and modalities of enforcement of constitutional courts' decisions;
- establishment of the court police (and this should be carried out through organizational laws);
- ensuring legal prerequisites for the efficient work of bailiffs.

Redefining of the basic notions of court enforcement law

The enforcement procedure is triggered by the *motion to enforce*, an act carried out by the authorized subject (creditor).

Enforcement has a goal of enabling the exercise of a right of the creditor, and the Law designates such right as a *claim*. A claim is a right to encash a sum of money or request certain performance, or non-performance of the debtor (Art. 15, para 1 of the LoE). Underlying substantial basis of the claim is of no importance for the coercive enforcement. The basis itself may stem from property right, contract, tort, status, family law, etc. The only important prerequisite is that the debtor has been condemned to behave in a certain way – active or passive (performing or not performing).

Execution title is a juristic act enacted by the court or other state authority that determines the existence of the claim and it represents of the basic procedural conditions for coercive enforcement (see Art. 16 of the LoE). Namely, Roman law already created a rule that has been followed until modern times – a coercive enforcement may be granted only on the basis of a valid execution title (document): *Nulla executio sine titulo*.

Object of enforcement is a certain real property or a property right of the debtor on which the enforcement is allowed and carried out. A (percentage) share of debtor's property may not be the object of court enforcement procedure, it must, as already stated, be a certain real property or a property right instead. The object of enforcement may be only existing, and not any future property rights. In order to protect the very existence of the debtor, the Law provided for excluding certain possessions and rights of the debtor from the enforcement procedure, therefore, the object of the enforcement may not include all property rights of the debtor. As stated above, debtor's persona and his/her personal belongings may not be the object of the enforcement. European Convention on Human Rights and Basic Freedoms explicitly forbids imprisonment as a mean to enforce civil court decision. Historically, enforcement procedure underwent an evolution path from the so called personal enforcement where the object of enforcement was the debtor himself/herself, that is, his/her persona and personal belongings, all the way to property enforcement, whereby the object of enforcement is typically, or exclusively, debtor's property.

Coercion that brings about the satisfaction of the claim is carried out through *enforcement measures*. Enforcement measures represent a collection of legal and factual measures of the court and its auxiliary bodies

that are undertaken in order to meet creditor's claim. Depending on the nature of the claim (for a sum or money or not related to a money claim), *enforcement measures are classified as enforcement measures for addressing money claims and enforcement measures for addressing non-money claims*. LoE has explicitly determined only the enforcement measures for addressing money claims and has listed them all down to the last one. Enforcement measures for addressing non-money claims have been adjusted to the nature of such claims and are therefore not listed in the Law. Instead, the Law provides only for the modality and procedure of enforcement of some non-money claims.

Is redefining of all these basic notions necessary in order to strengthen the efficiency of the enforcement procedure? The answer is unambiguously a positive one:

- some of these notions, as defined in the current LoE are unjustifiably broadening the scope of the court enforcement (the notion of execution title);
- some of them define procedural categories through substantive legal instruments, inducing confusion (notion of the claim);
- legal classifications (e.g. enforcement measures for addressing money and non-money claims) are outdated and inadequate;
- listing the enforcement measures for addressing money claims is being done in a closed, exhaustive list, and can not therefore follow substantive law's development (e.g. there is no opportunity to enforce a claim against a share).

Relationship between bankruptcy procedure and court enforcement procedure

The goal of the court enforcement procedure is a full compensation of a particular claim of the creditor. Besides a singular enforcement, legal system regulates general enforcement (bankruptcy) as well. Basic differences between a singular and a general enforcement are:

- a) the object of the singular enforcement are certain possessions or certain rights of the debtor, while the object of the general enforcement is the *property of the debtor as a whole*;
- b) a singular enforcement is granted and carried out in order to compensate those claims that have been determined in the *execution title*, or are designated in the *order of encashment*. Contrary, a general enforcement encompasses compensation of all claims of the creditors, including even those claims that have not been determined in the execution titles, and even those claims that the debtors have not defaulted on.
- c) In case of more than one creditor, the rules on priority of compensation differ. In the case of a singular execution, if there is more than one creditor seeking compensation against a single debtor on a same object of enforcement, creditors are compensated in the order in which they have been granted the right of compensation in the enforcement procedure. (Prior tempore,

potior jure). Contrary, the procedure of general enforcement has the creditors, as a rule, compensating their claims simultaneously and concurrently. (Par condition creditorum).

- d) Interplay of these various principles, in the procedure of singular enforcement, usually results in a total compensation for the creditors. The order of compensation is, therefore, designed so as to compensate the creditor who has the advantageous position, and only after that creditor has been compensated, the compensation of creditors of lower priority takes place. In the procedure of general enforcement, creditors are normally not compensated in full, but partially instead, and in a proportion to their claims (proportional compensation).
- e) Therefore, there is a difference behind reasons for carrying out singular and general enforcement proceedings. Singular enforcement procedure is initiated by the creditor when a debtor has not fulfilled his obligation on time and such enforcement is granted on the basis of the execution title or an order of encashment. Contrary, general enforcement procedure is initiated when a debtor becomes incapable for meeting his obligations, or in other words, becomes insolvent (bankruptcy procedure) or in the cases where other legal conditions for a winding up of the debtor – who is a juristic person – have been met, although the debtor did not become insolvent (winding-up procedure). General enforcement procedure does not attempt to compensate creditors only, it is also about the winding-up of debtor's (juristic person's) legal existence.
- f) Singular enforcement procedure may be initiated against a debtor who is a natural or a juridical person. Contrary, a general enforcement procedure (bankruptcy and winding-up), is in our legal system reserved for juridical persons only.
- g) According to the present state of our legal system, bankruptcy is always 'stronger' than a singular enforcement procedure, that is, a bankruptcy proceeding interrupts a singular enforcement, unless the right to carry out a singular enforcement (extraction right) has been acquired at least 60 days before the bankruptcy initiation.

What should the relationship between general and singular enforcement be like? The answer to this question may not be given only by a law on enforcement procedure. One must also look at the draft Bankruptcy Law. The provisions of the new Bankruptcy Law seem to indicate that the relationship will be more complicated than it was until now.

Parties and other participants in the enforcement procedure

Enforcement procedure is, just like a civil procedure, based on a two-party premise. A party who is seeking to enforce its claim is designated as a 'creditor', replacing previously used term 'enforcement

seeker'. The party against whom the enforcement procedure has been initiated is a 'debtor', and the previously used term was 'enforcee'. See Art. 15 para 2 and 3 of the LoE. These expressions designate parties in a procedural sense as well. A creditor is an active party who submits a request for enforcing his/her claim. A debtor is a passive party and the enforcement procedure is initiated and carried out against him/her. Legal terminology designating the parties to the enforcement proceedings have not been chosen in the most appropriate way, since those same expressions are used for parties (participants) in a substantive legal relationship. Procedural notion of a party to the enforcement proceeding has to be distinguished strictly from parties' participation in a substantial legal relationship, that is, distinguished from their litigation standing. Standing of the parties in an enforcement procedure is regularly proven by the execution title. A creditor in a substantial legal sense is a person whose claim has been confirmed in the execution title, and the debtor is the person who, according to the execution title, has to undertake certain active or passive conduct.

If the creditor or the debtor in an enforcement proceeding are persons other than those designated in the execution title, such creditor and debtor acquire the status of a party to the proceeding. However, enforcement will be granted only if the creditor proves in a legally acceptable way that the claim has been transferred to him/her or that the obligation has been transferred from the person designated as debtor in the execution title to the person designated as debtor in the enforcement proceeding. In other words, a courts will refuse to grant enforcement unless both creditor and debtor have standing to appear in the enforcement procedure. However, those persons enjoy a status of the parties to the enforcement procedure and enjoy all privileges and legal options that are at the disposal of the parties to the proceeding,, therefore, a creditor may appeal against any ruling that has rejected the motion for enforcement on the ground of a lack of standing. It is precisely because of these imprecisions among legal notions that one should resort to designating parties to the enforcement procedure a 'enforcement creditor' and 'enforcement debtor'. An enforcement creditor may be joined by one or more other creditors who are seeking enforcement before the same court against the same object of enforcement and propose the same enforcement measure. Once they have joined the proceeding, a joint procedure is administered. Possibility of later joining of other enforcement creditors ahs practical implications in the matters of delivering real property and compensating out of the collected price. A capacity to act as a party to the procedure and representation within the procedure have been settled by the CCP and its provisions are applied according in the enforcement procedure.

Beside the parties themselves, other persons who may participate in the enforcement procedure are those that are exercising their rights or legal interests (Art. 15. para 5 of the LoE). The following may be participants: pledge creditors and holders of other property rights on the object of enforcement; state authority or local government authority,

with its claim for settling tax debts; third person who owes something to the enforcement debtor (enforcement debtor's debtor); buyer of the auctioned good, etc.

Normally the participants of the enforcement procedure are those that are, according to the execution title, designated as creditor and debtor, therefore, execution title regularly appears as an act that legitimizes the parties to the proceeding. However, this need not always be the case, since it is possible that certain changes take place in the time period between the creation of the execution title and the beginning of the enforcement procedure. For instance, it is possible that the person designated in the execution title as a creditor or debtor dies before the enforcement procedure is started; creditor may cede his/her claim to the third person; third person may undertake debtor's obligation; a juridical person may be split up or may merge with another juridical person, etc. At that point one may ask how the enforcement court will determine the proper standing of the persons appearing as enforcement creditor and enforcement debtor. Enforcement will be granted on motion submitted by a person that has not been designated as creditor in the execution title, if that person proves with a public record (or a record certified in accordance with law) that the claim has been ceded to him/her or has been transferred to him/her in some other way. The following may be used as a public record: ruling on inheritance division, certified cession contract, land register certificate, since in the cases on enforcement against real estate, creditor's recorded right of pledge enables him/her to compensate his claim out of the sale of the real estate even after the ownership is transferred to another person.

If a creditor is not able to obtain a public record (or a record certified in accordance with law), he/she has to resort to litigation and request that the court determines that the claim has been transferred to him/her. In that case, standing is proved with a final civil court judgment. The same is applicable in the situation when the enforcement procedure is started against a person that is not designated as debtor in the execution title. The burden of proof is on the creditor. One may prove party's standing in the proceeding using only evidence methods expressly listed in the LoE (Judgment of the Supreme Court of Croatia Rev 307/83 of June 21, 1983, PPP1984/12). Motion for execution can not be brought against one of the jointly and severally liable debtors if the execution title is not addressed at him at all, since he/she was not a party in the proceeding that had the execution title as a result, and the execution title is addressed at another jointly and severally liable debtor (likewise, decision of the Supreme Court of Serbia, Pz 525/82 of March 8, 1982, SP 1982/9). If the execution title is addressed at all jointly and severally liable debtors, creditor is entitled to request enforcement against any of the jointly and severally liable debtors, at his own choice (see decision of the Supreme Court of Serbia, Pz 1249/90 of March 7, 1990, SP 1990/11).

Is it necessary to change the notion of parties and other participants to the procedure, especially methods of proving their standing? It is clear

from the above mentioned observations that the following is needed in the new law:

- avoid substantial and procedural identification of the parties;
- facilitate proving the change of standing (identity);
- regulate the procedural position of the third persons.

Execution title

Execution title is a singular juristic act that determines the existence of a claim, the fact that it is due, and the standing of the parties in the enforcement procedure. One may request enforcement on the basis of the execution title, and the request shall be that the claim determined in the title is enforced. Execution title imposes obligation on a court to grant and carry out enforcement if the creditor submits a motion for enforcement. Therefore, the execution title is binding not only for the parties, but for the court as well. 1930 Law on enforcement and protective measures terminology labels this act 'izvršni naslov' (titulus executionis). The notion of the execution title should be distinguished from the general notion of a record, which in civil court procedure has a meaning of one of the possible means of evidence. Execution title has, in the enforcement procedure, a status of a procedural precondition, without which the court may not grant and carry out the enforcement, unless the conditions for enforcement on the basis of prompt encashment are met. Since the LoE does not define the meaning of the execution title notion in general, but only lists juristic acts that qualify as execution title, it is necessary to synthesize fundamental features of the execution title institution on the basis of common denominators of those acts:

A juristic act has to fulfill the following conditions in order to qualify as an execution title:

- a) Execution title may only be a singular, and not a general juristic act.
- b) Execution title is a so-called qualified juristic act (see Triva-Bjelajac-Dika, *Court Enforcement Procedure*: p. 113), meaning that it authoritatively determines the existence of the claim that is being compensated in the enforcement procedure. Juristic acts originating from the parties (contracts, unilateral expressions of will) do not have the importance of the authoritative determination of a claim. This means that the acts, on the basis of which enforcement may be granted and carried out, have to originate from the courts or other state authorities, or arbitrations. A decision represents an execution title only if its holding determines the existence of the claim.
- c) However, not every court decision, or a decision of other authority, is considered an execution title. To gain such quality, a decision must be condemnatory, meaning that it must prescribe on debtor an obligation to behave in a certain way. Transmutatory decisions are not being enforced, since there is not need to do

that. Namely, they order a certain legal change, and that very order satisfies the claim. Claim has been directed only towards ordering a legal, and not a factual change. A legal change takes place in the moment when a court decision reaches its substantial finality, i.e. in that very moment the decision is 'enforced' and legal protection is achieved in full. Besides, determinatory decisions do not possess the quality of an execution title, since the legal protection is achieved through determining the existence of some right or a legal relationship. Once the right is determined to exist, parties are expected to behave in accordance with that determination. If the defendant does not behave in accordance with the determined legal relationship, plaintiff must bring an action with a motion to order a performance, and only after the claim has been affirmed and the decision becomes final, one may initiate enforcement procedure. The content of the order to perform determines whether the juristic act shall have the status of the execution title in the court enforcement procedure or the status of the execution title in the administrative enforcement procedure. Decision of a constitutional court is not an execution title according to the LoE (see decision of the Belgrade District Court, Gz 8256/93, SP 1993/9).

- d) In addition to these formal qualities, a juristic act has to fulfill some substantive legal criteria as well in order to acquire the status of the execution title. The LoE labels those conditions as 'a suitability of the execution title for enforcement'. Execution title is suitable for enforcement if creditor and debtor are listed in it, as well as the object, type, scope and time of the performance of the obligation. This provision invites various interpretations in legal practice. In a decision mandating debtor's delivery of chattels, it is not necessary to state the value of such property in order to have the execution title suitable for enforcement (Supreme Court of Macedonia, Rev. 142/85, March 21, 1985, SP 1985/10). Some are of the opinion that the enforcement suitability of the execution title does not necessarily require designation of the object, scope and type of the obligation, it is sufficient that these parameters are determinable (as in the judgment of the Supreme Court of Bosnia and Herzegovina Gz 19/81 of July 17, 1981, ZSO, vol.IV ch.III). On the other hand, a final judgment ordering the debtor to hand over the three-bedroom apartment for use, without any mention of the usable size (area) of that apartment, is not considered to be suitable for enforcement (decision of the Titograd District Court, Gz 553/78 of October 30, 1979, PP1980/5). There are some court decisions that allow the debtor to determine the scope of the obligation, and such decisions are unacceptable. In its decision Gz43/80 of February 19, 1981 (ZSO vol. IV ch. I), Supreme Court of Bosnia and Herzegovina held that, if the scope of the right-of-way right has not been determined in the execution title, debtor has the right to determine it

himself. If the debtor forfeits this opportunity, the scope may be determined only in a new litigation, and not in the enforcement procedure. Some court decisions reveal that the courts have been declaring execution titles unenforceable on the ground that they contained decisions contrary to the public order. See decision of the Higher Commercial Court of Serbia, Pz2720/82 of October 15, 1982, PPP 1983/4.

- e) Execution title status is determined by the law, so only those acts that meet the legislative criteria are considered to have the status of an execution title. The court may not hold that an act is to be considered an execution title if the law does not provide so.

Shall one change the legislative notion of the execution title? In accordance with arguing in favor of reducing the scope of the court enforcement laid out above, one should narrow the notion of the execution title exclusively to court decisions, subject to certain exceptions. Besides, all aspects of the execution title that have resulted in conflicting interpretations in the practice need to be defined with much more precision.

Principles of the court enforcement procedure

Principle of formal legality. – This principle is unique for the enforcement procedure, and it applies in the moment of granting the execution. Formal legality principle means that the enforcement court is bound by the act which represents the execution title. When a motion to enforce is submitted, if all preconditions for granting execution are met, enforcement court may not refuse such motion on grounds of illegality or irregularity of the decision. One may not contest the content of the execution title, nor may one bring forward evidence regarding the fact that the obligation determined in the execution title does not exist or that its scope is different. Principle of formal legality is expressly mentioned in some comparative legislations. However, LoE does not state this principle as a separate principle that has a clear meaning. Jurisprudence has indirectly, relying on Art 22 of the LoE, concluded that our enforcement procedure is based on a formal legality principle (see S. Triva, V. Belajec, M. Dika: *Court Enforcement Procedure*, p. 38). Some courts held that this principle is applicable in our situation (see decision of the Supreme court of Croatia, Gz 97/84 of January 15, 1985, SP 1986/2, that expressly states that the enforcement court is not allowed to deliberate on substantive legality of the execution title in any manner, including the sum granted for support; similarly Supreme Court of Croatia, Gz 44/82 of December 8, 1983, PSP 1983/24. If new facts challenge the existence of the obligation after the issuance of the execution title, enforcement court is not competent to decide on those issues, and has to refer parties to litigation. When a civil court passes a final decision on an contested issue raised during the enforcement procedure, enforcement court is bound by that decision of the civil court. Ambiguous provisions raise the issue of whether the enforcement court

may refuse to enforce the decision which is contrary to the public order. Enforcement court, according to one opinion, has to refuse to enforce the obligation to pay interest rate if the execution title obliges the debtor to pay interest rate higher than that set by the law, for any amount over the legal maximum (see Sreckovic-Lukic, p. 25). This position is inspired by the view that the court should accordingly apply Art. 3 para 3 of the CCP that prohibits dealings that run contrary to the public order. It would follow from this that the enforcement court may refuse to grant enforcement if it determines that the decision contained in the execution title is contrary to the public order.

Dispositive principle. – Principle of disposition is applicable to the initiation of the enforcement procedure. Creditor initiates the procedure (Art2. para 1 of the LoE). Exceptionally, enforcement procedure is initiated ex officio when certain claims have to be compensated. E.g., the court will ex officio initiate the procedure for enforcing procedural fines or costs of criminal proceedings. Creditor's disposition is reflected in the enforcement procedure in the fact that he has to determine enforcement measures and the object of enforcement himself. (Art. 35 of the LoE).

Creditor is entitled to withdraw his motion until the moment he receives compensation of his claim. If the claim has been compensated only partially, he may withdraw the motion for the uncompensated portion of the claim. Motion for enforcement may be withdrawn entirely or partially. Partial withdrawal of the motion means, according to the LoE, that the motion has gotten its scope narrowed. Withdrawal of the motion to enforce does not require debtor's assent or a decision of the enforcement court. If the motion has been withdrawn, enforcement procedure is terminated. A withdrawn motion may be resubmitted. See art. 37 of the LoE.

LoE does not envisage the possibility of modifying the motion to enforce, so one should apply CCP provisions accordingly. Modification may consist of altering the enforcement measure or the object of enforcement. Modifying the motion so as to replace a proposed enforcement measure with another one is allowed, on condition that the compensation in accordance with the originally proposed measure has not started yet. Costs of modification are borne by the creditor. A partial withdrawal of the motion to enforce is not considered to be a modification, but rather a limitation of scope (art. 37).

The principle of court-administered procedural development. When a decision granting enforcement is passed, the first stage of the enforcement procedure is over. The court ex officio monitors the stages of the enforcement procedure. That means that no special motion of the creditor is needed to propel the procedure from one stage to the other. This does not mean that the parties have no influence over the procedural developments over time. E.g.: enforcement may be postponed on request of the creditor if the compensation has not been carried out yet (art. 64 para 1 LoE); if none of the parties submits the request for second auction, and the first auction has already

failed, enforcement procedure will be terminated (art. 86 of the CCP). Unlike the civil procedure, there is no interruption of the enforcement procedure.

The principle of protecting the citizen-debtor – The goal of the enforcement is compensation of the creditor and not to financially ruin or cripple the debtor. Therefore, this principle has been prescribed in all modern laws. However, debtor protection principle should not be understood as a rule protecting debtor from any loss of property. Enforcement procedure, when it ends in creditor's compensation, regularly represents a loss of property for the debtor. This principle has the objective of avoiding total or hardly avoidable economic disaster for the debtor, a disaster that would endanger his/her existence and the existence of the persons he/she is required to support. Therefore, LoE provided several legal mechanisms that attempt to prevent the economic ruin of the debtor:

First, there is a principle that the enforcement may not be granted and carried out on property and rights that are essential for the existence of the debtor and persons he/she is obliged to support. Article 65 lists possessions and rights that are exempt from enforcement.

Second, enforcement is carried out to the extent necessary for creditor's compensation (art. 5 of the LoE). As a result, the court is not bound by the creditor's motion that suggests the enforcement measures and the object(s) of enforcement. If the creditor has proposed more than one measure or more than one object of enforcement, the court will, on defendant's or its own initiative, restrict the enforcement to only some of the proposed measures, if they are sufficient for compensating the claim. In addition, the Law allows the debtor to propose the enforcement to be carried out using another enforcement measure, and the court will accept this proposal only if the debtor proves that he will likely compensate the creditor using this alternative enforcement measure.

Third, when the enforcement is carried out through auctioning real estate or chattels of the debtor, the Law has prescribed the minimum sale price, so as to protect the debtor from selling his/her property at rock bottom prices. On a first auction, real estate and chattel may not be sold at a price lower than their ascertained price, and at the second auction they may not be sold at a price lower than the fraction of their ascertained price set out by the Law. These restrictions are meant to protect creditors as well, since sales at rock bottom prices threaten not only the existence of the debtor, but the compensation of the creditor as well.

Fourth, the principle of protecting the citizen-debtor does attempt to protect his/her economic existence, but the protection of his/her dignity as well. During the enforcement procedure, court and its auxiliary bodies have to respect debtor's dignity and carry the enforcement out in the least intimidating way.

a) *Exemption from enforcement – natural persons*

As laid out above, there are various methods of debtor protection. It is important to stress that the legal ban on enforcement on privileged rights is not absolute, but is combined with court-determined criteria. Sometimes those criteria are laid out very ambiguously in the law. A closer analysis of exempted possession and rights will follow.

Chattels. Chattels that were exempted from the enforcement earlier have been described, but not enumerated in the law, since some other laws may exempt other chattels as well. Chattels exempt from enforcement in LoE or some other law could have been classified into several categories.² After the latest amendments of the LoE in 200 (art. 65), the method of exemption from enforcement has been changed (now exemptions are enumerated in a closed list), and the list of exempted chattels has been shortened. The following possessions are exempted:

- 1) clothes, shoes, underwear and other possessions for personal use, bed sheets, kitchen plates and pots, essential furniture, stove and refrigerator;
- 2) food and heating fuel meeting the needs of the debtor and the members of her household in the following three months;

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- 2 (i) The following chattels were exempted from enforcement without any regard to profession or other characteristics of the debtor:
 - objects intended for personal use (clothes, shoes, etc.), household appliances (stove, refrigerator, and the like) and other items intended for serving household needs, but only to the extent necessary for the debtor and the members of his household, and with regard to the environment they are living in; enforcement court estimates whether certain object are necessary or not; besides, it further specifies the legal standard of the environment the debtor is living in;
 - food and heating fuel meeting the needs of the debtor and the members of his household for the following six months;
 - medals, honors and other commendations and recognitions, wedding ring, personal letters, manuscripts and personal writings of the debtor, as well as family photos;
 - chattels sent to the debtor through a postal package may be the object of enforcement only after the package is delivered to the debtor.
 - (ii) Chattels exempt from enforcement depending on the profession of the debtor were:
 - cattle used for work and fertilization, agricultural machines and other tools necessary for debtor-farmer in order to maintain his farm to the extent necessary for his support and the support of the members of his household; the extent of the necessity is determined by the enforcement court;
 - seeds to be used on farm of the debtor-farmer, and cattle feed for the following four months;
 - tools, machines and other objects, that are necessary for debtor to carry out his craftsman activities, as well as the fuel and raw materials needed in the following three months;
 - books and other objects, necessary for the debtor in order to perform her scientific, artistic or other professional activities that she is performing independently as her profession.
 - (iii) Chattels exempt from enforcement depending on certain characteristics of the debtor, were prosthesis given to the handicapped person on the basis of regulations, or prosthesis he acquired himself, and insofar as they are necessary for performing vital functions.

See art. 71 para 1 of the LoE.

- 3) debtor's cash (if he has a steady source of income) – up to the monthly maximum that is exempt from enforcement, proportionate to the next income payment;
 - 4) medals, honors, war plaques and other commendations and recognitions, personal letters, manuscripts and other personal writings of the debtor, as well as the family photos;
 - 5) auxiliary instruments that have helped a handicapped person or a person challenged in other way to perform necessary functions.
- A postal shipment or a postal money order addressed to the debtor may not be the object of enforcement until the moment it has been received by the debtor.

Real estate The Law exempted only real estate of the *farmers*. The following could not have been the object of the enforcement:

- agricultural land and farmer's buildings to the extent necessary for supporting the debtor and his inner family members, and other persons that the debtor is obliged to support according to the provisions of the law; land area has not been determined in absolute terms, but was determined by the court on each occasion, taking into account the number of persons debtor must support and the technical conditions of farming;
- house belonging to the debtor-farmer and his inner family members (as well as the persons he/she is obliged to support according to the law), including the yard; however, even these real estate be subject to enforcement if they have been an object of a contractual pledge (mortgage- see conclusions of the Federal Court workshop July 10-11 1981); an unfinished house may not be considered to be an exempt real estate, since it is not suitable for living (for former Yugoslav court practice, see in particular District court of Varazdin, Gz 1273/76 of December 4, 1976, PSP 1977/10). See former Art. 152 of the LoE. The latest LoE amendments do not exclude house from enforcement, and the land area exempt from enforcement is expressly set. Art 143: Farmer's agricultural land of up to 1000 m² is exempt from enforcement.

Debtor's monetary claims. The law differentiates between monetary claims that are fully exempt from enforcement and those that are exempt only partially.³ This difference remained until today, after the

3 The following monetary claims of the debtor were fully exempt from enforcement:

- Income received on the basis of statutory support obligation, damages received on the basis of health aggravation or aggravation or loss of working ability and for lost support due to death of the support provider;
- income on basis of compensation for a bodily harm;
- income received on basis of welfare support and temporary unemployment; compensation to freedom fighters are considered to be income received on basis of the welfare support (Supreme Court of Croatia, Gzz 82/82 od 8. 06. 1982, ZSO, vol. IV, ch. .IV)
- child benefit income;
- income received on basis of stipend and support for pupils and students and income of soldiers and military academy students;
- income received on basis of medals and honors, etc.;
- income received as a reimbursement of travel costs and per diem benefits.

2000 LoE amendments, and the only difference is that there are less exempted claims and that the partially exempted claims are more available for enforcement:

Article 86

The following are exempt from enforcement:

- 1) *Income received on the basis of statutory support obligation, damages received on the basis of health aggravation or aggravation or loss of working ability and for lost support due to death of the support provider;*
- 2) income on basis of compensation for a bodily harm received in accordance with disability insurance regulations;
- 3) income received on basis of welfare support;
- 4) income received on basis of temporary unemployment;
- 5) income received as child care support;
- 6) income received on basis of stipend and support for pupils and students;
- 7) income of soldiers and military academy students;
- 8) income of a prison inmate, except for claims based on statutory support obligation, and claims based on damages compensation on the basis of the criminal act of the convict.

Article 87

Enforcement against the salary or retirement compensation and on compensation in lieu of salary, may be carried out at no more than one half of the salary or retirement compensation and on compensation in lieu of salary.

The following were partially exempt from enforcement:

- salaries of employed debtors, including retirement compensation, salaries of the military personnel and income of the reserve soldiers during their participation in military activities; salaries may be the object of enforcement up to a third of their monthly amount, and up to half for claims arising out of statutory support and claims having the same legal status (claim on basis of damages for health aggravation or aggravation or loss of working ability and for lost support due to death of the support provide); when it comes to minimal wage, these shares are one-quarter and one-third, respectively;
- income of peace-time and war-time handicapped people on the basis of disability support, orthopedic support and handicap support, may be subject to enforcement only for claims of statutory support (and claims having the same legal status) up to one half of their monthly amount;
- income derived from lifetime support agreement and lifetime rent, as well as income derived from life insurance contract, may be subject to enforcement only to the extent of the most generous welfare support on the territory where debtor resides.
- convict work remuneration may be subject to enforcement only for claims based on statutory support obligation, and claims based on damages compensation on the basis of the criminal act of the convict; costs of criminal procedure do not represent damages based on the criminal act, and can not, therefore, be enforced against convict's remuneration. (decision of Supreme Court of Vojvodina. Gzz 18/81 of December 25, 1981., SP 1983/2).
- Postal money transfer sent to the debtor may be subject to enforcement only after it has been delivered to the debtor.

See arts. 92 and 93 of the LoE.

If the debtor receives a minimum wage as set out in the collective agreement and the law, enforcement may be granted for up to a third of the salary.

Provisions of para.1 of this article are applicable to the salaries of officers, military clerks, and income of military reserve personnel received during the military exercises.

Enforcement on income of war-time and peace-time handicapped military personnel pertaining to the handicap compensation, prosthetic support and handicap support may be granted only for claims for statutory support obligation, damage compensation for health aggravation, or aggravation or loss of working ability, and for lost support due to death of the support provider, and for no more than one half of such income.

b) Enforcement exemption – juristic persons

Rights and property of juristic persons cannot be subject to enforcement for compensating a money claim, if those rights and property are necessary for performing its function or for performing its activities. Property and rights of the juristic person that were exempt from enforcement were listed in arts 188-192 of the LoE. 1990 amendments of the LoE proved to be insufficient.

Chapter 14 of the LoE attempted to regulate especially enforcement on socially-owned property, since at the time of the enactment of the Law socially-owned property represented a dominant form of ownership in companies and other commercial subjects. This Chapter was entitled ‘Enforcement on socially-owned assets in order to compensate a money claim’. The title has been changed in 1990 and it now reads: ‘Special provisions on enforcement on property of juristic persons in order to compensate money claim’. Here is the list of the more important amendments:

- deleting the provision that exempted common assets from enforcement (former art. 189 LoE);
- deleting provisions on partial exemption from enforcement of agricultural land, forests and forest land that were socially-owned (former art. 191. of the LoE);
- deleting a provision on debtor’s bank account as a prime source of compensation (former art. 192 LoE).

Amendments have, therefore, introduced several important changes:

- 1) Enforcement in accordance with provisions of the Chapter 14 is applicable when the debtor is a juristic person, without regard to whether it is a commercial subject or not.
- 2) Provisions of this chapter are applicable without regard to the dominant form of ownership of the juristic person. It is irrelevant whether it is a privately owned juristic person, or the ownership is mixed, or the juristic person is state-owned or socially-owned.

- 3) No regard is given to the organizational form of the juristic person: special provisions contained in this chapter are applicable to stock companies, complexly structured companies, etc.
- 4) Property that is potentially available for enforcement (e.g. that may be the object of enforcement) is defined more broadly than before, since some provisions on total or partial exemptions from enforcement have been repealed.
- 5) Since the bank account assets (kept at that time at payment operations organizations) are not a prime object of enforcement, creditor may chose any other enforcement measure against the juristic person debtor, meaning that he/she is no longer obliged to attempt compensating out of the bank account.

2000 amendments have not brought any substantial changes.

The object of enforcement may not be possessions that are non-transferable, mineral deposits and other natural resources. In addition, one may not carry out enforcement on equipment and weaponry used for the defense, public or state security purposes and civil defense.

Non-transferable (res extra commercium) property is a property that may not be transferred. This property is labeled as state- or socially-owned.⁴ Reasons from excluding certain property out of commerce are different, and are related to public or state security, health, defense reasons, etc. As an example of a non-transferable property, one may offer real estate that are commonly used (streets, parks, squares), installations built in the commonly used buildings, etc. In addition commonly used property are also roads, waterways, ports and docks, airports, sea coast, etc.⁵ Our law prescribes that the state owns commonly used property. Even when the competent state authority granted, through a special administrative act, a special right to use the property to a certain juristic person, and there is an enforcement procedure going on against that juristic person, commonly used property may not be the object of the enforcement, since they represent non-transferable property that enjoy absolute immunity from enforcement.

Mineral deposits and other natural resources are, also, fully exempt from enforcement. This provision of the Law is rather ambiguous, since, except for the mineral deposits, there are no other types of natural resources were mentioned, even by the way of example. According to the Serbian laws on environmental protection, natural resources are: national parks, nature parks, exceptional areas of nature, natural reserves, monuments of nature and unique features of nature (art 41. of the Law on Protection of the Environment of the Republic of Serbia). According to their legal treatment, all these resources may be divided in two groups: protected and unprotected natural resources. National parks are always protected natural resources. Other natural resources are protected if the competent authority passes an act on

⁴ See Stanković-Orlić, *Stvarno pravo*, Beograd, 1993, p. 14.

⁵ See in more details at, Jelić, *Društvena i državna svojina*, Beograd, 1995, pp. 64–72.

protecting the natural resource (art 45. of the Law on Protection of the Environment of the Republic of Serbia). A protected natural resource may not be the object of enforcement. The following are also considered natural resources (or a natural treasure): game, fish in fishing waters, marine plants and animals.⁶ Although acquisition of property over such resources is limited in accordance with administrative regulations, they may be the object of enforcement. E.g. a fishing farm (itself a juristic person) may have enforcement carried out against the catch of fish it currently has in possession.

Installations, arms and equipment, intended for national defense are exempt from enforcement. That, however does not mean that *all* of the property belonging or being used by the Army or the police are exempt from enforcement. One should distinguish between the property that is non-transferable and property that may be transferred (Jelic, p. 82). Real estate, arms and equipment intended for national defense and public and state security services are non-transferable, and are therefore exempt from enforcement. It is difficult to interpret the notion of *intended use* in practice. One view is that there has to be a direct link between a certain property and the goal it serves (national defense, state or public security, civil defense) in order to qualify it for exemption from enforcement.⁷ Property not directly intended for defense purposes, etc., may be the object of enforcement. However, the latest amendments to the LoE seem to negate the above mentioned rational interpretation, since they exempt from enforcement assets intended for equipment purchase as well (cf. art 179 para 1 LoE).

Duties. Duties payable to the state or local government authorities (cities, municipalities) on the basis of contribution, taxes and other duties, may not be the object of enforcement.

Principle of protection of the debtor who is a juristic person. - No enforcement shall be granted against assets and rights of a juristic person for compensation of a monetary claim, if such assets and rights are indispensable for further carrying out of its tasks or activities. In addition, restrictions are laid out for enforcement against the property of the State and local communities.

Principle of chronological schedule – The court is obliged to take up the enforcement cases according to the chronological order in which they were received, unless the nature of the claim and special circumstances mandate a departure from this principle (art. 4 of the LoE). Exceptions for departure from the chronological schedule are listed in the Court rulebook as well.

Principle of chronological schedule governs the priority in compensation when more than one creditors appear against one debtor and seek enforcement on the same object of enforcement. In that case, as already suggested, creditors are compensated according to the order in

⁶ See Jelić, pp. 72 -79.

⁷ See Šarkić-Rašić, *Priručnik izvršnog postupka*, Beograd, 1992.,p. 239.

which they acquired their compensation claim (art 11 of the LoE). Compensation right in the enforcement procedure is, in fact, a court pledge right. Its time of acquisition depends on the enforcement measure and the object of enforcement. E.g.: in the course of enforcement through auction of an real estate, compensation right is acquired at the moment when the land registry entry was made; in the enforcement through auctioning chattels, at the time of the inventory; in the enforcement procedure on debtor's salary, at the moment when a ruling on banning payout of a portion of the salary is delivered to the juristic person that acts as debtor's employer, etc

Chronological schedule principle may be departed from for various reasons. For some claims, the Law envisages the principle of *realistic priority*. E.g., out of the proceeds of real estate's auction, one first compensates the costs of the enforcement procedure, thereafter duties payable for said real estate that have been accrued in the course of the previous year, etc. In additions, some exceptions from the principle of chronological schedule have been envisaged in the cases where some claims can be compensated against certain objects of enforcement only partially (*exclusionary principle*). E.g. for statutory support obligation claims, enforcement on salary of the debtor may be granted for up to 1/2 of the monthly salary (for other claims this ceiling is set at 1/3). Another exception is the *parity (equality) principle*. Namely, in some occasions the Law provides that the creditors belonging to the same order of priority will be compensated in proportion to the sum of their claims, unless they can be compensated in full out of the proceeds of the auction sale price.

Other principles. – Enforcement procedure is marked, besides principles that are unique for this type of civil court procedure, by operation of other general principles of court civil procedure, with or without any content modifications when compared to litigation.

The principle of adversity has the goal of securing their equal treatment, and it is a bit restricted when compared to the same litigation principle. The court grants motion to enforce (enacts enforcement ruling) without notifying (serving) motion to enforce to the debtor. Debtor is informed that the enforcement procedure has been started against him only when the enforcement ruling (granting motion to enforce) has been notified (served) to him. Rationale for this is the need to prevent debtor from hiding his property. Debtor is not harmed when the motion to enforce is granted, since he already had the opportunity to defend himself in the procedure that resulted in the enactment of the execution title (see S. Triva, V.Belajec, M.Dika: *Court Enforcement Procedure*, p. 35). Once the motion to enforce (enforcement ruling) and remedies procedure are over, adversity principle is applied with the consistency equal to that in the litigation.

Procedural efficiency principle is more relevant than in litigation, given that the enforcement procedure is urgent (art. 10 para 1 LoE).

Principles pertaining to collecting and submitting of evidence (*principle of material truth, principle of collecting evidence presented by the*

parties and ex-officio collection of evidence and principles regarding the evidentiary weight) do not have the same importance as they do in civil procedure (litigation). It has already been stressed that the enforcement procedure is characterized by the principle of formal legality. If new disputed circumstances come into existence after the execution title has been brought, the parties are usually referred to litigation. Enforcement court is only exceptionally in position to determine relevant facts (e.g. in the counter-enforcement procedure). In those circumstances, relevant principles of civil procedure are applicable.

Writing requirement (principle) is more stressed than in litigation. Mandatory hearings are seldom, and none of them has the importance of litigation's main hearing.

Unlike the 1930 Law on Enforcement and Protective measures, current Law does not exclude *public* during enforcement procedure, therefore, CCP provisions are applied accordingly.

Shall principles of enforcement procedure be redefined? Redefining principles is a must, not only regarding the fundamental principles, but regarding some vehicles for carrying out those principles as well.

First, principles that are not mentioned in the current text have to be expressly defined:

- the principle of strict formal legality;
- preclusion (eventuality) principle, i.e. ordering all the participants to the proceeding to bring forward anything they know before a certain procedural action is being undertaken, especially when the debtor is lodging an objection (otherwise she will be precluded from lodging objections)
- principle of court's strict observance of procedural time limits.

Besides introducing new principles, a distorted perception of the principle of debtor protection should be scrapped, since this results in turning the debtor into a procedurally stronger party.

Remedies

Remedies in enforcement procedure differ significantly to those in litigation. First, it would be more appropriate to use term 'legal recourse means' than 'remedies' as a generic term for actions of parties and other participants to the enforcement procedure. This stems from the fact that, in the course of the remedies procedure, a referral to litigation may occur, so the litigation appears as a supplementary method of striking out wrong and illegal decisions of the court during enforcement procedure. Besides, parties are entitled to lodge the motion to cure deficiencies of carrying out enforcement to the enforcement judge, whereby they do not challenge any decisions, but rather oppose particular action of an official. Second, legal remedies in civil procedure (litigation) and enforcement procedure used to be distinguished between each other according to 1934 Law on Enforcement and Protective Measures, and according to 1978 Law on Enforcement (but

not according to 2000 Law on Enforcement) and because the most important remedies are objections, that is, remonstrative (retractive) and not devolutive remedies. Third, extraordinary legal remedies are significantly reduced in comparison with litigation, since revision and the motion for renewal of the procedure are excluded by the Law.

Unlike the 1930 Law on Enforcement and Protective Measures, that provided mostly filing of actions to the civil court against the ruling on enforcement, 1978 Law on Enforcement shifted the decision-making center of gravity from litigation court to enforcement court. Enforcement court is to decide on debtor's objection to enforcement ruling, but in certain cases it had to refer the debtor to litigation since the factual questions that were important for outcome of deliberation on objection, became disputed in the course of the proceeding before the enforcement court. Referral to litigation was omitted from the 200 LoE text.

An objection may be lodged for any reason that prevents enforcement (art 51 of the LoE), the Law did not further specify the basis for it, but had listed examples of most important reasons for objecting to the enforcement ruling. Lister reasons may, according to their legal significance, be classified in three groups: procedural reasons, substantive reasons and factual reasons.

- *Procedural reasons* for debtor's objection are in particular: situation where an incompetent court enacted enforcement ruling, if the act that served as the basis of enforcement does not constitute an execution title or order of encashment; if the decision that served as a basis for enacting the enforcement order has not become enforceable; if the decision that served as basis for enacting the enforcement order has been vacated, if the settlement that served as basis for enacting the enforcement order has been vacated, if the time limit for compensation has not passed yet or if the precondition envisaged by the settlement has not materialized yet; if the enforcement was granted on rights and property that are exempt from enforcement, or that are exempt partially; if the deadline for submitting motion to enforce has expired and if there was no prior attempt to carry out enforcement on an object that has been designated for priority enforcement.

- *Substantive legal reasons* for lodging an objection, expressly listed in the Law, exist when: creditor postponed the compensation of the claim for additional time period that has not expired yet, if the claim that has been determined in the execution title has expired and the claim has not been transferred to the enforcement creditor, or, when the obligation has not been transferred to the enforcement debtor (lack of procedural standing).

- *Factual reasons* for debtor's objections are present in particular when the claim has ceased to exist on the basis of the fact that came into existence after the decision become enforceable, or before that, but at time when the debtor could not anymore raise this issue in the procedure that resulted in enacting execution title, or when the claim has ceased to exist on the basis of a fact that came into existence after

settlement conclusion. Listing reasons that give rise to objections represents an insufficient legal technique. *First*, there is a question of when exactly the fact that extinguishes the claim comes into being. According to the Law, that fact shall take place 'once the decision became enforceable' or 'at the time when the debtor could not anymore raise this issue in the procedure that resulted in enacting execution title'. Time of the appearance of this fact shall be understood in accordance with the rules on time limits of finality. Only when the fact that extinguishes a claim has occurred once the main hearing has been over, it may be presented in debtor's objection (see decision of the Serbian Supreme Court, Rev 1937/95 of May 10, 1995, ISP 11/95). In cases where the execution title is actually a decision that has not been passed after conducting a main hearing (e.g. default judgment), a fact that extinguishes the claim will be taken into account if it occurred after the conclusion of the preliminary hearing. For judgments based on acceptance or renouncing of the claim, when they appear as execution titles, crucial moment is the moment of passing the judgment, if the statement of acceptance or renouncing has been submitted in writing, or the moment of concluding the oral hearing on which such declaration took place. Only in cases where a claim-extinguishing fact has occurred after such moments, one may lodge an objection during enforcement procedure. Facts that have occurred prior to those moments may not serve as the basis for objection, but one may lodge extraordinary legal remedy against the litigation decisions – request for renewal of the procedure. Exceptionally from this rule, debtor's objection may be based even on fact that has occurred before the specified moments, only if that very fact could not have been brought forward in the procedure that resulted in execution title. E.g. in the course of procedure in the first instance, just before the main hearing is about to close, debtor's counterclaim matured and it fulfills all conditions for being set-off against creditor's claim. Debtor does not raise set-off objection, and the main hearing is over. This objection may not be raised on appeal. However, debtor may state in its objection to enforcement ruling that he has a counterclaim against the creditor and may request the court to set-off one against the other. In addition, he may set-off the claim outside the enforcement procedure, in an unilateral declaration of will and raise the objection that he has already set-off the claims. (See, S. Triva, V.Belajec, M.Dika: *Court Enforcement Procedure*, p. 263, 264, see also decision of the Higher Court of Novi Sad, Gz 582/83 of March 28 1983, SP 1985/6). Second, the law entitles the debtor to raise objection only in regard of a fact that leads to termination, that is, to permanent extinguishment of the claim. That may be any fact that, according to the substantive legal provisions, leads to a termination of a claim: performing obligation, write-out of a debt, impossibility of performance, confusion of parties to a relationship, set-off. This formulation, however, does not encompass facts that only temporarily postpone the performance of obligation. (According to the former Law of enforcement and protective measures, objection could be raised for these reasons as

well). One should take a position that postponing objections could be lodged as well, since the enumeration of bases for objections is not exclusive (not a closed list). Third, unlike the Law on enforcement and protective measures, LoE has not provided the *eventuality principle*, whereby a debtor would have had to present altogether all facts that extinguish the claim, or run the risk to forfeit all future rights to lodge objection. Still, there are some court decisions that allow lodging a new objection based on facts only if they have come into existence after the lodging of previous complaint. (see Supreme Court of Croatia, Gz 97/84 of January 15, 1985, SP 1984/4).

Legal remedies system of the LoE has never received a passing mark. 2000 LoE amendments give even more reasons for a negative assessment. 2000 LoE confuses appeal and objection. Referral to litigation is scrapped altogether, which turns the enforcement procedure into a mini-litigation – and that is one of the most disastrous situations that may occur in the enforcement procedure.

Should the legal remedies system of the enforcement procedure be changed? A complete overhaul is needed. One should start with a re-examination of the effects of 1930 Law system, since it provided for oppositionary and opugnatory objections and appropriate causes for litigation action. In any case, neither objections nor actions should not stall the started enforcement. Instead, the enforcement should be carried out, while resorting afterwards to counter-enforcement. The role of counter-enforcement should be expanded. Only then would creditor and debtor find themselves in a really equal position.

Carrying out of the enforcement

Carrying out the enforcement is a stage of the enforcement procedure that takes place after the passing of the enforcement ruling (granting the enforcement) and it amounts to undertaking various enforcement actions on a certain object of enforcement in order to compensate the creditor. Enforcement actions are carried out by the court and its auxiliary bodies. Those actions may be of legal (e.g. passing a prohibitive ruling; entry of auction ruling in the land registry, inventory, etc.) and practical (e.g. taking away the property of handing it over, vacating the premises). Legal actions create substantive legal effects in accordance with the Law. Practical actions are aimed at harmonization of the actual situation at hand with the sanction provided for in the execution title. Depending on the situation at hand, various enforcement actions may be undertaken by the court and its auxiliary bodies, mostly, however, this depends on whether one uses enforcement measure for compensating monetary or non-monetary claim, and on the actual enforcement measure determined in the execution ruling. Given the differences among enforcement measure, there are few provisions of the LoE that are generally applicable to the carrying the enforcement out.

As stated, the court carries out the enforcement although it does not initiate the procedure. Only exceptionally will the parties be able to

influence carrying out of the enforcement through their actions. E.g.: if the creditor has submitted a motion to enforce against chattels, without designating their location, resulting enforcement ruling may be submitted to any court that has a subject-matter competence if debtor's property is located at its territory, and in that case carrying the enforcement out starts at the proposal of the creditor, and not *ex officio*; once started, enforcement stage is being driven *ex officio*, however, if a repeated inventory identifies additional property that might be subject to enforcement, the court will try the inventory only at the proposal of the creditor; as an exception from the rule that the enforcement actions are carried out by court and its auxiliary bodies, the court may allow the creditor to undertake the enforcement actions himself if an action of the generic type is needed.

Limits to carrying the enforcement out. Time limits. Enforcement is carried out within limits set in the enforcement ruling.

As a rule, enforcement is carried out during daytime, and during a working day. It may be carried out on non-working days or during nighttime, if there is danger that the procedure might be delayed. Court has to rule in a separate conclusion to allow carrying out of the enforcement during nighttime or non-working days.

Carrying the enforcement out before the enforcement ruling has become final. The rule was that the enforcement is carried out before the finality of the enforcement ruling, unless provided otherwise for certain enforcement actions (art 41 para 1) That, however, does not mean that the enforcement shall be finished off, i.e. the creditor compensated, before the enforcement ruling has become final. Only in exceptional circumstances may a creditor get compensated before the finality status is acquired, in the case of compensating against the debtor's account at the payment operations service. This exception does not apply to enforcement on the basis of order of encashment, since the money transfer may be carried out only after the enforcement ruling on the basis of order of encashment becomes final.

Most of the enforcement measures consist of several enforcement actions. Initial actions may be carried out right after the enforcement ruling has been passed, since it need not become a final one. Final enforcement action, e.g. selling the property and compensating the creditor, may be carried out only after the enforcement ruling becomes final. However, a problem arises when the enforcement consists of only one enforcement action (e.g. taking a certain piece of property from the debtor). A prevailing stand is that, if it takes only one enforcement action to compensate the creditor, it may not be carried out before the enforcement ruling becomes final (see S. Triva, V. Belajec, M. Dika: *Court Enforcement Procedure*, p 159).

Conduct of the officials. Method of carrying out the enforcement actions in debtor's apartment of business premises must be in accordance with the principle of protecting debtor's dignity.

When searching the living premises or personal clothing of the debtor, official must exercise due regard to the dignity of the debtor and the members of her family.

When searching the living premises of the debtor, and neither the debtor, his legal representative, person having power-of-attorney, nor any adult member of the household are present, at least two adult citizens have to act as witnesses of the search.

Enforcement within business premises of the debtor who is a juristic person, is carried out only after its management has been notified, in presence of the person delegated by the management. If the management does not delegate anyone even after a repeated notification, actions will be carried out without the presence of the delegated person.

The official is entitled to escort out any person who interferes with carrying out enforcement. If the need arises, official may request police assistance.

Shall the provisions on carrying enforcement out be changed? Provisions of the current LoE on carrying out of the enforcement are exceptionally brief. Those provisions are not of conceptual, but of a technical nature. Practice has shown that the relationship between the enforcement judge and the court bailiff has to be regulated in more details. Proper rules on carrying the enforcement out could significantly contribute toward a speedier and more efficient procedure.

Enforcement measures

Enforcement measure types for compensating a money claim have been set in a closed list (*numerus clausus*) in the Law. That means that the court is not allowed to allow any other enforcement measures. Those measures are:

- 1) sale of chattels;
- 2) sale of real estate;
- 3) ceding of a monetary claim;
- 4) ceding of a claim to hand over certain property;
- 5) encashment of some other property rights and
- 6) transfer of sums being kept at the bank account (formerly payment operations service)

Enforcement measures listed above have been labeled according to the enforcement action legislator considers to be the most important one. Namely, all of the measures consist of several enforcement actions.

Generally, carrying out of enforcement for compensation of money claims undergoes three stadia. In the first stadium, creditor obtains the right to compensate out of property or rights that represent the object of enforcement. Moment of becoming entitled to compensation is relevant for determining the order of compensation of creditors in enforcement procedure. Entitlement is acquired in various ways, depending on the enforcement measure: inventory, entry in the land registry, prohibiting disposal of certain claims, etc. Second stadium of

enforcement is the actual handing over of property or encashment of rights, or the transfer of rights to the creditor. Third stadium represents creditor's compensation.

Sale of chattels consists of the following enforcement actions: inventory, appraisal, sale and compensation of the creditor. The same is applicable for immoveables sale, except that, instead of inventory, an entry on the ruling granting the sale is entered in the land registry.

If the enforcement is being carried out against debtor's money claim towards third persons, basic actions are prohibition, transfer and compensation. If the claim has been transferred to creditor for further compensation, creditor will be considered compensated only when he receives the claimed sum from debtor's debtor. If, however, the claim has been transferred instead of payment, creditor is considered to be compensated at the very moment of transfer. Enforcement against a non-money debtor's claim against a third person is carried out through following enforcement actions: prohibition, transfer of the claim to creditor, sale of the property and compensation.

Enforcement on patent, technical improvement, innovation, *usus-fructus* or a similar right of the debtor, is being carried out through a prohibition on disposing of such right, encashment of the right and compensation of the creditor.

Non-money claim is any creditor's claim that does not have as its object a payment of certain money. Unlike the portion provisions of the Law on enforcement measures for compensating money claims, which provide that the enforcement measure depends on the object of enforcement, non-money enforcement provisions regulate the method of enforcement in relation to the content of the claim that has to be compensated. Enforcement of the following claims is expressly regulated:

- 1) handing over and delivery of chattels;
- 2) vacating and handing over of the real estate;
- 3) obligations to act, refrain from acting or allow acts of the others;
- 4) reinstating a worker to his workplace;
- 5) entering a right in a public record;
- 6) division of property and
- 7) communicating statements of the will.

Except for these differences between compensating a money and non-money claim, another difference stems from the Law. The part relating to the compensation of non-money claims does not provide separate provisions that would be applicable only to debtors who are juristic persons. All rules are equally applicable to all debtors, disregarding the fact of whether they are natural or juristic persons.

One of the measures that are supposed to facilitate compensation of non-money claims are court penalties, governed by the Obligations Law (art. 294). If the debtor was ordered in a final decision to perform some non-money obligation, and he fails to do so in the voluntary compliance period, the court may, at the request of the creditor, order an adequate additional period for compliance and set a probationary

fine. The court is actually ordering the debtor to pay a certain sum of money unless she performs her obligation within additional period granted. Amount of the fine is set per every day of delay or per any other time portion. Court penalties may be requested and used until the creditors starts the enforcement procedure. On the basis of a final ruling on penalties the court may, on request of the creditor, pass the enforcement ruling, i.e. ruling on coercive encashment of the amount set in the ruling. Ruling on court penalties is within competences of the court that is otherwise competent for enacting enforcement ruling, and that is a single judge (see Conclusions of the workshop held in the Federal Court, Belgrade, 1981). Court penalties have to be distinguished from the fines that are used during the enforcement procedure. Debtor is obliged to pay court penalties only if no motion to enforce has been submitted until that day (Higher Court of Sombor, Gz 763/83 of September 7, 1983, *Pravo –terorija i praksa* 1984/3).

Shall the current enforcement measures be altered? The need for such changes has been expressed in the previous paragraphs. First, one should analyze whether there is a need for distinguishing between two groups of enforcement measures: those aimed at compensating money and non-money claims. Besides, *numerus clausus* should be scrapped when listing enforcement measures. Actions contained in each and every measure should be made less formal. Besides, since the new law on enforcement procedure will be enacted on the level of the Republic, one should determine whether the coercive enforcement of non-money claims arising out of family and marriage decisions should be regulated in the law on family and marriage or in the law on enforcement procedure.

Protective measures

Enforcement may be granted and carried out only after the execution title or order of encashment are submitted. There can be no enforcement until the procedure is wrapped up by passing the enforcement ruling. However various circumstances may, during the procedure itself, hamper the enforcement or prevent it completely. Those circumstances may be the result of debtor's actions, but they may also arise out of events that are not the result of parties' actions. Moreover, even after the initiation of the enforcement procedure, creditor's compensation may be jeopardized by such circumstances. Protective measures have the goal of to prevent the occurrence of harmful consequences that prevent or hamper compensation of the creditor, even in cases where the right of the creditor is not yet beyond doubt. There are no theoretical disputes on this point.

However, legal character of such procedure is not clear: is this a special kind of enforcement procedure, or is the procedure of protective measures essentially a litigation procedure. This question does not have only theoretical, but practical implications as well. If one considers it a special kind of enforcement procedure, one may lodge legal

remedies provided by LoE against a ruling that orders a protective measure. In other case, ruling could be challenged using legal remedies provided by the CCP. Arguments forwarded in favor of the argument that protective measures are of enforcement nature are that the protective measures procedure is functionally linked to court enforcement and that it is administered according to the rules of the enforcement procedure. Besides, both procedures – enforcement and protective measures have as their goal compensation of the creditor (B. Starovic, *Komentar Zakona o izvršnom postupku*, p. 597). Granting enforcement measures requires only a probability (not certainty) that there is a danger for compensating creditor's claim, and that places protective measures closer to the enforcement procedure, than to litigation (see S. Triva, V. Belajec, M. Dika: *Court Enforcement Procedure*, p. 319, 320). One should also stress that the protective measures procedure is governed by the LoE. On the other hand, the following arguments are forwarded in favor of viewing protective measures to be of litigious nature: protective measures procedure requires court to decide on merits regarding the issue of whether the preconditions for granting enforcement measures are met and it orders debtor to behave in a certain way; provisional measures, which are probably the most important protective measures, are regularly issued by courts of litigation; protective measure has a preventive effect, since it prevents the impossibility of compensation in the enforcement procedure and it, therefore, precedes the enforcement; the fact that protective measures are governed by the LoE does not prejudice the nature of such procedure. Issues of legal nature of protective measures procedure has been examined in the case law as well. According to the holding of the Civil Bench of the Supreme Court of Serbia, of February 19, 1996 (Bilt. Sud. Prakse VSS 1996/1, p. 25), ruling on granting a provisional measure represents an enforcement ruling. Therefore, the Supreme Court adopted a stand that protective measures are predominantly of enforcement procedure, rather than litigation procedure character.

LoE does not provide a reliable answer when it comes to the nature of the protective measures procedure, and provisional measures in particular. LoE handles procedural and substantive conditions for granting such measures, conduct of the competent court in the process of deliberating on those measures, and the effects of such measures. LoE does not contain special provisions on challenging of the ruling granting such measures. On the basis of listed preconditions for granting provisional measures, one could conclude that the provisional measure decision represents an execution title, rather than an enforcement ruling.

The Law has provided a closed list of protective measures: real estate pledge right, creation of a pledge of chattels or real estate on the basis of parties' agreement, **interim** and provisional measures. Real estate pledge right and creation of a pledge right on chattels and real estate are not dependant on a precondition that the compensation of creditor's pledge will be thwarted or jeopardized, so one may ask if those

two measures serve to ensure a later encashment. Since both of these measures have a preventive character, and given that they constitute a right of pledge that serves to protect certain claim, one may argue that they serve the same goal as do other protective measures provided by the law. However, they differ significantly from other provisional and protective measures, since a proof of future thwarting or jeopardizing of compensation is not a necessary precondition for their granting.

Protective measures are not allowed on property and rights that are exempt from enforcement.

Enforcement provisions are applicable in the procedure of granting protective measures, unless otherwise stated. This means that the civil procedure provisions may be applied accordingly.

Is there a need for changing provisions on protective measures? A complete revision is needed, if only for the fact that in the meantime new substantive laws on protective measures have been passed. Besides, a new bankruptcy law is expected, and it will change the rules on secured claims (extraction rights). The whole substantive legal system has to be accompanied with a completely new procedural mechanism. It would be useful to analyze the need for a different set of protective measures regarding juristic persons (companies) in advance. Proving conditions for granting protective measures should be simplified.

IMPACT OF THE LATEST LOE AMENDMENTS

Notification

For a long time, there has been a debate within the legal community on procedural rules regarding notification (service of process) and about practical problems accompanying it. A constant feature of notification is a lack of parties' discipline and relatively liberal rules on notification procedure. Drafters of the latest LoE amendments have reserved personal notification for only two occasions, and provided that all other notifications, for natural and juristic persons alike, to be carried out over the court's noticeboard (art. 7): *Personal notification rules contained in the CPP shall be used only in regard to ruling on motion to enforce and ruling on objection to motion to enforce. All other notifications shall be carried out over the court's noticeboard. Notification referred to in para.1 of this article that has to be made on the territory of the court shall be carried out by persons employed with the court.*

This solution does not contain any answers to numerous questions, some of which will be presented here:

- according to art 40 para. 4 of the LoE, ruling on enforcement on chattels is handed over to the debtor at the time of carrying out the first enforcement action, unless the law provides otherwise; is this ruling notified on court's noticeboard?
- According to art. 52 para 1 creditor has a right to respond to objection, and no personal notification (service) is envisaged for

objection; how shall creditor learn that an objection has been lodged – over the noticeboard?

- According to art. 53 para.3, following the lodging of objection, court may schedule a hearing, and, given that there is no referral to litigation in present system, the importance of that hearing is extremely big; notification for this hearing is communicated over the noticeboard, etc.

Therefore, instead of thoroughly revising and changing notification rules, personal service has been replaced with a notification on the noticeboard, completely formalizing some rights (response to the objection), or doing it in a way that prevents utilization of certain procedural entitlements, prevents the observation of certain procedural principles (notification regarding hearing on objection regarding certain contested factual issues is done only over noticeboard) or points in a contradictory way.

Instead of the desired efficiency, the result was a **repressive acceleration** that disregards fundamental procedural rights of the parties. It is not clear why a stronger diligence is required from the parties to the enforcement procedure (everyday check-ups of the noticeboard), while no such thing is being required from the parties to the procedure that decides on rights. A magic noticeboard formula can not eradicate the atmosphere of poor discipline of the court and of the parties, which does not plague this law only, nor is this the only way to change the practice. On the contrary, this is an excellent recipe for only one goal: formalizing many of the procedural entitlements of the parties, turning them into a decoration. This harsh notification regime is sensible and justified only when it comes to juristic persons. Experience in applying Croatian Law on Enforcement could have been used successfully. But they were not.

Debtor's objection

As already stated above, seven legal remedies of the LoE have been totally reconstructed: appeal is not allowed; objection is the only legal remedy; no appeal may be lodged against a ruling on objection; parties may not be referred to litigation as a corrective way of resolving disputed issues of fact.

Articles 8 and 49 of the LoE are clear:

An objection may be lodged against a first instance ruling, except when this law provides that objections are not admissible.

Objection may be lodged no later than three days following notification of the ruling.

Objection shall not postpone the enforcement, unless this law provides otherwise.

A ruling that is passed following an objection is final.

The court shall rule on objection no later than 15 days from the day it was lodged.

Objection shall be ruled on by the very same court that had passed the enforcement ruling.

Objection referred to in art. 49 paras 2 and 3 may be lodged for fundamental procedural infringements, or in the case when facts of the case have been determined wrongly or not completely, or if the substantive law has been misapplied.

A ruling on objection has to sustain it, reject it, or dismiss it as untimely, incomplete or prohibited.

If the objection for lack of competence is sustained, court shall vacate its ruling, shall vacate its own actions and shall communicate the motion to the competent court.

If some other objection is sustained, the court shall, pursuant to the facts of the case, cease the enforcement in whole or in part and shall vacate actions already carried out.

Although their content is clear, they do not provide answers for some unavoidable enforcement issues:

- 1) May one lodge oppositionary or opugnatory actions at all? Namely, according to the views of Yugoslav theory and practice, these actions are considered constitutive, meaning that the possibility to lodge them has to be provided by the law. What will happen if some other fact that extinguishes creditor's claim (e.g. debt write-off) occurs after the 3-day period for lodging a complaint has expired? Objection may not be lodged anymore, oppositionary action is not provided by the law anymore (there is no referral to litigation, so there are no prerequisites for this action if there is no referral to litigation).
- 2) If no oppositionary and opugnatory actions may be lodged (as it seems to be the case), what course should the debtor take in order to challenge the enforcement if the claim has ceased to exist after the period during which objection could be lodged?
- 3) Is there any contribution to efficiency in comparison to the present situation, if enforcement court is entitled to determine on the disputed factual issues (there is no referral to litigation, and the enforcement court decides, depending on the circumstances of the case, whether to schedule a hearing)? Namely, the fact that the enforcement court may determine issues of fact opens the prospect of litigation within litigation. This litigation has to be wrapped up in 15 days, since that is the instructive deadline for deliberating on objection. This is being done in a litigious procedure where the factual issues are determined in only one instance of decision-making (there is no appeal against a objection ruling based on such factual findings), so the constitutionality of such provision is dubious, that is, is this in accordance with the constitutionally guaranteed right of appeal. Efficiency and negating

parties' rights are not the one and the same. One could regard this only as an authoritative acceleration.

- 4) If the main idea was to discourage the debtor from lodging the objection, but he is still allowed to lodge some action (where? which law provides for this opportunity? what is the reasoning behind this?) this would amount to revisiting the solutions contained in the 1934 Law, and it was criticized for decades in our scholarly writings as extremely inefficient, precisely because of that solution: a party is immediately resorts to litigation, without having to wait for the referral of the enforcement court, although it is not clear whether there are any disputable issues between the creditor and the debtor.

The list of issues is not exhausted at all. These questions are presented only to illustrate certain hasty solutions of some subtle issues of court enforcement procedure.

Objection of a third party

There is no mention of third party's objection anymore, so the most recent legislative take regards the third party as a 'bad guy'. This omission may be interpreted in at least two ways: (a) objection of a third party is not allowed at all, which means that he/she may only submit an action during litigation; this solution would be completely unfair; (b) objection is still allowed (in the sense of art. 49 para 3 of the LoE: '*An objection may be lodged against a ruling passed in carrying the enforcement out, except when this law provides that objections are not admissible.*') but the procedure is not regulated, and that discourages any sensible third party to petition enforcement court for extraction.

Solution stated under (a) could be defended only if the extraction action has been explicitly provided for in the new LoE, since it is constitutive and has to be explicitly provided by the law, just like the oppositionary and opugnatory actions. Obligations Law is not sufficient in this case, as it is not for oppositionary and opugnatory objections, since the constitutive actions prescribed therein do not have procedural effect, i.e. the effect of their sustaining is not a declaration prohibiting enforcement. Enforcement prohibition – although there is no way to obtain it – has been retained (if only because of inertia?) in many provisions of the amended LoE. Solution stated under (b) could be defended more easily using the already mentioned interpretation of art. 49 para. 3, however, since there is not a single word on procedure regarding any such objection, even if it were admissible, it amounts to a fig leaf without any efficient impact. At the same time, third party position has not been changed in any other aspect in comparison with the previous LoE.

Instructive deadlines

LoE changes and amendments have led to prescribing some new deadlines for the court: e.g. art. 10 provides that the court has to decide within 3 days on motion to enforce. In addition, the court has to decide on objection within 15 days. The problem remaining is the one common to all instructive deadlines: no sanction has been provided for non-observance.

Enforcement costs

New art. 33 of the LoE states: *‘Enforcement costs shall be borne by the debtor, unless a groundless motion to enforce has been submitted, or the motion to enforce has been revoked, but not because the debtor has fulfilled his obligation, in which case the costs shall be borne by the creditor.’*

There is not a single word on bearing enforcement procedure costs in advance – where some efficiency gains could have been made if the advance is not paid on time. There is, however, no ground for analogy with litigation.

Police assistance

If the police does not comply with the court’s request for assistance in carrying out enforcement, the court has to inform immediately Minister of Internal Affairs, Government or a responsible parliamentary body.

No similar rule existed before, since there were no cases of express refusal of the police to provide assistance. This provision is merely a reflection of the harsh reality.

Imprisoning debtor?

Article 204 of the amended LoE:

If, pursuant to the execution title, debtor has to perform an action that no other person can perform instead of him, court shall pass enforcement ruling and determine an appropriate period for performance of debtor’s obligation.

Alongside the enforcement ruling, the court shall fine debtor if he does not perform his obligation within the prescribed period. Natural persons may be fined up to 5000 dinars, and juristic persons up to 20.000 dinars.

If the debtor does not perform within the period prescribed, the court shall initiate on its own motion enforcement of the ruling on fine.

In cases referred to in para 3 of this article, the court shall simultaneously pass a new ruling, leaving debtor another period for performance of the obligation and issue a new fine, in an even bigger amount, if debtor does not perform his duty even after such period.

Court shall continue to act as laid out in paras. 2, 3, and 4 of this article against the debtor who, despite the fines, fails to perform his obligation, until the total sum of fines ordered reaches a tenfold amount of the first fine.

If a fine to the debtor – who is a natural person – could not have been encashed coercively, fine, or its remaining portion shall be converted to prison sentence.

Conversion of fine to prison sentence shall be calculated at a rate of one day of imprisonment for every additional 100 dinars of fine, however, prison term may not last more than 60 days.

When estimating the amount of fine within the limits prescribed, the courts shall take into account the importance of the obligation debtor had to perform, as well as other circumstances of the case.

One has to raise the question of how the new provisions on imprisonment related to article 23 of the former Constitution of FRY and how they fit into International Pact on Civil and Political Rights. A more detailed elaboration of this issue has to be left for another occasion.

But, it is not clear why the drafters did not suggest a new incrimination: non-compliance with a final and enforceable court decision.

Anything else that might have been changed, but did not?

Drafters have introduced certain new enforcement measures that should correspond with present legal activities and with the organization of commercial juristic persons: E.g.:

- enforcement measure of enforcement against a share (stock) has not been mentioned, although it is very efficient;
- another efficient mechanism has been omitted: if the debtor's immovable is the object of enforcement, creditor may not appear as a priority buyer;
- no special competencies of enforcement court are prescribed regarding a possible change of the statutory interest rate or the value of domestic currency in the course of enforcement procedure, although such fluctuations are not seldom in our country;
- preliminary enforcement – already well known as a part of Yugoslav tradition according to 1930 Law – has not been prescribed as a specific and efficient protective measure;
- there are no incentives to use effective mechanisms, such as e.g. establishment of the right of pledge, which is still prescribed by the LoE.

PRACTICAL APPLICATION AND THE NEED FOR REVISION OF THE ENFORCEMENT PROCEDURE

When the critical remarks laid out above and the questions raised extrapolate against the background of the enforcement practice, one

may offer some policy conclusions which appear to be a *communis opinio*.

Current law, and the way it has been read, understood, used and abused in the course of its application, may not represent a basis for efficient enforcement, and the court statistics confirms this observation. Enforcement figures should be taken into account in view of the number of civil cases, particularly litigations, that is - property, civil, commercial and family cases. Here are some figures:

Report on activities of courts of general jurisdiction⁸ on the territory of Republic of Serbia in 2002 is shown in the following table:

Court type	Cases admitted in 2002	Carry forward from 2001	Total number of cases currently	Cases resolved	Still unresolved
Municipal	987,843 (17,544* more than in 2001)	455,827	1,551,789	1,099,972 or 71% (60,076 more than in 2001)	451,817 (3,649 less than in 2001)
District	87,512 (11,773 more than in 2001)				
Supreme Court	20,607 (1,431 more than in 2001)				

* This number does not include cases on enforcement of final civil judgments.

The increase is, however, predominantly present in enforcement cases.

Enforcement procedure – municipal courts, 2002

New cases 356, 436

Increase on previous year 44,709

In process, including cases that have been carried forward 516,219

Resolved 352,394 (68,3%)

Increase of the number of cases resolved 43,078

The figures are worth comparing. Number of enforcement cases being processed is over one third of the total cases in process, and both figures are growing. Litigation is often resorted to, while a final court decision is not sufficient to resolve the dispute: a procedure of coercive enforcement follows. (Impression is slightly different if one takes into account a significant number of enforcement cases that are based on authentic documents of public utility companies).

The same proportions are applicable to commercial cases as well.

⁸ The report has been presented on the basis of figures provided by the Serbian Supreme Court.

As an illustration, one may consider the figures pertaining to the Belgrade Commercial Court:

Number and structure of cases, Belgrade Commercial Court, 2002

1. Litigations: 15,710
2. Requests for entry in the registry: 19,946
3. Insolvency procedures: 12,243 (11,104 in yr. 2001)
4. Bankruptcies: 780 (1,160 in yr 2001)
5. *Coercive enforcements*: 3,024
6. Extra-litigious proceedings: 2,045
7. Commercial offences: 2,638

Finally, the last relevant illustration in this survey is related to the duration of the cases

Average resolution time, cases before the courts of general jurisdiction, 2002

- first instance civil cases: ca. 9.7 months (10.2 months in 2001)
- inheritance cases: ca 2.8 months (3.2 months in 2001)
- second instance civil cases: ca. 1.6 months (1.1. months in 2001)
- *enforcement cases (civil)*: ca. 5.6 months (6.4 months in 2001)

Half a year for enforcement might not in itself be so tragic unless one takes into account that a large number of enforcement cases is based on authentic documents of public utility companies, and such cases are carried out relatively quickly, through enforcement order or, at latest, inventory of debtor's chattels, after which the enforcement is carried out voluntarily. Average duration of 'regular' cases is therefore much longer. In any case, an average civil case, with appeal and coercive enforcement, but without revision, is over 19 months long.

It would be interesting to have figures on whether a particular enforcement object represents an adequate source of compensation. Since no such figures exist, one may, based on personal impressions and conversations with enforcement judges, mention in the negative context the enforcement against real estate and against chattels.

Consequences of inefficient enforcement are clear. Among many, one may stress those that are halfway between law and economics.

To put it briefly, debtor's position becomes privileged, and that in turn decreases contract discipline and respect of private property. This, in turn, results in a more expensive currency, hardships and delays in procuring crediting, with the final result of raising price of manufactured goods and services and a decrease in competitiveness of domestic economy.

Certainly the Law on Enforcement is not the absolute solution for enforcement efficiency, just as efficient enforcement is not sufficient if the litigation is not efficient. If we eliminate extra-legal reasons such as situation in justice system and police (since police is supposed to assist

with the enforcement), correlation with other procedural and substantive laws is very important.

In this regard, this project team has had to restrain its ambitions to a certain extent, e.g. when it comes to relation between insolvency and enforcement, when it comes to enforcement in family matters, etc. It is not possible to introduce new enforcement rules without a prior amendment of laws in these matters.

We had a similar problem with regard to proper implementation of certain institutions envisaged in other laws, which are yet to be established (e.g. registry of non-possessory pledge) that are about to be established or are being transformed (e.g. organization for coercive collection of claims), or are just about to seriously start their activities (*Central registry of securities*).

The starting point was the existing law. This is an implicit answer to the eternal question in transition legal systems: shall we (partially) reform only a part of the legal system, or shall we wait for the whole cluster of it to be reformed. The first solution was accepted.

II New Law on Enforcement Procedure or a Thorough Revision of the Existing One?

SHALL AN ENTIRELY NEW LAW BE SUBMITTED?

This question could have been the first among those that required an answer based on principles, or required defining dilemmas and options before any practical drafting work begins. We have chosen to tackle this issue after the part outlining the position paper, at the end of the whole work, having in mind that the answer is greatly dependant on the ‘inventory’ and perception of the issues already discussed.

Following reasons may, among others, be mentioned in favor of discontinuity:

- a) In the last 25 years, current LoE has been ‘radically’ amended several times. Among other things, some analysts and practitioners noted pendulum swings regarding some issues that were regarded as crucial, e.g. on debtor’s protection (or debtor’s ability to postpone the end of the procedure) through using legal remedies in enforcement procedure, or, on the other hand, trying to accelerate enforcement. It turned out that ambitious project did not bring the expected progress, and this is especially true for the latest amendments. Causes are definitely not located in the basic text of the current law, particularly within the provisions relating to the conduct of the enforcement judge in the course of the proceeding. However, given that (not all) causes of the inefficient and expensive enforcement stem from this law, one could easily assume that further ‘tweaking’ will not bring the desired results, and that the system needs to be ‘shaken’ to its core.
- b) Current law, although envisaged to be, among other things, a codification of the case law that emerged during application of 1930 LoE provisions, emerged as a law of the ‘economy of self-governance’, within a corresponding legal milieu. This law has to refer to too many newly created economic and legal notions, and the current law can simply cannot do that in a satisfactory manner. As an illustration one may look at the changes that are not ‘revolutionary’, e.g. transfer of the payment operations to commercial banks, a new method of salaries calculation, etc.
- c) New solutions in enforcement procedure may require a different relationship to other laws or envisage amendments and changes

of other laws (e.g. on bankruptcy, pledge, court police....). It is technically easier to introduce new LoE notions in a brand new law, while relying on changes in other law, especially if those changes are introduced in 'phases'.

Comparative experience, however, suggests that a 'new law' solution is not a clear-cut one; one may come across adaptations of earlier solutions much more often, especially in countries that adhere to Austrian model of enforcement procedure, and this includes former Yugoslav republics. Besides that, current LoE contains many technical solutions that are very satisfactory.

It seems persuasive that the formal approach to the project should be development of a new law. Otherwise, some answers provided in this position paper would be conclusive, especially when it comes to the scope and systematization of the law.

ENFORCEMENT AGAINST (COMMERCIAL) JURISTIC PERSONS – SPECIAL PROCEDURE OR DEPARTURES FROM BASIC RULES

A clear goal of the enforcement legislation reform is a more efficient, quicker and cheaper enforcement procedure. There are enough general and well-known arguments to support the hypothesis that speed and simplicity are especially important in commercial relationship, and they need not be listed in this paper. This hypothesis, in turn, naturally generates idea that there should be some additional rules when the juristic (commercial) person is a participant to the enforcement procedure.

Efficiency and speed of the enforcement proceeding have a flipside – potential erosion of debtor's protection. His ability to challenge the ground of enforcement (execution title), chosen object or measure of enforcement are legacies of enforcement legislations.

When the efficiency principle and the principle of protecting debtor clash, there is an extra space available for tailoring special enforcement rules which should apply in cases when parties to the procedure are juristic persons, especially when the enforcement is carried out against a debtor who is a commercial juristic person. Among other things, following arguments may be put forward and they may reflect on the character of such rules:

- Modern legislation treats professionals who enter private legal relationships, and that is always the case with commercial juristic persons when it acts within its profession, as if they possess a complete knowledge and have all necessary information on relevant legal and factual issues. In addition. This foundation spawned many rules of modern contract and tort legislation, as well as new laws and new notions, e.g. consumer protection law or product liability law. This concept must find its place within enforcement legislation as well, especially during current period of transition, when contractual discipline and respect of private property are

being reinstated. At least, this kind of debtor may be expected to protect its interests and that may be reflected in many rules, e.g. notification, methods of property auction, etc.

- (Commercial) juristic persons are linked to a number of objects and methods of enforcement that are not available to natural persons or special procedures, e.g. enforcement on a business account. Question of the priority of compensation, i.e. of privileged claims, may be posed in a particular way. Only relationships between juristic persons pose issues of interaction between enforcement and bankruptcy legislation;
- Litigations that precede such enforcement procedure are subject to a special set of rules (in order to make it more efficient), and the enforcement is regularly carried out through specialized (commercial) courts.
- Some provisions of the enforcement procedure where both parties are juristic persons have traditionally been present in our legislation, and are present even today. They are, however, envisaged as departures from basic solutions. If the previous observations are correct, this is not a proper systematization; differences should exist already on the level of procedural principles and their application.

On the other hand, enforcement logic in civil matters is, after all, always the same. Fully extracting rules on enforcement in commercial matters into a separate law would, therefore, represent a overkill.

The most suitable solution, it seems, is to treat enforcement in commercial matters, or enforcement against a (commercial) juristic person (this should be subject to further specification later) in a separate part of the Law on Enforcement.

ENFORCEMENT IN PARENTAL, MARITAL AND FAMILY MATTERS

In considerable number of family (parental) matters, enforcement differs starkly even in comparison with those enforcement cases where the object is a non-substitutable action of the debtor: parties' positions are different, especially in view of the importance of child's interest.

There are also some special procedural rules, participation of authorities other than courts, reversibility of decisions, briefly – many reasons that invoke the question of whether enforcement in family, parental and marital matters (a) could or even should be encompassed in enforcement procedure legislation, and if the answer to this is positive, (b) could it be done through departure from general rules or (c) reserve a special portion of the law for these issues.

Arguments in favor are that the specificity of this matter and its link with substantive rules is of such degree that those rules should be a part of family law codification, rather than a part of enforcement legislation. Creators of the first draft of future Family Law have to a great degree taken this position.

On the other hand it is stressed that promulgating enforcement rules outside the Law on Enforcement Procedure may create problems in practice, as it always happens when the relationship between general and specific is complicated by the fact that the specific is not filled out with much of a content.

Having this in mind, we have opted to keep family and marital matters in this law, respecting the comparative guidelines, family legislation in force, and introducing only necessary changes.

III The Most Important Changes Introduced in the Draft Law on Enforcement Procedure

OVERVIEW OF NOVELTIES

If one would have to sum up, the most important novelties of the Draft, in comparison with the current legislation may be classified in three groups, despite the fact that any amendment is important and that it is only the following practice that will be able to actually rank their importance:

1. New instruments of the draft LoE are:

- New system of **protective measures** (although generally contained in the pre-WW2 regulations), including the new types of injunctions, especially in commercial matters (with the aim to discourage debtor from carrying out a useless litigation and dodging enforcement, and consequently strengthen the position of the creditor)
- **Summary enforcement procedure in commercial matters** (on the basis of certain documents, domestic and foreign, e.g. letters of credit, guarantees, invoices, enforcement is allowed without litigation with the possibility to lodge objections only for the reasons related to the validity of the document itself), but also the **special regulation of enforcement in commercial matters**.

2. Significant changes were introduced to the following systems:

- **Legal remedies** (introduction of appeals and its distinguishing from objection, and precise defining of reasons for both legal remedies and short time limits provided for decisions on legal remedies lodged)
- Introduction of a possibility to **postpone enforcement**, as a narrow exception allowed only for enumerated reasons
- Introduction of **new measures and objects** of enforcement (enforcement against stock or shares in limited liability companies)

3. Important changes have been introduced to, in particular:

- **Enforcement against chattels and real estate** for compensation of money claims (lien, preemptory right, right of the enforcement creditor to take over the item if the public auction does not succeed, reduction of the number of items that are exempted from enforcement)

- regulating the role of **public registries** (real estate, lien on chattels, securities...)
- rules on **delivery** and court **instructive time limits**
- clearer regulation of the position and responsibilities of **court officials** (bailiffs), as a precondition for them to become established as a separate judicial profession.

Some of these novelties shall be summarily laid out below, in order of their introduction in the law.

LEGAL REMEDIES⁹

Draft introduces (re-introduces) appeal as the basic legal remedy against the enforcement order, for debtor's benefit when the motion for enforce is granted, or for benefit of the creditor, when the motion to enforce is denied.

On the first glance, this does not foster efficiency of enforcement: debtor is being granted opportunity to challenge enforcement order for legal reasons. Enforcement practice shows, however, that lack of appeal induces debtors to use various means to supplement it. Therefore, possibility to introduce legal control of enforcement ruling has been introduced, and the efficiency will be fostered through clearly defined reasons for appeal, clarification of appellate procedure and strict and short time limits.

At the same time, objection has been retained, and it may be lodged only for reasons related to the claim itself.

Draft introduces relationship between the appeal and the objection, in order to avoid *falsa nominatio* that might lead to procedural delays.

Time limits are short and strict, not only with regard to the parties (short preclusive time limits for lodging legal remedies), but also for the court, for its issuing of decisions and for delivery of documents, including communications between first and second instance courts.

Court's overstepping of time limits – a common insufficiency of our legal system with regard to instructive time limits – shall be considered judge's delay of procedure, and a judge may be held responsible for that.

The fact that there is a 'danger' of appeal leading to prolongation of procedure is also countered through a rule which provides that the appeal, unless otherwise specified by the law, does not postpone enforcement. Draft provides for a narrow exception, whereby the enforcement may be postponed on debtor's proposal, if such (unjustified) enforcement threatens it with irreparable or hardly repairable harm (article 60.), if the court orders so conditioned on depositing security. This option may also be used by the debtor who lodges appeal

9 When it comes to principles of enforcement procedure, one shall remark that, in accordance with the opinion laid out in the position paper, article 7 of the Law introduces the principle of formal legality.

against enforcement order (An alternative is also provided for this provision).

Draft has also established a possibility that a third party, e.g. someone who claims to be the owner of the item against which enforcement is to be carried out, to object to the enforcement order. This is a must. Lack of such recourse has led not only to unnecessary litigations, but also to abuse of litigations in order to influence the outcome of enforcement procedure.

When enforcement is granted on the basis of authentic document, the system whereby a lodged objection refers the case to litigation, has been kept.

ENFORCEMENT OF FOREIGN DECISIONS

Foreign executive titles have first to be recognized in order to be enforced on the domestic territory. Therefore, a precondition for enforcement is giving them the equal footing to that of domestic decisions. This matter is governed by the Law on Conflict of Laws with Rules of Other Countries (Private International Law, PIL, Official Gazette SFRY 43/1982, Official Gazette, FRY 48/96) which, in articles 86-101 regulates conditions, or obstacles, for recognition and enforcement of foreign court decisions, foreign arbitral decisions and decisions of other foreign authorities that enjoy the same status as the court decisions in the country of their origin.

One of the methods for recognizing a foreign decision is initial submission of request for recognition (in extra-litigious procedure), on the basis of which a recognition ruling may be obtained. A foreign decision so recognized may be submitted for enforcement. Recognition ruling has *erga omnes* effect and one may lodge a devolutive appeal against it within 15 days.

Another method has proved more popular in practice, at least when it comes to money judgments. Since Article 101 para 5 of the PIL provides that any court may decide on recognition as a preliminary, incidental issue, foreign executive title may, without prior initiation of recognition procedure, be submitted to enforcement court together with a motion to enforce. Recognition of such a decision would be treated as a preliminary matter and decision on recognition would not be contained in the holding and would not have legal force.

New Law on Enforcement Procedure (LoE) shall not intervene in the part of PIL which outlines criteria for recognition of foreign decisions. Although one might envisage desirable amendments to the existing criteria, LoE would in that case regulate matters that do not fall within its scope even according to widest interpretations, and amending of PIL should be postponed until the moment where such amending would encompass its other parts as well. What LoE might bring, however, is a clear and precise codification of the existing practice of enforcement of foreign executive titles. Therefore, new LoE should

clearly provide for a possibility of enforcing foreign decision which has been already recognized, but also the possibility of its recognition as a preliminary matter in enforcement procedure. Where such motion to enforce has been submitted, the court shall consider only those obstacles to enforcement that it considers *ex officio*, and other obstacles may be resorted to in legal recourse against the enforcement order.

What is left is the issue of a potential recognition, or enforcement of foreign provisional and protective measures. It seems that, at least for the time being, reasons against adoption of such possibility in the new LoE outweigh reasons for adoption of such possibility. First, PIL provides in article 87 finality as a precondition for recognition of foreign decisions. This means that, in order to clear obstacle for recognition of foreign provisional measures one would have to amend article 87 of PIL or create a special regime in new LoE, including obstacles for recognition of foreign provisional measures. As a minimum, one may think of *ordre public*, reciprocity and inability to present arguments before the authority. This final requirement is in accordance with one of the comparative guiding tools, Brussels Convention (Regulation) would lead to non-recognition of the most potent and potentially most efficient, *ex parte* provisional measures. In any case, jurisdiction to grant provisional relief and to adjudicate main may be treated separately (just like in art 24 of Brussels Convention or art 31 of Brussels Regulation), so exclusive international jurisdiction of the foreign court to adjudicate the dispute does not preclude jurisdiction of our court to grant provisional relief. Additional problem is presented in the situation where recognition of a foreign provisional measure is sought and such provisional (or protective) measure does not exist in our legal system, and where it would be impossible to equalize its status with that of the domestic measure. Finally, economic efficiency of recognition of the foreign provisional measures is dubious. Namely, one may envisage that it is much easier and speedier for the party requesting recognition of the foreign provisional measure to apply for provisional measure to be issued by the domestic court, instead of initiating recognition process that would definitely last longer. Therefore, finality of the decision shall not be re-examined.

CARRYING THE ENFORCEMENT OUT

There are two novelties that should be pointed out when it comes to carrying out the enforcement: provisions regarding conduct of court officials (bailiffs) and provisions regarding fines.

- a) “*Court official* is a person employed with the court who directly undertakes certain enforcement or protection measures” seems like a superfluous provision of article 24 para 1(7) of the Draft. However, its purpose is to enable court officials to become a separate profession within justice system. It would be useful if in the future such profession would be regulated by law (e.g. explicitly

mentioned in the Law on Judiciary, and further regulated through sub-statutory enactments, that would envisage particular training, education, sworn ceremony of accepting the position, etc.).

Numerous provisions regulate the conduct and the modality of conduct of the court officials. One should point out, as the most important thing, that they are under constant supervision of the enforcement judge. Enforcement judge shall, upon objection of a party, annul any illegal or irregular action of the court official; and such action is, of course, a basis for holding court official responsible.

To the extent possible in the existing legal environment, issue of police conduct has also been regulated to the extent they carry out certain enforcement actions, and the issue of communication among competent ministries has also been tackled. However, it is a unanimous opinion of the authors of the Draft that the future of this issue depends on establishing court police, which would, among other things, assist in enforcement procedure.

b) Article 41 of the Draft has regulated enactment and collection of fines in the enforcement procedure.

There are two types of fines (and none of them may, for stated reasons, be substituted for prison sentences):

- A fine may constitute an enforcement measure if the issue is a non-substitutable action (article 196 of the Draft). Courts shall then issue a fine, if the debtor does not voluntarily comply with order for action or refraining from action, and if the debtor does not comply even after fining, alongside the conclusion for collection of the first fine, the court shall issue a second, larger fine. (One may envisage that a fine is already threatened with in the first order which grants enforcement and orders debtor to perform or refrain from certain action).
- Another situation is where a debtor or other participant of the procedure (debtor's debtor, person who holds debtor's item, bank, organization for coercive collection of payments...) is ordered to perform or refrain from certain action. (Further conduct is identical to the first situation).

ENFORCEMENT FOR COLLECTION OF MONEY CLAIMS

Enforcement against real estate

Enforcement for collection of money claims through a sale of debtor's real estate is governed by Chapter II of the Law. According to 'classification' of the novelties of the Draft, this Chapter contains some improvements of the text and some new solutions, that is, solutions which significantly alter the current Law. The basic goal of the drafters was to improve the position of enforcement creditor, and that mandated improving efficiency, through a number of seemingly

minor corrections, of the whole enforcement procedure through sale of the real estate.

Enforcement debtor's position

a) *Preemptory right (article 107 and 108)* A preemptory right is established for the benefit of enforcement creditor, expanding the number of persons that may use such right in the procedure for enforcement through real estate sale.

There are no objections in principle against establishment of preemptory right for the benefit of enforcement creditor, since the Law on Enforcement does not contain exclusively provisions of procedural natures. On the contrary, it contains a number of substantive provisions (e.g. acquisition of liens in enforcement procedure).

When regulating creditor's preemptory right, particular attention has been given towards establishing a necessary harmony and balance with statutory and contractual preemptory rights existing on the same real estate, and in particular:

- Order of exercise of rights,
- Determination of the moment in time when the enforcement creditor acquires preemptory right, and
- Conditions for exercise of such right.

For example, enforcement creditor acquires such right through recording an entry of the order for enforcement against real estate, and uses it conditionally, if and when there are no statutory or contractual preemptory rights that have been acquired earlier, or such rights exist but their owners do not intend to exercise them. Court shall invite the owner of the statutory preemptory right and owner of the contractual preemptory right that has been entered in the land registry, as well as the enforcement creditor, to declare into court records whether they intend to use such right.

Enforcement creditor shall use such right as advantage over the highest bidder.

When exercising such right, enforcement creditor shall not deposit security, and shall exercise it even when the real estate is being sold through direct sale.

b) *Compensation through awarding an item into property of the enforcement creditor, or awarding it to enforcement creditor for use.* Compensation through awarding real estate into property of enforcement creditor is one of the more important novelties in this portion. Such award is possible when the real estate has not been sold even at the second public bidding hearing or through direct sale within time limit set by the court. This compensation is executed on request of the enforcement creditor, real estate is awarded to him/her and he/she is considered compensated up to 2/3 of the assessed value of the real estate (that is, at the minimal bidding price) and the court decides so in a form of conclusion. Debtor may lodge objection against such conclusion, if there is an obvious discrepancy between assessed price and the

value for which the creditor is considered compensated. (This late reaction to assessment figures is possible in light of later market price fluctuations). Three alternatives to this basic solution have been offered as well.

Creditor may request real estate to be handed over to him for use if first and second bidding have been unsuccessful, and if creditor has not exercised the right to compensate through taking over the real estate. Such handover may be requested no later than 15 days from the day on which enforcement has been cancelled. Handover ruling shall determine the compensation for use, which means that the instrument at hand is a real estate lease of sorts. Debtor may lodge objection against such ruling.

These two new instruments should dampen the impact of the fact that real estate is seldom sold even at 2/3 of its assessed price, so this solution is, on one hand, in favor of the enforcement creditor, and the pressure on enforcement debtor to fulfill obligation and thus free real estate from compulsory lending, and on the other hand, avoid loss of property at unfavorable prices.

Legal status of the co-owner of property that is the object of enforcement

Legal status of the co-owner of property that is the object of enforcement is improved and changed, but not at the expense of enforcement creditor, through introduction of the right of the real estate co-owner to demand that the real estate, co-owned by the debtor, be exempted from the enforcement and be handed over to the other co-owner into exclusive ownership, on condition that said co-owner deposits the sum equal to the assessed value of the part co-owned by debtor. This right may also be exercised by one of the remaining co-owners or by several of them jointly (priority of exercising this right is not determined).

Basic solution prescribes that this right may be exercised only in accordance with certain conditions related to the size of the share co-owned by the co-owner who demands the real estate to be exempted from enforcement and be handed over to him into exclusive ownership, as well as the co-owned share of the enforcement debtor. A share in the jointly owned real estate that is subject to enforcement does not amount to more than half of its value is not enough to request exemption from enforcement, but is entitled to have the assessed value of his share paid before compensation of any enforcement creditors and before compensation of costs of the enforcement procedure. (This does not interfere with preemptory rights of the co-owner, if it is established by the law or through a contract).

An alternative to this solution is also provided, according to which a co-owner may request the co-owned property to be exempted from enforcement and be handed over into his sole ownership, without regard to the size of shares, on condition that he deposits the sum equal to the value of debtor's share.

As stated, this provision does not interfere with the preemptory right of the co-owner if so established by the law or through contract. These are two entirely different rights and are exercised in entirely different ways. – when according to the quoted provision a co-owned real estate is exempted from enforcement, there is no public auction (bidding) or direct sale – rather, a co-owner deposits the sum equal to the assessed value of debtor’s share, and if the right is preemptory, the real estate is publicly auctioned, its price is determined through bidding, but the person holding preemptory right holds the right to preempt other bidders. They have preemptory right over the highest bidder, if they declare intent to buy at the same conditions right after conclusion of the bidding. Therefore, public bidding enforcement is carried out and the holder of the preemptory right enjoys priority, however, when the co-owner declares intent to buy before the public bidding, it is exempted from sale and the enforcement is cancelled. If the co-owner is at the same time a holder of preemptory right, he holds both entitlements and may decide which one to exercise.

Public auction procedure

Public auction procedure is shortened and simplified. This is actually a number of small improvements, the most important of which are:

- a) deposition of price established at public auction has to be done within 30 days (instead of the current solution whereby the court determines the time limit)
- b) if the highest bidder does not deposit sale price within that period, court shall not schedule another sale but shall, instead, declare that sale invalid and shall determine that the real estate is sold to the second highest bidder. If he/she also fails to deposit sale price within 30 days, this rule shall be applied accordingly to the third highest bidder. Only when he/she also fails to deposit the sale price, the court shall declare annul auction and shall schedule a new one, which will be held within 30 days.
- c) In lieu of collecting bids of the auction participants, Draft introduces auction director. Auction director shall, in accordance with the rules provided, raise the price until the best price is achieved (this is implementation of the auction within privatization process).

‘Extended’ procedure of compensation through real estate sale

These provisions ensure efficiency of the procedure and regulate in more detail actions following delivery of order to award real estate to the buyer (unless the Law or agreement with the buyer specifies otherwise). They encompass:

- a) eviction of enforcement debtor out of the sold real estate:
 - On request of the buyer (motion);
 - Court decides on this in a conclusion;

- Court orders eviction and handover of real estate to the buyer;
- This conclusion is carried out through application of provisions of the Law on Enforcement Procedure regulating enforcement through eviction and handover of the real estate;
- Buyer who requests this enjoys position of the enforcement creditor.

Proof of ownership

Working text also regulates in more detail issues of enforcement against real estate related to the necessary quality of proof of enforcement debtor's ownership over the real estate that is subject to enforcement. Just like in other cases, actual circumstances have been taken into account, as well as deficiencies of real estate registries, reluctance to register, and the fact that estate that is not registered may represent the object of enforcement in, e.g. tax matters.

Draft distinguishes between three situations:

- Where the debtor's ownership is entered into registry of property
- Where the property registry exists but debtor's ownership has not been entered in it;
- Where no property registry exists (no registry has been established),

If the property is registered, enforcement creditor shall, alongside motion to enforce, submit excerpt from the public record as a proof that the enforcement debtor is the owner of the property. If, given the same set of facts, other person is recorded as the owner, enforcement creditor who contains that the real owner is the enforcement debtor shall submit executive title that is sufficient for recording enforcement debtor's right. On the basis of it, the court shall record enforcement debtor's right.

There are special provisions regulating situations where there are no records of real estate right, but there is only cadastre or deeds, and those provisions mostly correspond to the current solution (art 170 of the LoE), that is, applying accordingly provisions applicable on that territory to documents submitted alongside the motion to enforce as a proof of ownership over real estate, as well as the according application of provisions regulating where and how the enforcement order shall be recorded. Cadastre record and deed may be used as proof of ownership, and if there are no such proofs or they may not be obtained, enforcement creditor shall in her motion to enforce state the place where the real estate is located, its name, borders and its area. The court shall perform inventory of that real estate and will invite enforcement creditor, enforcement debtor and neighbors to participate. Inventory record constitutes enforcement record.

While the LoE in force envisages similar rules for circumstances where registry actually exists, but debtor's property has not been registered in it, article 141 of the Draft regulates this situation in detail:

- Enforcement court shall, upon receiving motion to enforce, deliver those documents to the authority charged with recording rights and shall stay the procedure until the recording is entered;
- If requirements for entering a record have not been met since there are no appropriate documents, e.g. a building or a part of it are the objects of enforcement and there is no permit to use, building permit on the name of enforcement debtor shall be sufficient, and if there is no building permit on the name of the enforcement debtor, it shall suffice to present documents on legal transactions that lead to acquisition of property on behalf of the enforcement debtor.

PROCEDURE IN COMMERCIAL MATTERS

The goal of the enforcement procedure reform is a more efficient, quicker and cheaper procedure. This goal was especially in sight with regard to commercial matters, where debtor is a professional who is obliged and capable of guarding its own interests.

Therefore, some special rules are envisaged for enforcement in commercial matters, and are grouped in a special chapter of the Draft Law. Here are some of the most important rules:

- 1) *Persons who are subject to the chapter regulating enforcement in commercial matters.* Enforcement in commercial matters applies to juristic persons, but also to entrepreneurs, natural persons who perform a for-profit activity and have an account opened in accordance with the payment system rules. Provisions on enforcement in commercial matters are applicable when a commercial entity appears in an enforcement measure or as object of enforcement.
- 2) *Content of the motion to enforce.* Content of the motion to enforcement is harmonized with provisions of the Law on Payment System, and the motion will have to contain debtor's ID number, debtor's tax number and numbers of accounts with a commercial bank. However, this does not mean that the motion will be rejected if the enforcement creditor does not submit any of the above mentioned information, since the court can not dismiss the motion if enforcement creditor submits proof that it has requested competent authorities to furnish said information. In such occasions, the court itself has to request such information from competent authorities, and competent authorities will have to obey court's request.
- 3) *Delivery.* Delivery is simplified in a following manner: delivery is carried out in accordance with the Law on Civil Procedure, and if such delivery is not successful, it is carried out at the address where debtor's seat, as recorded in the registry is located, or at the address of person authorized and so recorded in the registry. If such delivery also fails, delivery shall be considered successful

after 8 days from the day on which the document has been affixed to court's noticeboard. Enforcement procedure used to last long because of the inability to carry out delivery. This should make the procedure more efficient.

- 4) *Enforcement against accounts and against stocks and shares.* These enforcement measures are regulated in detail in accordance with the Law on Payment System, and in accordance with the new Law on Securities. New enforcement measures are introduced and regulated (stocks, shares in the limited liability company), and role of institutions participating in enforcement procedure has been clarified (Organization for coercive collection of payments, Registry of securities, authority where commercial entities will be registered once the courts cease to perform such function).
- 5) *Summary enforcement procedure.* Here, an effort has been made in order to reduce number of litigation cases in certain commercial circumstances through an efficient and cheap enforcement procedure based on documents.

When it comes to such type of authentic documents, there is no need to refer creditors to litigation unless debtor possesses certain types of documents that have the same or stronger legal standing, and there is an opportunity to end the debtor-creditor relationship through summary enforcement procedure.

If creditor possesses one or more authentic documents explicitly listed in art. 244 and where the motion to enforce explicitly contains that a summary enforcement is requested, the courts shall grant such enforcement in summary procedure.

Debtor may lodge objection against order for summary enforcement only for specifically listed reasons. A mere reference to a particular reason is not sufficient to prevent enforcement – debtor has to submit, alongside objection, some of the evidence explicitly listed.

Competence to decide on objection is vested with the panel comprised of three judges of the same court which has issued the enforcement order. If the panel determines that the objection is justified, order shall be revoked and the case shall be examined in accordance with procedure envisaged for authentic documents. However, if the panel determines that the objection is not justified, it issues order to carry enforcement out. Debtor may appeal against this order, however, such appeal does not stay enforcement.

SECURITY

Security procedure, as well as measure that the court may issue for protecting certain claim, have been constructed on principles wholly different from those that served as a basis of the current LoE in this respect. New basic general characteristics of the court security are:

1. Procedure for deciding on whether security measures will be issued has cognitive procedural character where characteristics of general litigation procedure prevail. Principles of that procedure are, foremost, disposition – since the creditor requesting security shall initiate procedure with a motion that might be revoked for same reasons for which initial litigation action may be revoked. Court’s decision to issue security measure has a character of *titulus executionis*, and the enforcement is commenced immediately, in summary decision procedure. This brings some certainty to the security measures procedure that was lacking until now. Besides, deciding on security measure and enforcing such measure are not confused any more, as they are under legislation currently in force.
2. Contrary to the current law, draft contains clear rules on specific characteristics of security procedure, in particular a departure from principle of hearing both parties and the level of proof necessary for deciding on security measure. Although likelihood of danger that claim will not be possible to compensate (or such compensation will be particularly difficult) is still required, proving danger is significantly eased through prescribing statutory presumptions of existence of such danger (which free creditor from the burden of proof, that is, shift the burden of proving the lack of danger to the opposing side – debtor) and through clearly determining that the facts on which existence of danger is determined only lead to probability, and not to actual persuasion of the court.
3. Number of measures of enforcement has been significantly increased in comparison with the current solutions. Instead of preliminary measures contained in the current LoE, this draft reintroduces **enforcement for preliminary compensation** and **enforcement for security**, which are actually used to carry out enforcement even before the finality of the decision, and if it turns out that it was unfounded, debtor may achieve restitution through counter-enforcement. This strengthens substantive and procedural position of the creditor and strengthens its legal security. Security through establishment of a court lien is significantly broadened as a statutory possibility, in comparison with the law currently in force. Namely, the court may determine lien for securing compensation of the creditor on all chattels and real estate owned by the other party, and on all transferable rights of the other party. According to the current text, this possibility exists only for property, but not for the rights. Besides, lien rights in property and lien rights in rights recorded in public registry are clearly delineated, and relationship between court lien as a security measure and registered pledge has been established. Substantive facts related to the constitution of lien, its duration and cessation – are clearly fixed in this draft, as opposed to the current Law.

Legal remedies issue has been disputed ever since adoption of the LoE in 1978. This draft solves this issue through allowing appeal that may be lodged within strict time limits.

When it comes to particular aspects, this draft consequently develops general characteristics laid out above. Issues of jurisdiction, special procedure and legal remedy are regulated jointly for all types of security measures. This also applies to the time limits within which those measures might be issued. Total number of security measures is increased, and that particularly applicable when it comes to different types of lien as a court security, and different ways of establishing such liens. Changes were, however, rather rare when it comes to provisional measures, but they have been defined in a clearer fashion and more such measures have been defined, in comparison with current situation. Enforcement of all security measures is carried out in accordance with a single act that encompasses *titulus executionis* and enforcement order in itself. Enforcement measures are those contained in the part of the law pertaining to enforcement, as is establishment of liens. In the latter case enforcement, and therefore security as well, is carried out through the very act of the court that constitutes lien. Creditor's prospects to achieve efficient security are significantly broadened in comparison with the current state. If these solutions are adopted as a law, one should expect, in comparison with current state of the matter, increase in number of security procedures before or parallel to litigations.

DRAFT LAW ON
ENFORCEMENT PROCEDURE

PART ONE
Basic Provisions

Content of the Law

Article 1.

(1) This Law shall govern court procedure for coercive enforcement of claims on the basis of executive titles or authentic documents (hereinafter: enforcement procedure) and for protective measures procedure (securing enforcement), unless these matters are regulated by another law.

(2) This Law also regulates procedure for coercive enforcement of civil claims based on foreign executive titles.

Initiation of procedure

Article 2.

(1) Enforcement procedure and protective measures procedure are initiated on the motion of the enforcement creditor.

(2) Procedure referred to in para. 1 of this Article may be initiated ex officio when the law mandates so, and on the motion of persons and authorities specifically authorized by the Law. In such cases, said persons and authorities shall be treated as enforcement creditors.

(3) Procedure may also be initiated upon motion of authorized persons and authorities, when the obligation to initiate procedure is set out in the law.

Competence

Article 3.

(1) Enforcement and protective measures shall be ordered and carried out by court.

(2) Enforcement and protective measures shall be carried out by court on the territory of which enforcement debtor has its domicile or seat, unless otherwise provided by this Law.

Composition of the court

Article 4.

(1) First instance enforcement procedure and enforcement orders shall be the competence of a single judge.

(2) A judge may delegate certain actions to the expert associate, unless otherwise provided by the law.

Expedience of procedure

Article 5.

(1) The court shall act expediently in matters of enforcement and protective measures.

(2) The court shall decide on motion to enforce or a motion for security within three (three) days following its submission. If the motion to enforce is based on foreign executive title that has not yet been recognized by a domestic court, the courts shall decide on the motion within 15 days following its submission.

(3) Time limits for carrying out certain actions set out by the courts shall not be longer than 8 (eight) days.

(4) If a party to the procedure has not carried out certain action within the time limit prescribed by the law or the court, and has done so without justification, the court shall not allow it to carry out the action.

(5) Any judge acting in contravention to paras. 1, 2, 3, and 4 of this Article shall be regarded as delaying the procedure.

Order of proceeding and order of compensation

Article 6.

(1) The court shall administer the cases according to the [chronological] order of their submission, unless the nature of the claim or other special circumstances warrant otherwise.

(2) If there are several enforcement creditors that are enforcing their monetary claims against the same enforcement debtor and on the same object of enforcement, priority shall be given according to the moment in which they have acquired right to compensate against that object of enforcement, unless otherwise provided by the law.

(3) If, in addition to the circumstances set out in para. 2 of this Article, there is an ongoing enforcement procedure before another state authority, the court shall, in accordance with provisions regulating priority of enforcement proceedings before various authorities, decide to stay enforcement procedure or to grant enforcement, while in the case where there are no provisions on priority of enforcement the procedure shall be continued before the court.

Alternatively:

Para 3 is amended and reads:

(3) If there is a parallel ongoing procedure before another state authority regarding the case referred to in para 2 of this Article, the court shall, on the basis of provisions of priority of enforcement before the particular authority, stay the enforcement procedure, and if no such provisions exist, it shall decide whether to stay or continue the enforcement procedure within three days of the day on which it received notice on parallel proceedings.

The principle of formal legality **Article 7**

When all conditions for issuing enforcement order and carrying out the enforcement have been met, the court shall issue the enforcement order or carry out enforcement measures, unless the claim designated in the enforcement title or in the authentic document is contrary to the explicitly stated constitutional rules or mandatory rules of law, or is contrary to the public morale.

The scope of enforcement and security **Article 8**

(1) The court shall grant enforcement or protective measure only in regard to enforcement measures and enforcement objects that have been designated in the motion to enforce, or motion for protective measure.

(2) Where several enforcement measures or several enforcement objects have been suggested, the court may, on its own motion or on motion of a party, limit the enforcement to certain measures or objects only, if they are sufficient for compensation or protection of the claim.

(3) The court may, on proposal of the enforcement creditor or enforcement debtor, in accordance with this Law, designate another enforcement or protection measure, instead of the one originally suggested.

(4) Enforcement of a money claim or a protection of such claim shall be granted and carried out to the extent it is necessary for compensation or protection.

(5) The parties may submit proposal referred to in para 2. of this Article not later than 3 days following the receipt of the enforcement order, while the proposal referred to in para 3. of this Article may be submitted until the beginning of the actual enforcement (beginning of carrying out of the enforcement).

Decisions **Article 9**

(1) Court decisions in enforcement procedure are issued as orders or conclusions.

(2) A conclusion orders officials to carry out certain actions, or decides on issues of governing the procedure.

Service
Article 10

(1) Service of documents in enforcement procedure shall be carried out in accordance with provisions of Civil Procedure Law, unless otherwise provided by this Law.

(2) If no service could be carried out in accordance with provisions of Civil Procedure Law, service shall be carried out through posting on the noticeboard of the court, and shall be deemed carried out on the eighth day following the posting on the noticeboard.

Alternative:
Deleting para 2.

Legal recourse means (remedies)
Article 11.

(1) Enforcement procedure remedies are appeal and objection.

(2) Revision and renewal of the procedure shall not be allowed against a final order in procedure of enforcement or protective measures.

Appeal
Article 12

(1) Enforcement debtor may lodge appeal against enforcement order within 8 days of the day on which order has been delivered, if conditions for lodging of the appeal, as prescribed by this Law, have not been met.

(2) Enforcement creditor may lodge appeal against the order refusing to grant enforcement with 8 days of the day on which the order has been delivered.

(3) Both parties may lodge appeal against decision on costs of the enforcement procedure.

(4) Appeal may be lodged against the decision on objection.

(5) Appeal against other orders in the enforcement procedure is allowed only if this Law specifies so.

Appeal procedure
Article 13

(1) A second instance court, comprised of three judges, shall decide on appeal.

(2) Appeal shall not halt enforcement, unless the enforcement order court decides otherwise for important reasons.

(3) First instance court shall deliver case material to the second instance court within 3 days of the receipt of appeal.

(4) Second instance court shall decide on appeal within 15 days of the receipt of the case material, and shall return case material to the first instance court within 8 days.

(5) Any action in contravention to paras. 3 and 4 of this Article shall be regarded as delay of the procedure.

Alternative

Para 2 shall read as follows:

(2) Appeal shall not stay enforcement, unless the court adopts motion for postponement for reasons provided in Article 60 of this Law.

Objection

Article 14

(1) Enforcement debtor may lodge an objection to the court which has issued enforcement order, no later than three days upon receipt of the order.

(2) Objection may be lodged for reasons that affect the claim, and in particular:

- 1) when the claim has been extinguished on the basis of a fact that has come into existence after the moment when the decision representing the executive title has become enforceable, or came into existence before that moment, but at that time it was not possible for the enforcement debtor to submit that in the procedure which ended with the enactment of the executive title, or, when the claim has been extinguished on the basis of the fact that has come into existence after the settlement agreement;
- 2) if the time limit for compensation of the claim has expired or if the condition set out in the executive title has not been met;
- 3) if the enforcement debtor has postponed the fulfillment of the obligation for a period of time that has not yet expired;
- 4) if the motion to enforce does not contain evidence that the claim has neither been ceded to the enforcement creditor, nor that the obligation has been transferred to the enforcement debtor, or if that particular evidence has not been properly assessed;
- 5) if the executive title claim has been extinguished according to provisions on statutory limitation.

Relationship between appeals and objections

Article 15

(1) If an appeal has been lodged for the fact that affect the claim, it shall be treated as objection.

(2) If the objection is lodged, in addition to reasons that affect the claim, for other reasons as well, it shall be treated as an appeal.

(3) Depending on the reason for its lodging, first instance court shall decide what legal remedy it shall proceed on.

(4) Appeal is not allowed against conclusion on what legal remedy to examine.

Objection procedure

Article 16

(1) Court shall decide on objection no later than 15 days of the day of its receipt, or within 15 days of the day on which the court, within the meaning of art. 15 para 3, has concluded that it shall proceed examining objection.

(2) Competence to decide on objection shall be vested in the court that has issued enforcement order

(3) Court shall stay enforcement until it decides on objection lodged.

(4) Enforcement debtor shall state all reasons and all evidence on which he bases his reasoning and submit such reasons together with the objection. If he fails to do so, any later objection shall be rejected.

(5) The courts shall decide whether to schedule a hearing on objection, depending on the grounds on which the objection is based.

(6) Parties may appeal against the order deciding on objection and the appeal may be based on insufficient or inaccurate factual assessment, or on erroneous use or assessment of evidence.

(7) Competence to decide on appeal shall be vested with the second instance court.

(8) Appeal referred to in para 6 of this Article shall not halt the enforcement of the order.

(9) Court action in contravention to para. 2 of this Article shall be regarded as delay of the procedure.

Instruction to litigation or other procedure

Article 17

(1) When the creditor denies facts stated in the objection referred to in Article 13 of this Law, and such facts may not be proven by documents or witness testimony within 15 days of the day on which the objection has been received, the court shall instruct the party, whose allegations seem to be less probable, to resort to litigation or to some other procedure.

(2) An appeal may be lodged against the order instructing a party to initiate litigation only if the court has erroneously decided on which party is instructed to initiate litigation.

(3) The party instructed to initiate litigation or some other procedure shall submit a motion to declare enforcement impermissible or a motion for continuation of enforcement.

(4) If the party, that has been instructed to initiate litigation or some other procedure, does not initiate it within 15 days of the receipt of order referring to litigation, the court shall continue enforcement on facts that may be proven by official documents or documents certified in accordance with law.

(5) Unless otherwise provided by this Law, the fact that one of the parties has been instructed to initiate litigation or some other procedure shall not prevent carrying out of the enforcement.

(6) Any action or other motion initiating a litigation or some other procedure shall contain all facts and grounds that render enforcement permissible or impermissible. (A new action or a new motion initiating a procedure that would contain other facts or grounds regarding the same claim shall be inadmissible).

Objection of the third party

Article 18

(1) Third party may lodge an objection against the enforcement order no later than 3 days upon being informed that the enforcement order has been passed, if its right in over certain property and rights encompassed by the enforcement order, is stronger than the right of the enforcement debtor.

(2) Enforcement order court shall decide on objection only if the third party proves its claim by submitting a official document or a document certified in accordance with law.

(3) If a right of the third party may not be proven in accordance with para. 2 of this Article, the court shall instruct the third party to initiate litigation or another procedure.

(4) In lieu of lodging the objection, a third party may initiate litigation or some other procedure. It shall inform on this the court that has passed enforcement order within 3 days of filing the action or initiating some other procedure.

(5) Where an objection has been lodged, action has been filed or some other procedure has been initiated, the court may, upon hearing the arguments of the parties, determine another object of enforcement or other enforcement measure, or, if such alteration is not possible, carry out the enforcement.

Objection against enforcement order based on authentic document

Article 19

(1) Objection may be lodged against enforcement order issued on the basis of authentic document, and such objection may be lodged within 3 days of the day on which the order has been delivered.

(2) If the enforcement debtor has not designated in its objection the portion of the enforcement order he is actually objecting to, it shall be understood that the enforcement debtor is objecting to the order in its entirety.

(3) If the enforcement order based on authentic document is challenged in entirety or in regard to the part ordering enforcement debtor to compensate the claim, the court seized shall repeal enforcement order in the part where it orders enforcement and shall repeal all actions already carried out, and further procedure shall be carried out in accordance with the provisions on objection against money order, and if the court is not territorially competent to rule on such issue, it transfer the case to territorially competent court.

(4) If the enforcement order is challenged only in the part ordering enforcement, further procedure shall be carried out as a procedure on objection against enforcement order issued on the basis of authentic document.

(5) If the objection referred to in para 3 of this Article is sustained, part of the enforcement order that mandates enforcement order to compensate enforcement shall have the status of executive title on the basis of which one may again request enforcement.

(6) Objection against enforcement order must contain a reasoning.

Restitutio

Article 20

Enforcement procedure restitutio shall be permitted solely for overstepping of the time limit for lodging objection against enforcement order, and for overstepping of the appeal time limit.

Enforcement of foreign executive title

Article 21

1) Local jurisdiction over the enforcement of foreign executive title shall be vested in the court of the territory where at least one enforcement object, as stated in the motion to enforce of the enforcement creditor, is located, unless otherwise provided by this Law.

2) If the motion to enforce is based on a foreign executive title, enforcement creditor shall submit its original or certified copy, translated into official court language, and attach a document evidencing its finality (enforceability) according to the law of the country of origing of the executive title.

3) A foreign execution title already recognized by the domestic court in accordance with law shall be enforced in the manner and in the procedure identical to the procedure of enforcement of domestic executive titles.

4) Enforcement creditor may also initiate enforcement procedure before a competent court of the Republic of Serbia on the basis of the executive title that has not been previously recognized before the domestic court. Where the motion to enforce has been initiated on the basis of the foreign executive title that has not yet been recognized, recognition is treated as a preliminary matter.

5) The court deliberating on granting the enforcement on the basis of foreign executive title that has not been previously recognized shall examine those obstacles to recognition that are taken into account *ex officio*.

6) In their objection to the enforcement order on foreign executive title not previously recognized by the domestic court, parties to the procedure may invoke other obstacles to recognition of foreign executive title provided by the law.

Enforcement against property of foreign state

Article 22

Property of foreign states and international organizations that is located on the territory of the Republic of Serbia shall be exempt from execution or protective measures where no prior written authorization of Justice Ministry has been obtained, unless the foreign state or international organization has explicitly consented to enforcement or protective measure.

Application of provisions of the Code of Civil Procedure

Article 23

Provisions of the Code of Civil Procedure shall be applied accordingly to enforcement and protection measures procedure, unless this Law or some other laws provide otherwise.

Definitions

Article 24

Certain notions and expressions used in this Law shall have the following meaning:

- 1) “claim” is a right of the enforcement creditor to request the payment of a sum of money or some other consideration, performance or non-performance;
- 2) “enforcement creditor” is a person seeking enforcement or securing a protective measure;
- 3) “enforcement debtor” is a person against whom enforcement or protective measure is sought;

- 4) “party” is enforcement creditor or enforcement debtor;
- 5) “participant” is a person that, while not being a party to the procedure, protects certain right or legal interest of its own;
- 6) “enforcement order” is a order that partially or completely grants the motion to enforce;
- 7) “court official” is a person employed with the court who directly undertakes certain enforcement or protection measures;
- 8) “object of the enforcement” is a right or a property that might be transferred, cashed-in or used in other way in order to compensate a claim;
- 9) “enforcement measure” is a collection of actions and decisions of the court and court official, set out in this law, carrying out enforcement or protective measures;
- 10) “farmer” is a person whose predominant portion of income stems from agriculture;
- 11) “public registry” is a registry of real estate and other public registries, or a register designated by law for evidencing and entry of rights on real estate, shares and other enforcement objects;
- 12) “pre-entry” is a entry in the public registry that conditionally transfers, acquires or extinguishes rights on real estate or other objects of enforcement.
- 13) “security” is a document or an electronic record that is an object of certain right or that contains a right that represents the object of enforcement;
- 14) “share” is a security entered in the Registry of securities that is an object of enforcement or protective measures.

PART TWO
**General Provisions
on Executive Procedure**

Chapter One: INTRODUCTORY PROVISIONS

Bases for granting enforcement

Article 25

The courts shall grant enforcement only on the basis of executive title or authentic document, unless this Law provides otherwise.

Executive title

Article 26

The following shall be considered executive titles:

1. Enforceable court decision and enforceable court settlement
2. Enforceable decision issued in administrative procedure and administrative procedure settlement, entitling to a sum of money, unless a special law provides otherwise
3. other title designated as executive title by the law.

Decision and settlement

Article 27

(1) For the purpose of this Law, the following shall constitute a court decision: judgment, order and other decision issued in a procedure before the court or arbitration; a court settlement shall mean a settlement agreed to before the court or arbitration.

(2) For the purpose of this Law, the following shall constitute an administrative procedure decision: a order or conclusion issued in the administrative procedure by authorities, services or juridical persons performing entrusted public competencies, and the administrative settlement shall mean a settlement concluded in the administrative procedure.

Enforceability of the decision

Article 28

(1) A court decision ordering the satisfaction of a claim to performance or transfer shall be regarded as enforceable if it has become final

and if the time period for voluntary compliance has expired. Voluntary compliance period begins on the day on which the decision is delivered to the enforcement debtor and expires on the last day of the period set out in the court decision, unless stated otherwise.

(2) A court decision ordering abstaining from action or ordering allowing some action of the others is enforceable when it becomes final, unless the executive title sets out the time limit for bringing in line the behavior of the enforcement debtor with that duty.

(3) Enforceability of decisions issued in the administrative procedure shall be assessed in accordance with the rules governing that procedure.

(4) Partial enforcement may be granted if only a part of the decision became enforceable.

(5) Enforcement shall be granted even on the basis of a decision that has not yet become enforceable or administrative procedure decision that has not become final yet, if the law provides that the appeal does not postpone enforcement.

Enforceability of the settlement

Article 29

(1) Court settlement and administrative procedure settlement shall be enforceable if the settlement claim has matured in accordance with the terms of the settlement, or, in cases where the maturity period has not been treated explicitly in the settlement, it shall be enforceable upon expiration of the statutory period for voluntary compliance.

(2) Maturity of the claim shall be evidenced by settlement minutes, official document or a document certified in accordance with law.

(3) Maturity that may not be evidenced in accordance with para 2. of this article shall be proven by a final decision issued in litigation or administrative procedure, and such decision determines maturity.

(4) If the settlement has matured only partially, enforcement may be granted only for the matured part.

Enforcement suitability of the executive title

Article 30

(1) Executive title shall be suitable for enforcement if it designates enforcement creditor, enforcement debtor, object of enforcement, its type, scope and time period of claim compensation.

(2) If the executive title does not designate a time limit for voluntary compensation of the claim, such time limit shall be set in the enforcement order.

Determining and charging default interest rate

Article 31

(1) If a change in the default interest rate takes place after the creation of the executive title, the court shall, on proposal of the enforcement creditor or enforcement debtor, order in its order the default interest rate to be paid in accordance with the new level.

(2) If the executive title determines the procedural costs, the court shall, on proposal of the enforcement creditor, order the default interest rate to be paid on the sum of the procedural costs, for the period between the day on which the executive title has been issued to the day of payment.

Authentic document

Article 32

(1) Enforcement of money claims may be granted on the basis of authentic documents as well.

(2) For the purpose of this Law, the following shall be considered an authentic document:

1. Bills of exchange and cheques (protested and with a return charge) if necessary for establishment of a claim
2. bonds and other serial securities entitling their holders to cash in their nominal value
3. bills
4. business book excerpts for the price of utilities, water, heating, garbage collection and similar services
5. official document creating an enforceable money obligation, except for foreign official documents
6. bank guarantee
7. letter of credit
8. debtor's certified statement, authorizing the creditor to order a money transfer.

(3) Interest rate calculation shall also be considered as invoice.

(4) Authentic document shall be suitable for enforcement if it designates enforcement creditor, enforcement debtor, object of enforcement, its type, scope and time period of claim compensation.

(5) Where maturity of the claim may not be derived from the authentic document, enforcement shall be granted only if the enforcement creditor submits a written statement confirming maturity of the claim and stating the date of the maturity.

(6) In the cases where authentic document represents a method of payment, enforcement creditor may initiate summary enforcement procedure.

Transfer of claim and obligation

Article 33

(1) Enforcement shall also be granted on the motion and in favor of the person that has not been designated as enforcement creditor in the executive title, if such person submits official document or a document certified in accordance with law as evidence that the claim has been transferred or ceded to him/her in any way or, if such evidence is not available, offer a final civil or administrative decision to prove such transfer or cession.

(2) Enforcement shall also be granted against a third party that has not been designated as enforcement debtor in the executive title, if the enforcement creditor submits official document or a document certified in accordance with law evidencing that said third party has acquired the debt contained in the executive title, or that the law mandates said third party to pay such debt. If the obligation of the third person is objected to, the court shall instruct the party whose right it considers to be less probable to litigation or to administrative procedure.

Conditional and mutual obligation

Article 34

(1) Enforcement conditioned on prior fulfillment of an obligation of the enforcement debtor or on occurrence of some other condition, shall be granted when enforcement creditor evidences the occurrence of such condition or of fulfillment of such obligation with an official document or a document certified in accordance with law.

(2) Fulfillment of the obligation or occurrence of a condition shall be evidenced by a final administrative or civil procedure decision if the enforcement creditor is not capable of offering evidence referred to in para 1. of this Article.

(3) Where the executive title requires enforcement debtor to fulfill an obligation that is conditioned on a fulfillment of an obligation towards the enforcement debtor, the court shall grant enforcement if enforcement creditor submits evidence of fulfilling his obligation towards the enforcement debtor.

(4) Enforcement creditor's obligation referred to in para 3 of this Article shall be considered fulfilled when the object of the obligation is deposited with the court or another appropriate action is taken to the similar effect.

(5) Enforcement creditor claiming that he/she has already fulfilled his/her obligation shall evidence so in accordance with paras 1 and 2 of this Article.

Alternative obligation of enforcement debtor's choice

Article 35

(1) Where, according to executive title, enforcement debtor has a right to chose among several objects of his/her obligation, enforcement creditor shall, in the motion to enforce, designate the object of enforcement.

(2) Enforcement debtor has a right to chose until the enforcement creditor receives the requested object fully or partially.

Enforcement debtor's options

Article 36

When the enforcement debtor is ordered to fulfill a non-money obligation, with an option to avoid obligation by paying a certain sum of money designated in the executive title, enforcement debtor may not exercise option to pay a sum of money after the moment on which the enforcement creditor has even partially received the non-money compensation.

Submissions and hearings

Article 37

(1) Enforcement court proceeds on the basis of submissions and other written documents.

(2) The court shall summon a hearing when so required by this law, when it considers the hearing to be suitable.

(3) The court shall listen to the parties and other participants to the procedure without a formal hearing if so provided by this law or if it considers such method necessary for clarification of certain issues or certain motions.

(4) Absence of one or both parties or other hearing participants or their ignorance of court hearing summons shall not prevent the court from proceeding.

Enforcement measures and objects of enforcement

Article 38

(1) Enforcement measures are enforcement actions or a system of such actions used to coercively enforce a claim in accordance with law.

(2) Objects of enforcement are rights and property that the enforcement of the claim may be carried against in accordance with law.

(3) The court shall Enforcement measures may be carried out directly against the enforcement debtor and other persons in accordance with this Law.

(4) The following are not eligible for enforcement objects: non-transferable property and other property explicitly designated by law.

(5) Claims based on taxes and other public dues may not be object of enforcement.

(6) Buildings, arms and equipment used for defense purposes may not be object of enforcement.

(7) Eligibility of a certain property or right to be object or enforcement, or the scope of enforcement on certain right or property, shall be determined in accordance with the circumstances present at the moment of submission of the motion to enforce, unless otherwise provided by this Law.

Costs of the procedure

Article 39

(1) Enforcement creditor shall put up advance against the costs of granting and carrying out the enforcement.

(2) Enforcement creditor shall put up advance for the costs of enforcement within period prescribed by the court. Such period shall not be shorter than 30 or longer than 60 days. The court shall abort enforcement if no advance payment for costs has been made in the prescribed period, if such costs are necessary for carrying out the enforcement.

(3) The court shall bear the costs of advance payment where the enforcement procedure is initiated ex officio.

(4) Enforcement debtor shall reimburse enforcement creditor's costs necessary for enforcement if the enforcement creditor requests so.

(5) Enforcement creditor shall reimburse costs unnecessarily inflicted on the enforcement debtor if the debtor requests so.

(6) Request for costs may be submitted no later than 30 days after the end of the procedure.

(7) The court shall decide on costs in enforcement procedure, and shall grant enforcement for their collection on party's motion.

Guarantee

Article 40

(1) Guarantee referred to in this Law shall be deposited in cash or hard currency.

(2) Exceptionally, the court may grant guarantee based on bank guarantee, securities or precious objects whose value may be easily determined on the market and that may be sold quickly and easily.

(3) Other party establishes statutory lien on the deposited guarantee.

(4) If, in enforcement procedure, the court decides on opposing party's right for damages or costs of the procedure related to the action for which guarantee was deposited, it shall, on request of the party and in the same order, decide on compensation of the claim out of that guarantee.

Chapter Two: FINES AND COURT PENALTIES

Section 1. Fines

Enforcement procedure fines

Article 41

(1) Where this law provides fine as enforcement measure, such fine may be levied against natural persons in the amount of 3000 to 150,000 dinars, and against juristic persons in the amount of 30,000 to 1,500,000 dinars.

(2) A fine of 5,000 to 150,000 dinars may be levied against a responsible official of the juristic person.

(3) Fine referred to in paras 1 and 2 of this Article shall be levied repeatedly, in increased amount, alongside conclusion on carrying out the preceding fine, if the enforcement debtor does not obey the repeated order of the court or continues to act in contravention to the prohibition. Ordering of the fine and carrying it out shall be repeated until the fined person obeys court decisions.

(4) Prior to levying of the fine, the court shall enable enforcement debtor to state its position, and shall organize an evidence hearing if necessary.

(5) The court shall issue a order on fining, and shall take into account, when deciding on the amount, economic strength or circumstances of the enforcement debtor, significance of the action that should have been undertaken and other circumstances of the case. The order shall set the period for payment as well.

(6) Person against whom the fine has been levied may lodge objection against the order on fining within three days of receiving the order.

(7) Person against whom the fine has been levied shall bear all costs caused by the levying the fine and carrying it out.

(8) The fine shall be collected ex officio if the enforcement debtor does not pay it voluntarily. Costs of the coercive enforcement of the fine shall be coercively collected together with the coercive enforcement of the fine.

(9) The fine referred to in this Article may also be levied and enforced against the enforcement debtor, debtor's debtor, bank and other natural and juristic person, as well as responsible officials of the juristic person if they disobey the order or prohibition issued in the enforcement procedure, where allowed so by this Law.

(10) A fine levied in accordance to paras 1 to 9 of this Article may not be converted into a prison sentence.

Section 2. Court penalties

Penalty procedure

Article 42

(1) Court shall decide in enforcement procedure on request of the enforcement creditor to order the enforcement debtor of a non-money obligation determined in the final judgment to pay court penalties provided in the provisions governing law on obligations.

(2) Request for payment of court penalties may be submitted to the court competent for enforcement of the decision establishing a non-money claim before submitting the motion to enforce.

(3) Rules on expediency shall always be applicable to requests for payment of court penalties. The court shall, as a rule, decide on court penalty payment request without holding a hearing.

(4) If the court finds that the request for court penalties is well founded, it shall issue a order, ordering the enforcement debtor to pay the court penalties for the period starting with the submission of the request for payment of court penalties until the submission of the motion for coercive enforcement.

(5) Appeal may be lodged against the order that grants or rejects the request for payment of court penalties.

(6) Upon receiving a motion to enforce the decision ordering enforcement debtor to fulfill a non-money obligation, the court shall rescind the obligation to pay penalties in the future.

(7) Debtor who voluntarily carries out the obligation after the order on court penalties, but before the motion for coercive enforcement, may submit request for lowering of already determined court penalties, in accordance with the rules of law on obligations.

(8) The court that decided on court penalties shall rule on lowering of their amount. An appeal may be lodged against the order that grants or refuses the motion to lower the amount of court penalties.

Coercive enforcement

Article 43

Order on court penalty payment obligation shall be coercively enforced in accordance to the provisions of this Law applicable to enforcement of money obligations.

Chapter Three: MOTION TO ENFORCE

Subject-matter jurisdiction

Article 44

Subject-matter jurisdiction to decide on the motion to enforce shall be vested in the court designated by law.

Content of the motion and appended materials

Article 45

(1) The following must be designated in the motion to enforce: enforcement creditor and enforcement debtor, executive title or authentic document, obligations of the enforcement debtor, measures and objects of enforcement and other data necessary for carrying out of the enforcement.

(2) Alongside the motion to enforce, enforcement creditor shall submit executive title or authentic document in original or certified copy and other documents when so required by this Law.

Certificate of enforceability

Article 46

(1) Where the motion to enforce is not submitted to the court that decided on claim in the first instance, the motion shall be accompanied by a original executive title or a certified copy of it, with enforceability certificate, or an authentic document shall be submitted.

(2) Certificate on enforceability shall be attached by the court, or by other authority that has decided on claim in the first instance.

(3) Unfounded enforceability certificate shall be annulled by the very same authority, on request or ex officio.

Revocation of the motion

Article 47

Enforcement procedure shall be aborted if the enforcement creditor fully or partially revokes the motion to enforce.

Order on the motion

Article 48

(1) Enforcement order must denote: enforcement creditor and enforcement debtor, executive title or authentic document, claim of the enforcement creditor, measures and objects of enforcement, and other data necessary for enforcement according to this Law.

(2) A order that fully or partially denies the motion to enforce shall contain reasoning.

Delivery of the enforcement order

Article 49

(1) Enforcement order shall be delivered to enforcement creditor and enforcement debtor. A order that denies the motion to enforce shall be delivered to enforcement creditor only.

(2) Motion to enforce shall be attached to the enforcement order delivered to the enforcement creditor.

(3) Enforcement order against the money claim shall also be delivered to the debtor of the enforcement debtor, and the enforcement order on assets kept in the account of the enforcement debtor shall also be delivered to the organization for coercive collection.

(4) Enforcement order on chattels shall be delivered to enforcement debtor immediately before the initiation of the first enforcement action, unless this Law specifies otherwise.

Chapter Four: CARRYING OUT OF THE ENFORCEMENT

Enforcement based on the non-final enforcement order

Article 50

Enforcement shall be carried out before the enforcement order has become final, unless this Law provides otherwise. However, court may not, fully or partially, complete the enforcement procedure through compensation of the creditor before the enforcement order has become final.

Time of the enforcement

Article 51

Enforcement shall be carried out during the day-time on working days, and on non-working days or during the night-time it may be carried out only if there is a danger of delay, if so determined in the court's conclusion.

Actions of the court official

Article 52

(1) Court enforcement clerk shall, in the course of search of enforcement debtor's apartment or clothes he/she wears and in the course of carrying out other enforcement actions act with due respect of the enforcement debtor and the members of his/her household.

(2) At least two adult citizens shall be present during enforcement actions at the premises of the enforcement debtor if neither enforcement debtor, nor legal representative or agent of the debtor or some other adult household member is present.

(3) If an executive action is to be carried out in a locked room and the judgment debtor is not present or refuse to unlock the room, the court official shall open such room in the presence of two adult witnesses.

Interference with actions of the court official

Article 53

(1) Court official is authorized to order a person who interferes with the course of enforcement to leave the place where the enforcement is being carried out.

(2) In the course of the enforcement procedure, police shall provide to the court official all assistance necessary for carrying the enforcement out. Court official may, if the need arises, instruct use of force against the person interfering with enforcement.

(3) Provisions on internal affairs or court police are accordingly applicable to police actions taken on instruction of the court official.

(4) Coercive measures envisaged by this Law may be carried out in the enforcement procedure shall only if they are necessary and the force actually used proportionate to the circumstances of the case.

(5) Court shall report, through Ministry of Justice, any police disobedience of court official's instruction for enforcement assistance to the Ministry of Internal Affairs of the Republic of Serbia.

Irregularities in the course of enforcement

Article 54

(1) A party or participant may file a submission with the court, requesting correction of irregularities caused by the court official in carrying enforcement out.

(2) The court may issue a conclusion annulling illegal and irregular actions of the court official.

Chapter Five: COUNTER-ENFORCEMENT

Reasons for counter-enforcement

Article 55

(1) When the enforcement has already been carried out, enforcement debtor may submit a motion for counter-enforcement to the court, requesting the enforcement creditor to return what he/she has acquired through enforcement, is:

1. executive title has been repealed, reversed, annulled or had its legal force set aside an any other way;
2. enforcement debtor has voluntarily compensated enforcement creditor's claim in the course of enforcement procedure
3. a final decision has repealed or reversed the enforcement order;
4. final court decision has declared enforcement inadmissible.

(2) Motion for counter-enforcement on grounds listed in points 1, 3 and 4 of this Article may be submitted within 30 days of the delivery of decision to the enforcement creditor, and on ground of point 2 para 1

of this Article within 15 days of the day of compensation, no later than the end of the enforcement procedure.

(3) When the court orders a counter-enforcement on ground stated in point 1 para 1 of this Article, it shall, on request of the enforcement creditor, order at least one-tenth of the value of obligation to be deposited in the court deposit. If the obligation is a non-money one, it shall, on request of the enforcement creditor, order the enforcement debtor to deposit at least one tenth of the monetary value of obligation in the court deposit.

(4) Enforcement debtor may not resort to litigation prior to expiration of time limits provided in this Article.

Procedure on motion for counter-enforcement

Article 56

(1) Court shall deliver motion to counter-enforcement to enforcement creditor and order him/her to respond within three days from the day of delivery.

(2) If the enforcement creditor objects to the motion within that period, the court shall issue a decision, and might organize a prior hearing.

(3) If a court issues order granting the motion, it shall order enforcement creditor to return what was received during the course of enforcement to the enforcement creditor within 15 days.

(4) Where the enforcement has been carried out for collecting money claim, the court shall, on request of the enforcement debtor, order a default interest rate collection for the sum of money that was the object of enforcement from the on which the enforcement has been carried out until the day of its return, unless the enforcement has been granted for reason state in Article 51 para 1 point 1.

Order on counter-enforcement

Article 57

(1) Based of a final and enforceable order that has instructed the enforcement creditor to return to the enforcement debtor to return what he/she has collected, the court shall, on motion of the enforcement debtor, issue the order for counter-enforcement.

(2) Counter-enforcement shall be carried out in accordance with provisions of this Law.

Impossibility of counter-enforcement

Article 58

(1) Motion to counter-enforcement shall not be granted if return of the object is requested and the object has undergone such legal or factual changes that restitution is not possible anymore.

(2) In such case, enforcement debtor may resort to litigation even before the expiration of the time limit for submission of the motion to counter-enforce.

Chapter Six: POSTPONEMENT AND ABORTION OF THE ENFORCEMENT

Postponement of enforcement upon motion of the enforcement creditor Article 59

(1) Upon motion of the enforcement creditor, the court shall fully or partially postpone enforcement, if carrying out of enforcement has not yet commenced.

(2) If the carrying out of enforcement has commenced and the enforcement debtor has declared against postponement within the time limit set by the court, the court shall deny motion for postponement.

(3) If the law provides that enforcement must be requested within certain period, enforcement creditor may file a motion for postponement within that period.

Postponement on enforcement upon motion of the enforcement debtor Article 60

(1) Upon motion of the enforcement debtor, the court shall fully or partially postpone enforcement, if the debtor establishes likelihood that enforcement would cause him/her irreparable or hardly repairable harm, where:

1. a first instance decision has been brought, granting the request of the enforcement debtor to repeal the executive title;
2. a first instance decision has been brought, granting the request of the enforcement debtor to set aside arbitral award;
3. a first instance decision granted request of the enforcement debtor to repeal certificate of enforceability;
4. enforcement was dependant on a simultaneous performance of enforcement creditor's obligation and the enforcement debtor has not performed his/her obligation on the ground that enforcement creditor has neither performed his/her obligation nor shown readiness to perform it.

(2) Upon request of enforcement debtor, the court may fully or partially postpone enforcement in other situations as well where there are exceptional justifications for such decision, and if the enforcement debtor establishes likelihood enforcement would cause him/her irreparable or hardly repairable harm.

(3) The may condition the postponement upon deposition of guarantee.

(4) Enforcement debtor's submission of motion to postpone enforcement and appealing against order denying such motion does not halt further carrying out of enforcement.

(5) A third party may submit motion to postpone enforcement in accordance with conditions set out in para 2 of this Article.

Period of postponement of enforcement

Article 61

(1) Where enforcement has been postponed on motion of enforcement creditor, the court shall postpone enforcement for the period requested by the enforcement creditor.

(2) Where enforcement creditor submitted motion to postpone enforcement, and the law orders that enforcement shall be requested within a certain period, enforcement shall not be postponed beyond that period.

(3) Where enforcement is being postponed on request of enforcement debtor referred to in Article 60 para 1, point 1 and 3, enforcement shall be postponed until litigation or other procedure has ended.

(4) Where enforcement is postponed on motion of the enforcement debtor as provided in Article 60 para 2, enforcement may be postponed only once, for a period no longer than 90 days.

(5) Where enforcement is postponed on request of the third party, time limit referred to in para 3 of this Article shall be applicable to the period of postponement.

Continuing a postponed enforcement

Article 62

(1) A postponed enforcement shall be continued ex officio following the expiration of the period of postponement.

(2) The court may continue the enforcement on motion of enforcement creditor even before the postponement period has expired, if the enforcement creditor demonstrates likelihood that the reasons for postponement have ceased to exist, or deposits guarantee.

Dismissal of enforcement

Article 63.

(1) In addition to other situations provided under this Law, enforcement shall be dismissed ex officio if the executive title has been finally repealed, reversed, annulled, or otherwise rendered without effect, or the certificate on enforceability has been repealed.

(2) Court shall ex officio deliver enforcement order if, in the course of the enforcement procedure and until the enforcement has been carried out, it is determined that the claim has ceased to exist on ground

that the object of enforcement has perished, a party without legal successor has ceased to exist, claim underwent a compensatio, etc.

(3) Decision terminating enforcement shall repeal all previous enforcement actions unless this infringes the rights acquired by third parties.

PART THREE
Enforcement of Money Claims

Chapter One: ENFORCEMENT AGAINST CHATTELS

Section 1. General Provisions

Territorial jurisdiction

Article 64

(1) Territorial jurisdiction to decide on motion to enforce against chattels and to carry out such enforcement shall be vested in the court of the territory where chattels are located.

(2) If the motion does not specify the location of chattels, territorial jurisdiction to decide on such motion shall be vested in the court where enforcement debtor has its domicile or residence, or has its seat.

Exemption from enforcement

Article 65

The following shall not be eligible to constitute objects of enforcement:

(1) clothes, shoes, underwear and other items of personal use, bed linen, dishes, portion of furniture necessary for the enforcement debtor and the members of his/her household, stove and refrigerator

(2) food and fuel enforcement debtor and his/her household need for the period of three months;

(3) enforcement debtor's cash, where enforcement debtor has permanent monthly income, up to the monthly amount exempted from enforcement according to law, in proportion to the remaining time until the next income portion;

(4) decorations, medals, certificates of war service and other decorations and awards, personal correspondence, manuscripts and other personal documents of the enforcement debtor, as well as family portraits;

(5) orthopedic devices necessary for vital functions of a disabled person or other handicapped person;

(6) mail dispatch or a postal money order sent to the enforcement debtor, until the time it is delivered to him/her.

Enforcement actions

Article 66

(1) Enforcement actions against chattels shall be carried out through inventory, assessment and sale of the chattels, and through compensation of enforcement creditor out of the proceeds of the sale.

(2) Motion to enforce may request that only inventory and assessment be made. In such case, enforcement creditor may submit motion for sale of chattels within 3 months of the day of enforcement inventory, or assessment.

(3) If the enforcement debtor does not submit motion to sale within that period, enforcement shall be dismissed.

Section 2. Inventory and assessment of chattels

Notice on inventory

Article 67

(1) Court official shall, right before it initiates inventory, deliver enforcement order to the enforcement debtor and shall invite him/her to pay the amount ordered, with interest and costs.

(2) If enforcement order could not be delivered to the enforcement debtor in the course of the inventory, it shall be delivered to him/her later, according to the general rules on delivery.

(3) Enforcement debtor shall be informed on time and location of inventory, if he/she requested so.

(4) Absence of parties shall not prevent the inventory.

(5) Absent party shall be informed on inventory that has been carried out.

Object of inventory

Article 68

(1) Items in possession of the enforcement debtor and his/her that are in possession of the enforcement creditor may be objects of the inventory.

(2) Items of the enforcement debtor that are in possession of a third person may be objects of the inventory only upon that person's consent.

(3) If a third person does not consent to the inventory, the court shall, on motion of enforcement creditor, transfer enforcement debtor's right to request handover of the item in order to carry out enforcement in accordance with rules on transfer for collection.

(4) If a third party neither informs court on his/her rights on a chattel that is in possession of enforcement debtor, nor provides evidence on his/her rights on them, court shall consider that such rights of the third party do not exist and shall regard enforcement debtor as owner of the things in his/her possession.

(5) For purposes of inventor, spouses or extramarital partners shall be considered joint owners on equal share of all chattels that are found in their house, flat, business office or other real estate.

Scope of the inventory

Article 69

(1) Inventory list shall contain as many items as necessary for compensation of the claim of enforcement creditor and cost of enforcement.

(2) Priority of entry on inventory list shall be given to items where no objection regarding rights preventing enforcement have been lodged and items that are easy to cash-in,

Taking into account statements of the present parties and third parties regarding .

(3) The court may subsequently order execution on another object, and not on the object initially placed on the inventory list upon the judgment creditor's motion, in case there is considerable discrepancy between the value of that object and amount of the claim.

Effect of inventory

Article 70

(1) Enforcement creditor shall acquire court lien on items on the inventory list at the moment on which court official signs inventory record. Court official shall, alongside his/her signature, clearly mark the day and hour on which the record has been signed.

(2) Parties may request the court to revise inventory within three days of inventory's completion. The court shall decide on revision within 3 days of receipt of a later request.

(3) On items that were included in inventory through conclusion of the enforcement judge a lien is established at the moment of issuing the conclusion, and the same time moment is relevant for ceasing of lien on items that are deleted from inventory.

(4) Where the inventory has been completed in favor of several enforcement creditors, order of priority of lien shall be determined according to the day on which the motion to enforce has been delivered to the court, and, if the motions to enforce have been delivered on the same day, they shall have the same order of priority.

(5) Where the motion to enforce has been sent by certified mail dispatch, dispatch day shall be considered as the day on which the motion was delivered to the court.

Registration and publicity of court lien

Article 71

(1) Enforcement court shall, without delay, deliver the copy of inventory record or of conclusion on revision of inventory to the

organization that has a statutory authority to register non-possessor lien on chattels. Organization shall register court lien in accordance with special law on registration. Priority order of registered court lien, as opposed to registered lien of other creditors against the same chattel, shall be calculated from the moment on which the court lien has been acquired, through inventory or conclusion, while from the moment of registration third parties are estopped from claiming that they were unaware of this right.

(2) Copy of the inventory record or a court conclusion on revising inventory shall be delivered to enforcement creditor. Enforcement creditor may request registration if the court has not done so already.

(3) Court official shall visibly position a copy of the inventory record or a conclusion in the room in which the item was at the time of inventory, and on items that are left in possession of enforcement creditor shall visibly mark that they have been a part of inventory.

(4) Anyone who removes a copy of inventory record or inventory mark shall be fined in accordance with Article 41 of this Law.

Safekeeping of items on inventory list

Article 72

(1) Items on inventory list are, as a rule, left for safekeeping with enforcement debtor.

(2) On proposal of the enforcement creditor, if he/she evidences likelihood that those items might be damaged, disposed of or lose their value in any other way, court shall hand over items to enforcement creditor or a third party. Enforcement debtor shall bear costs of safekeeping, as well as risk of damaging and destruction, unless damage or destruction may be attributed to the fault of the creditor or the fault of the person whom items have been handed over to for safekeeping.

(3) On proposal of the enforcement creditor, court may hand over items on the inventory list to the enforcement creditor or a third party. Costs of safekeeping shall be born by the enforcement creditor, while enforcement debtor shall bear costs he/she would have if the item were with him for safekeeping. Risk of damage or destruction of items with enforcement creditor for safekeeping shall be borne by the enforcement creditor, unless the destruction or damage is caused by force majeure.

(4) Cash, securities and other precious items shall be handed over to court deposit for safekeeping.

(5) Other valuable items of higher value shall also be handed over to the court deposit if they are suitable for that kind of safekeeping.

Prohibition of disposal for items on inventory list

Article 73

Every person in possession of, or having control over items on inventory list shall be prohibited from disposing of such items unless authorized by court instruction.

Unsuccessful inventory attempt

Article 74

(1) When, in the course of inventory, no chattels are found that could be object of enforcement, court shall inform about that enforcement creditor who was not present at the inventory.

(2) On motion of enforcement creditor who evidences likelihood that enforcement debtor knows where the chattels may be found, court shall invite enforcement debtor to inform on location of chattels within three days. Obligation of the enforcement debtor to provide information shall be subject to rules on coercive enforcement applicable to obligations that may only be personally fulfilled by enforcement creditor.

(3) If enforcement creditor does not propose to carry out another inventory within that period or if no chattels that may be object of enforcement are found even during repeated inventory, court shall abort enforcement.

Assessment

Article 75

(1) Assessment of items shall be done at the time of inventory. Assessment shall be done by the court official, and, if necessary, expert or other qualified person appointed by court. Assessment is conducted on the basis of the market price of such item at the place of inventory. The court may decide to conduct assessment on the basis of price reports acquired from appropriate organizations and institutions.

(2) Enforcement creditor and enforcement debtor may agree on the value of an item.

(3) A party may submit motion for expert assessment even if the court has not ordered it. If the court accepts such motion, costs of expertise shall be borne by the party that proposed it within the period set by the court. If advance costs are not paid within the set period, motion for expert assessment shall be considered revoked.

(4) Court shall issue a conclusion when deciding on motion referred to in the previous paragraph.

(5) Costs of expertise referred to in para3 of this Article shall be borne by the party proposing it, disregarding the outcome of the enforcement procedure.

(6) A party may, within three days of assessment, submit a motion to the court to determine higher or lower value of items listed in inventory,

as compared to the assessed value, or to order new assessment unless it was an expert assessment. Court decides on this in a conclusion.

Record of inventory and assessment

Article 76

(1) A record of inventory and assessment shall be made.

(2) A record shall, among other things, contain specific items in the inventory list and their assessed value and shall contain entries of statements of the parties and participants to the procedure, as well as statements of the third persons regarding rights that prevent enforcement.

(3) If the court orders assessment after inventory to be conducted through expert assessment or acquisition of reports of organizations and institutions, assessment shall have its separate record.

(4) Enforcement creditor may publicize inventory record in the mass media at his/her own expense.

Notice instead of inventory

Article 77

(1) If, after inventory, enforcement is granted against inventory items for collection of another claim of the same enforcement creditor or for collection of claim of another enforcement creditor, no new inventory and assessment shall be organized. Instead, a notice shall be entered in the record, and such notice shall contain data of the later enforcement order.

(2) Enforcement creditors that are beneficiaries of the notice shall acquire lien on item listed in the inventory, and the order of their priority shall be determined in accordance of the time when notices are made.

(3) Without any delay, organization that keeps records of chattels' lines shall be informed about the notice, and it shall record liens acquired in the registry.

Section 3. Sale of items

Time of sale

Article 78

(1) Sale of items on the inventory list shall be conducted once the enforcement order has become final, unless enforcement debtor proposes or consents to the motion of the enforcement creditor to conduct the sale earlier, or if items are susceptible to quick deterioration or if there is danger of a significant reduction of their price.

(2) Sale may be conducted at least 15 days after the day of the inventory.

(3) Sale may be conducted even before the expiration of period prescribed in para 2 of this Article if enforcement debtor consents to sale

before expiration of that period or if items are susceptible to quick deterioration or if there is danger of a significant reduction of their price, or if enforcement creditor deposits security for damages that he/she would have to compensate to enforcement debtor if the enforcement order does not become final.

Method of sale

Article 79

(1) Sale shall be conducted through oral public auction or through direct bargaining. The court shall issue a conclusion on mode of the sale, striving to achieve the most advantageous sale.

(2) Auction sale shall be ordered especially when there are items of higher value, and if sale over assessed price is to be expected.

(3) Direct bargaining contract is a contract concluded between a buyer, on one side, and court official and a person action as commissionaire, on other side.

(4) Court official sells items in the name and for the benefit of the enforcement creditor, while commissionaire sells in his/her own name and for the benefit of the enforcement creditor.

(5) Sale shall be announced on the court noticeboard at least 15 days before the day of the auction, and it can also be announced in accordance with provisions on announcing real estate sales.

(6) Court shall inform enforcement creditor and enforcement debtor on place, day and hour of sale.

Sale price

Article 80

(1) Inventory items shall not be sold on the first auction, or within period court determined for direct bargain sale, for price below their assessed value.

(2) If assessed value price has not been reached at the first auction, court shall, on motion of the party, order another auction with the starting price set at one half of the assessed value.

(3) Provisions of para2 of this Article shall also apply accordingly when items listed in inventory could not be sold at assessed value price through direct bargain, within period set by the court or some subsequent sale.

(4) A party may submit motion for second auction or direct bargaining may within 30 days of the day of the first auction or day on which direct bargain period set by the court has expired.

Public sale hearing

Article 81

Provisions of this Law on sale price and auction and sale hearing in matters of enforcement against real estate shall apply accordingly to chattels.

Buyer's rights and obligations

Article 82

(1) Best bidder shall pay the price of the chattel immediately after the results are announced, unless court provides otherwise in a conclusion. If the bidder does not pay immediately at court's request, second bidder shall be declared a buyer and shall pay the price he/she offered, and so forth.

(2) When none of the suitable bidders pays price at court's request, the court shall, at request of a party, declare first hearing unsuccessful. A party may submit request for another hearing and shall submit such request within 8 days of the day of the unsuccessful hearing.

(3) Buyer shall receive the item from the court official upon payment of price.

(4) Court official shall hand the items over to the buyer even if he/she has not deposited price, if enforcement creditor or participants having priority in compensation consent to that at their own risk, within limits of the sum they were entitled to.

(5) If the buyer does not deposit price within the period prescribed, persons referred to in para 4 of this Article may request the court to order buyer to pay in the same procedure, and request enforcement against buyer once the order is final and enforceable.

Section 4. Compensation of enforcement creditor

Compensation when there is only one enforcement creditor

Article 83

When only one enforcement creditor is compensated out of the sale price, the court shall, without holding a hearing, issue an order to compensate in the following order of priority out of the proceeds of the sale: costs of the enforcement procedure, costs set out in executive title, interest due until the day of sale and main claim. Residuals of the sale price remaining after compensation shall be handed over to the enforcement debtor.

Compensation when there are several enforcement creditors

Article 84

(1) When several enforcement creditors are compensated in the enforcement procedure, or if, in addition to enforcement creditors,

other persons whose rights cease to exist after the sale of an item are being compensated, compensation is carried out in accordance with provisions on priority of compensation out of sale of real estate, and according to the priority of acquisition of lien or other right that will cease to exist through sale, unless otherwise provided by the Law for certain specific claims. Enforcement creditors of the same priority order who can not be fully compensated out of the sale price shall be compensated in proportion to the amounts of their claims.

(2) Once the compensation order is issued, the court shall take into account only those claims whose enforcement order has become final before compensation order has been issued.

(3) Residuals of the sale price after compensation shall be handed over to the enforcement debtor if there are no obstacles.

Compensation through awarding of the item do enforcement creditor

Article 85

(1) If the item could not be sold at a second auction hearing nor in a direct bargain within the period set by the court, the court shall, on motion of the enforcement creditor, award the item to the creditor into his property.

(2) In cases referred to in para 1 of this Article, enforcement creditor shall be considered compensated in the amount of one half of item's assessed value.

(3) Enforcement debtor may lodge objection against the conclusion on awarding item to enforcement creditor within 3 day so the day of delivery of the conclusion, if there is a clear disproportion between the assessed value and compensation value of the item. Court shall, upon this objection, issue an order to the enforcement debtor to compensate his/her claim within 15 days, and if he/she does not comply, shall confirm awarding of the item to enforcement creditor.

(4) No appeal may be lodged against order referred to in para 3 of this Article.

Alternatives

a) para 2 is amended to read as follows: "In cases referred to in para 1 of this Article, enforcement creditor shall be considered compensated in the amount of item's assessed value

b) para 3 is deleted

Application of provisions on enforcement against real estate

Article 86

Provisions of this Law on enforcement against real estate related to the issue of eligibility of the buyer, objecting to claim, instruction to litigation and order on compensation are applied accordingly to

enforcement against chattels for compensation of the money claim, unless otherwise provided in this Chapter.

Chapter Two: ENFORCEMENT AGAINST REAL ESTATE

Section 1. General provisions

Territorial jurisdiction **Article 87.**

Competence to decide on motion to enforce against real estate property and for carrying that enforcement out shall be vested in the court of the territory where real estate is located.

Enforcement actions **Article 88**

Enforcement against real estate shall be carried out by entering a notice on enforcement order in the public registry, assessing real estate value, sale of the real estate and compensation of the enforcement creditors out of the proceeds of the sale.

Evidence of enforcement debtor's ownership **Article 89**

(1) Enforcement debtor shall, when submitting a motion to enforce, also submit an excerpt from the public registry evidencing that the real estate is registered as enforcement debtor's property.

(2) If the registry records that real estate right referred to in para 1 of this Article belongs to another person and not to enforcement debtor, enforcement creditor shall submit document sufficient for entry of enforcement debtor's property right into registry.

(3) In cases referred to in para 2 of this Article, entry shall be executed ex officio by the court in receipt of the motion to enforce or, upon court's request, by the authority in charge of the public records for that real estate

Real estate co-owned by the enforcement debtor **Article 90**

(1) Court shall grant enforcement against real estate co-owned by the enforcement debtor.

(2) Other co-owner may object to this and request the co-owned property to be exempt from enforcement and be transferred into his/her sole ownership, if the share of the enforcement creditor is more than a half, and the share of the debtor significantly lower than one half, if he/she deposits a sum equal to enforcement debtor's share. This

right may, under identical conditions, also be exercised by one of several other co-owners or jointly by several co-owners..

(3) Co-owner whose share on real estate which is the object of enforcement does not exceed one half of the value of such property, may request his/her assessed value of the share to be paid out of the proceeds of the sale, before compensation of any enforcement creditors or costs or of the procedure

(4) This does not interfere with the right of preemption.

(5) Co-owner referred to in paras 2 and 3 of the Article whose share in the property subject to enforcement has been challenged, court shall instruct to litigation to file action for declaratory judgment against the enforcement creditor regarding share in the property.

Alternative 1:

Para 2 shall read:

(2) Other co-owner may object to this and request to have the co/owned property exempted from enforcement and be transferred to his/her sole ownership, if he/she deposits a sum equal to the value of enforcement debtor's share.

(3) Co-owner who had not request exemption from enforcement or has not fulfilled conditions for exercising such right, shall be entitled to have his/her share paid out before compensation of any enforcement creditors or of costs of the procedure.

Alternative 2:

Para 2 shall read as follows:

(2) Other co-owner may object to that and request the co-owned real estate to be exempted from enforcement and be transferred to his/her sole ownership, if he/she deposits a sum equal to the value of enforcement debtor's share. This right may be exercised by one of the remaining co-owners or by several co-owners jointly.

Entry of enforcement order (notice of enforcement)

Article 91

(1) A notice on the enforcement order, or some other appropriate notice in accordance with public registry regulations, shall be entered in the public registry.

(2) Such entry shall entitle enforcement creditor to request compensation of his/her claim out of real estate even in the case where a third party becomes acquires the same real estate.

(3) Enforcement creditor that has filed motion to enforce, but has not acquired lien prior to that, shall acquire the right, upon entry into records of enforcement order, to compensate out of the proceeds of the real estate prior to persons who acquired lien or compensation right out of that real estate.

Enforcement stage

Article 92

(1) A separate enforcement procedure against the same real estate shall not be allowed for compensation of another claim or another enforcement creditor once the notice of enforcement order has been recorded.

(2) Enforcement creditor whose claim has been ordered to compensate against the same real property later shall join enforcement procedure that has already started.

(3) Enforcement procedure that has already started may be joined until the order for awarding real estate to the buyer has become final, where direct bargaining took place, or until finality of order for transfer of property, following auction sale.

(4) Court shall inform enforcement debtor on joining of other creditors to the enforcement procedure, where an earlier notice on enforcement order has been made for his benefit.

Enforcement against other real estate

Article 93

(1) Court may order enforcement to be carried out against other real estate, instead of the real estate against which enforcement creditor requested enforcement, or order another enforcement measure, if there is a great disproportion between the value of the real estate and value of the claim, and other real estate or enforcement measure are sufficient for compensation of the claim.

(2) Where another enforcement measure has been ordered, entry of enforcement order against real estate shall remain valid until compensation of the enforcement creditor.

Compensation of lien creditor

Article 94

Lien creditor who has not submitted motion to enforce shall also be compensated in the enforcement procedure against real estate.

Expiration of lien

Article 95

(1) Lien recorded against real estate shall cease to exist on the day that order on transfer of real estate becomes final even if lien creditors are not fully compensated.

(2) Real estate buyer and lien creditor may agree to keep lien against real estate even after order on transfer of real estate has become final, on condition that buyer undertakes the debt of the enforcement debtor against lien creditor, for the sum he/she would acquire in the enforce-

ment procedure. In such case, purchase price is lowered for the sum equal to that of the acquired debt.

Easements and real encumbrances

Article 96

(1) Sale of the real estate shall not extinguish real easements.

(2) Sale of the real estate shall not extinguish personal easements and real encumbrances that have not been entered into public registry prior to rights of lien creditors or compensation rights of creditors that initiated enforcement. Personal easements may be extinguished on request of the creditor, with appropriate reimbursement.

(3) Sale of the real estate shall extinguish other personal easements and real encumbrances.

Real estate lease

Article 97

(1) Sale of office building or office space shall not extinguish lease of that building or office space, if possession over real estate has been handed over to the buyer before the enforcement order was issued.

(2) Buyer inherits rights and obligations of the lessee.

Lease of apartments for indefinite period in accordance with Law on

Article 98

Apartments lease for indefinite period concluded before acquisition of lien right or right for compensation, that serves as a basis for seeking enforcement, shall not be extinguished with sale of the real estate. Buyer shall replace lessor (person renting apartment) from the moment of acquisition of the real estate.

Surveying real estate

Article 99

Court shall allow a person interested in buying the real estate to survey the real estate at appropriate time.

Exemption of certain real estate from enforcement

Article 100

(1) Agricultural land of the farmer up to 10 acres may not constitute an object of enforcement.

(2) Provisions of para 1 of this Article shall not apply to enforcement for compensation of money claims that have contract lien right over real estate as a collateral (mortgage).

Section 2. Assessment of real estate value

Method of value assessment

Article 101

(1) Court shall assess real estate value once the enforcement order becomes final, on request of the enforcement creditor lodged after the enforcement order has been issued.

(2) Real estate value shall be assessed in the amount of its market price on the day of assessment, based on opinions and findings of experts, other facts or in accordance to other suitable methods.

Decreasing or amending the assessed value

Article 102

(1) When assessing value of the real estate, regard shall be taken of any rights that remain on the real estate after the completion and decrease its value.

(2) Court shall, on request of the party submitted at least 8 days before the sale hearing, re-assess value of the real estate at the sale hearing, if the party establishes likelihood that the value has changed significantly in the period between the day of previous assessment to the day of the sale.

Order on determination of value

Article 103

(1) Court shall determine value of the real estate in an order.

(2) Objection may be lodged against the order referred to in para1 of this Article.

Abortion of enforcement for insufficiency of value

Article 104

(1) Any person having right to compensate out of sale value of the real estate and, at the same time, having priority in compensation over enforcement creditor that had requested enforcement, may request abortion of enforcement if the determined value of real estate does not cover sum of his/her claim.

(2) Motion for abortion of enforcement may be submitted within 8 days following the issuing of the conclusion on sale.

Section 3. Sale of the real estate

Conclusion on sale

Article 105

(1) Upon finality of the enforcement order and order on assessment of real estate value, court shall issue a conclusion on sale of the real estate that will determine the method and conditions of sale, as well as time and location of sale, if the sale is conducted through public auction.

(2) Conclusion on sale shall be displayed on court's noticeboard and in other appropriate ways.

(3) A party to the procedure may publish the conclusion on sale in mass media or inform persons that act as go-betweens in real estate market, and shall bear costs of such publishing and informing.

(4) No less than 30 days shall pass between the day on which the conclusion on sale has been displayed on court's noticeboard until the day of the sale.

(5) Conclusion on sale shall be delivered to the parties, lien creditors, participants to the procedure and persons that have a preemption right (statutory or entered into registry) and to the competent tax administration authority.

Preemption right

Article 106

(1) A person having statutory preemption right over real estate that represents the object of enforcement through sale shall have priority over the most favorable bidder, if he/she declares that he/she buys the real estate under identical conditions immediately after the sale is concluded.

(2) A person having a contractual preemption right shall exercise it in accordance with conditions laid out in para 1 of this Article, if there is no statutory preemption right or the holder of such right decided not to exercise it.

Preemption right of the enforcement creditor

Article 107

(1) Where no statutory or contractual preemption right existed over real estate, or if holders of such rights have not exercised them, creditor shall have preemption right.

(2) Enforcement creditor acquires preemption right over real estate through entering into record a notice of enforcement order against real estate.

(3) Where holders of preemption rights over real estate that have acquired such rights before the enforcement creditor declare in the court records that they will not exercise such rights, creditor shall have

priority over the most favorable bidder if he/she declares that he/she buys the real estate under identical conditions immediately after the conclusion of sale.

Declaration of preemption right holder
Article 108

If the real estate is sold through direct bargain, court shall invite the holder of statutory preemption right, as well as holder of the contractual preemption right that is entered in the public registry, and shall also invite enforcement creditor, to declare into court record whether they will exercise such right.

Method of sale
Article 109

- (1) Real estate sale shall be conducted through public oral auction.
- (2) Hearing on real estate sale shall be conducted in the offices of the court, unless the court determines otherwise.
- (3) Hearing on sale shall be conducted before a single judge.
- (4) Parties and lien creditors may agree at any time to conduct real estate sale through direct bargain within a certain period.
- (5) Contract on direct bargain sale shall be concluded in writing and shall have legal effect from the day on which order on awarding becomes final.

Conditions of sale
Article 110

- (1) Conditions of sale shall, among other things, contain the following:
 1. a more detailed description of real estate and its peripherals
 2. designation of third party rights that are not extinguished through sale
 3. designation of easements and real encumbrances that will be taken over by the buyer
 4. assessed value of the real estate determined in the order of the court
 5. time limit for buyer to deposit price, no longer than 30 days
 6. method of sale, amount of collateral, time limit for collateral deposition
- (2) On motion of enforcement creditor or enforcement debtor, time, place and conditions of sale shall be published in mass media and the costs shall be borne by the initiator.

Guarantee deposition

Article 111

(1) Participants of the public auction shall deposit guarantee in advance.

(2) Guarantee shall amount to 1/10 of the assessed value of the real estate.

(3) Enforcement creditor who has submitted a motion to enforce that resulted in enforcement order and lien creditor shall be exempted from obligation to deposit guarantee, if their claims are at least equal to the sum of guarantee and if that sum could, with regard to their priority and assessed real estate value, be compensated out of the sale price.

(4) Buyer of the direct bargain sale shall deposit guarantee with the person he/she contracted with immediately before the conclusion of the contract.

(5) Bidders whose bids have not been accepted shall have their guarantee returned immediately after the conclusion of the auction.

One bidder

Article 112

(1) Sale hearing shall be conducted even if there is only one bidder.

(2) Upon motion of any party or a lien creditor the court may, in accordance with circumstances of the case, order postponement of sale hearing if only one bidder is present.

Eligibility of buyers

Article 113

Enforcement creditor, judge, court official and persons that participated in assessment are not eligible to be bidders at auction or participants in direct bargain sale.

Sale price

Article 114

(1) Real estate shall not be sold below assessed value at the first sale hearing.

(2) If the real estate could not be sold at the first hearing, the court shall schedule the second hearing where the real estate may be sold below assessed value, but for no less than 2/3 of that value. No less than 30 days shall pass between the two hearings.

(3) Parties and lien creditors may agree in a statement to be entered into record of the enforcement court, that the real estate may be sold for an even lower price than the price assessed or a price lower than 2/3 of that value.

(4) Provisions of this Article shall apply accordingly in cases where real estate could not be sold through direct bargain at its assessed value, nor at some later sale hearing.

Hearing for sale and awarding of real estate **Article 115**

(1) Court shall announce at the sale hearing that it will initiate bidding once it determines that conditions for commencement of the hearing are met.

(2) Court shall determine auction host.

(3) Auction host shall commence auction by announcing the initial price. If at least one bidder accepts the offered price, host shall announce the next price, which shall be higher for no more than 5 % than the previous price. This procedure shall be repeated until the last price offered remains unaccepted, and the auction is concluded when the highest bidder is declared a winner.

(4) Upon the conclusion of auction, court shall determine which bidder offered the highest price, and shall declare real estate awarded to that bidder.

(5) Court shall issue a separate order on awarding of real estate sold through public auction and that order shall be displayed on court's noticeboard and delivered to all persons that shall be recipients of the conclusion on sale, and to the auction participants as well.

(6) No special appeal may be lodged against the conclusion on awarding. Instead, reasons for appeal against that order may be inserted in the appeal against the order for awarding real estate.

(7) Records of sale hearings shall be kept.

Awarding real estate sold through direct bargaining **Article 116**

(1) The court shall issue order on awarding real estate sold through direct bargaining once it determines that all conditions for valid conclusion of the sale have been met.

(2) Order on awarding shall be displayed on court's noticeboard and shall be delivered to all persons that are recipients of the order on sale, and to the buyer as well.

Deposition of price **Article 117**

(1) Buyer shall deposit the price within the period determined in the conclusion on sale, and such period shall not be longer than 30 days from the day on which the conclusion has been displayed on court's noticeboard.

(2) If enforcement creditor whose claim does not amount to the proceeds of the auction sale price is actually the buyer, and if he/she

could compensate out of the sale price given his/her priority in compensating, he/she should deposit only the difference between the claim and the actual sale price.

(3) If the highest bidder does not deposit the sale price within the set period, court shall issue a conclusion determining sale to that bidder invalid and issue a new conclusion stating that the real estate has been sold to the second highest bidder. If the second bidder does not deposit the price he/she bid within the period set out in the conclusion, the court shall apply these rules to the third bidder accordingly.

(4) If none of the three highest bidders deposits the offered price, or sale price within the prescribed period, the court shall issue a conclusion declaring sale invalid and scheduling a new price to be held in no more than 30 days.

(5) Deposited guarantee of such bidders shall be used to compensate costs of the new sale and will cover possible discrepancies between the sale price achieved at earlier and later auctions.

Awarding real estate to the buyer

Article 118

(1) Upon deposition of auction sale price or upon deposition of price and finality of order on awarding real estate sold through direct bargain, the court shall issue an order to award real estate to the buyer and to record his/her property right in the public registry upon finality of such order, and to delete rights of the third parties when so provided by the order.

(2) Order on awarding real estate shall be delivered to all persons that are recipients of the conclusion on sale.

(3) A special objection shall be allowed against the order to award real estate.

(4) Order on awarding real estate shall be displayed on the court's noticeboard and, once the third day of displaying has expired, it shall be considered delivered to all persons that are recipients of the conclusion on sale and all participants in the procedure.

Protection of buyer's rights

Article 119

Repealing or reversing of the enforcement order after the finality of the order awarding real estate to the buyer shall not affect buyers right acquired on order of awarding real estate.

Compensation through awarding real estate to enforcement creditor

Article 120

(1) If the real estate could not be sold on second auction hearing or through direct bargain within period set by the court, the court shall,

on motion of enforcement creditor, award the real estate to the creditor and into his/her property.

(2) In cases referred to in para 1 of this Article enforcement creditor shall be considered compensated for the amount equaling 2/3 of the assessed value of the real estate.

(3) Debtor may file objection against the conclusion on awarding item to creditor within 3 days of the day on which the conclusion was delivered, if there is an obvious discrepancy between the assessed price and the amount of actual compensation. Court shall decide on this objection in an order and grant debtor a period of 15 days to compensate his/her claim, and if he/she fails to do so, shall confirm the conclusion on awarding the item.

(4) No appeals shall be allowed against para 3 of this Article.

Alternatives:

- a) para 2 shall read: "In cases referred to in para 1 of this Article enforcement creditor shall be considered compensated in the amount equaling assessed value of the item."
- b) Para 3 shall be deleted
- c) Article 120 shall be amended and shall read: "If real estate could not be sold at second bidding hearing or within the time limit for direct bargain set by the court, enforcement creditor shall acquire rights referred to in Article 85 of this Law, and shall be considered compensated in the amount equal to 2/3 of the assessed value of the real estate."

Abortion of enforcement

Article 121

(1) If real estate could not be sold at second hearing, and enforcement debtor did not exercise his/her right referred to in Article 120, court shall schedule subsequent hearings only on motion of enforcement creditor.

(2) Enforcement creditor may submit motion for scheduling a new sale hearing. Such submission may be made after at least three months, but not longer than one year after the hearing.

(3) Court shall abort enforcement if enforcement creditor does not submit a motion within period prescribed by para 2 of this Article.

(4) If real estate could not be sold through direct bargain within the period set in agreement among parties and lien creditors, and enforcement creditor does not propose auction sale within period referred to in para 2 of this Article, court shall abort enforcement.

Awarding of real estate to enforcement creditor for use

Article 122

(1) Enforcement creditor may within 15 days of the day on which enforcement was aborted submit a motion to the court to issue order awarding him real estate for use that he will remunerate.

(2) Enforcement debtor may lodge appeal against the order on awarding real estate to enforcement creditor for use, except for the part of decision dealing with costs.

(3) Articles 12 and 13 of this Law shall apply accordingly to this appeal.

Section 4. Compensation of creditors

Time of compensation commencement

Article 123

Court shall commence compensation upon finality of the order awarding real estate.

Persons who are compensated

Article 124

(1) The following persons shall be compensated out of the proceeds of the sale: enforcement creditor who initiated enforcement, lien creditors disregarding whether they have reported their claims and persons who have right to compensation for personal easements.

(2) Residuals of the sale price left over after persons referred to in Article 1 have been compensated shall be handed over to enforcement debtor, if there are no obstacles for that.

Priority of compensation

Article 125

The following shall have priority to compensate out of the proceeds of the sale:

- 1) costs of the enforcement procedure,
- 2) claims based on statutory maintenance, if they are evidenced with executive title and reported no later than the time of sale hearing.

Compensation order of other claims

Article 126

(1) Upon compensation of claims referred to in previous Article, the following shall be compensated:

1. tax claims and other claims that are levied against real estate for the past one year

2. claims based on tort damages for loss of health or working abilities and for loss of maintenance caused by death of the maintenance provider; claims based on employment relationship of the employee with entrepreneur or another natural person engaged in business and claims of social service contributions that are due, without regard as to whether such claims are secured by lien against the sold real estate
3. claims secured by lien
4. claims for compensating personal easements and real encumbrances that are exhausted through sale, if they have been created before enforcement procedure has been initiated.
5. claims of enforcement creditors who initiated enforcement procedure.

(2) Lien creditors shall be compensated according to the priority of their lien, and creditors of compensation for personal easements and real encumbrances according to the priority of their entry in the public records.

(3) Costs and interest rates for the past three years until the moment when order on awarding of real estate to the buyer has been issued, if designated by the executive title, shall be compensated in same order like main claims.

(4) Claims referred to in paras 1, 2 and 3 of this Article shall be compensated if they are reported at the sale hearing at latest and if executive title is submitted to evidence them.

Compensation amount for personal easements and real encumbrances

Article 127

(1) If no agreement is reached between holders of the rights and creditors that have priority over them on amount of compensation for personal easements or real encumbrances that are extinguished through sale, amount of compensation shall be determined by court, taking in particular into account period for which the easement would continue to exist, its value and age of the holder of such right.

(2) Buyer and holder of personal easement right or real encumbrance may agree to have buyer take over easement or real encumbrance, and have the amount of compensation, once determined in accordance with para 1 of this Article, deducted from the sale price.

(3) Claims of same compensation priority shall be compensated in proportion to their value, if the sale price is not sufficient for total compensation.

Contesting of claims

Article 128

(1) Creditor or some other person that is being compensated out of the sale price may, if such matter is of importance for his/her own

compensation, contest the existence of other claims, unless such claim has been determined in an executive title, their amount and priority.

(2) Contesting may at latest be lodged at division hearing.

Instruction to litigation

Article 129

(1) Court shall instruct person who contests a claim to initiate litigation within a period that may not be longer than 15 days if decision is dependant upon contested facts, unless he/she proves its contentions with final judgment, official document or private document certified in accordance with law. If a person contest a claim submits final judgment, official document or private document certified in accordance with law in favor of his/her own contentions, court shall decide on contention within enforcement procedure.

(2) If the person who contests claim creates likelihood that reasons for contesting exist, court shall issue a conclusion, instructing a person whose claim is contested to initiate litigation, and shall postpone order on compensation of contested creditor until the end of litigation. Exceptionally, court may condition issuing of enforcement order and actual enforcement of such creditor upon provision of collateral.

(3) Contested amount shall be deposited with the court.

(4) If a person instructed to litigation does not prove within the set period that litigation has been initiated, claim shall be considered non-contested, that is, it shall be considered that the person contesting the claim has given up on his/her request.

(5) Litigation judgment on contested claim shall be valid against enforcement debtor and all other enforcement creditors.

(6) Provision of para 4 of this Article does not preclude the right of the person instructed to litigation to, once the enforcement procedure has ended, initiate litigation against the person who contested his/her claim or against person whose claim he/she contested.

(7) Court may, on motion of the person whose claim has been contested, condition postponement of issuing compensation order and compensation of contested claim on provision of collateral against damages that such person might suffer as a result of compensation postponement. If the person contesting the claim does not provide collateral within the set time limit, claim shall be regarded as non-contested. Person whose claim has been contested has right to damages suffered on the basis of groundless contesting of the claim, if such contesting has been done with a sole purpose of damaging him/her or preventing him/her from enjoyment and exercise of his/her rights.

Section 5. Special provisions for compensation of particular claims

Claim that has not matured yet

Article 130

(1) A claim of the lien creditor that has not matured until the day of issuing compensation order, for which no interest has been contracted, shall be collected upon deduction of amount equivalent to default interest rate from the day on which compensation order has been issued until the day of maturity of such claim.

(2) A mature claim for which interest rate has been contracted shall be collected together with amount of contracted interest rate calculated until the day on which compensation order has been issued.

Periodical claim that has not matured yet

Article 131

(1) Periodical claims based on damages for loss of health or decrease or loss of working capabilities and lost maintenance after the death of the maintenance provider that are secured by lien, and mature after the day on which compensation order is issued, shall be compensated on express request of the creditor.

(2) Claims referred to in para 1 of this Article shall be determined in a way that claims for personal easement and real encumbrances are determined.

Conditioned claim

Article 132

(1) Amount of claim that has been secured through lien, and is conditioned at the same time, shall be separated and deposited with court. It shall be collected when the postponement condition is met or when it is certain that termination condition shall not occur.

(2) If the postponement condition is not met or the termination condition does occur, separated amount set shall serve to compensate enforcement creditors whose claims have not been compensated in full or have not been compensated at all and, if no such judgment creditors remain, or the entire amount was not needed for compensation, separated amount, or the remainder thereof, shall be handed over to the enforcement debtor.

Registration of lien, notice on priority of compensation and notice on dispute

Article 133

(1) When registration of lien has been entered in the public registry, and person in the favor of whom registration has been made proves that there is an ongoing procedure for its justification, or that the time

limit for initiation of such procedure has not expired yet, claim that has been registered shall be compensated in accordance with provisions regulating compensation of claims under postponement condition.

(2) When a notice of dispute for deleting a lien or notice on dispute has been entered, claims against which such notices have been recorded shall be compensated in accordance with provisions on compensation of claims under termination condition.

Section 6. Distribution hearing, compensation order and deleting rights and encumbrances

Partition hearing

Article 134

(1) Upon finality of order for awarding real estate to buyer the court shall schedule a hearing for distributing the proceeds of the sale.

(2) Parties and persons who, according to court records and public registry data, claim the right to be compensated out of the proceeds of the sale shall be invited to the hearing. Invitation shall contain a warning that claims of creditors who do not participate at the hearing shall be taken into account according to their condition as stated in the public registry and records, and shall instruct them that claims, their amount, priority and existence may be contested at latest the hearing for division.

(3) Compensation of creditors and other persons requesting compensation shall be deliberated at the hearing.

Compensation order

Article 135

(1) Court shall, immediately after conclusion of the hearing, issue order on compensation of creditors and other persons that request compensation, taking into account the state of the matter as derived from public registries, records and factual situation determined at the hearing.

(2) When issuing an order referred to in para 1 of this Article, court shall take into account only those claims that are regulated in an enforcement order that has become final on the day of the division hearing at latest.

(3) If there are claims whose enforcement order has not become final yet at the day of division hearing, such claims shall be compensated once the enforcement order becomes final out of the residuals of the sale price, if there are any, and any remainder shall be handed over to the enforcement debtor.

(4) Appeal may be lodged against compensation order.

Removal of rights and encumbrances

Article 136

Once compensation order is final, court shall issue an order, instructing removal of recorded rights and encumbrances in the public registry, except for such rights and encumbrances that remain against real estate even after it is awarded to the buyer or the buyer has already taken it over.

Section 7. Legal position of enforcement debtors and third parties after awarding of real estate

Loss of possessory right over real estate

Article 137

Once the real estate has been awarded, enforcement debtor loses possessory right over real estate and shall hand it over to the buyer right after order on awarding real estate is delivered, unless the law or agreement with buyer provide otherwise.

Dislodgement of enforcement debtor

Article 138

(1) Once it issues order on awarding real estate, the court shall, on motion of the buyer, issue a conclusion instructing enforcement debtor to vacate real estate and hand it over to the buyer.

(2) Enforcement referred to in para 1 of this Article shall be carried out in accordance with provisions of this Law regulating enforcement through vacation and handover of real estate.

(3) Buyer in the enforcement procedure referred to in para 2 of this Article, once it submits motion referred to in para 2 of this Article, shall be regarded as enforcement creditor.

Dislodgement of third parties

Article 139

(1) Upon issuing order on awarding real estate, the court shall, on motion of the buyer, order third parties to vacation and handover of real estate.

(2) Court shall commence enforcement of such order immediately after its issuing. Enforcement shall be carried out in accordance with provisions of the Law regulating enforcement through vacation and handover of real estate.

Section 8. Special rules on enforcement against real property not recorded in the public registry

Enforcement against real property in territories where no real estate cadastre or land registry exist

Article 140

(1) In territories where there is neither real estate cadastre nor land registry being kept, or there is no registry of real estate rights as prescribed by law, rules of that territory applicable to titles submitted alongside motion to enforce, as a proof of property right over real estate enforcement object, shall be applicable, as well as rules on which public registry enforcement order shall be entered into and rules on how such entry shall be made.

(2) If it is impossible, for any reason, to acquire evidence on property right in accordance with rules applicable on that territory, enforcement creditor shall, in lieu of evidence on property rights, designate in his/her motion to enforce the place where real estate is located, its title, borders and area.

(3) In cases referred to in para 2 of this Article court shall carry out inventory of the real estate that is a proposed object of enforcement and shall invite enforcement creditor, enforcement debtor and persons whose real estate borders the real estate in question to the hearing.

(4) Inventory record shall have the meaning of enforcement record and shall be displayed on notice board.

Enforcement against real estate not registered in the public registry

Article 141

(1) If the real estate is not recorded on the territory where there is a cadastre of real estate or other public registry prescribed by the law, enforcement creditor shall, alongside motion to enforce, submit documents sufficient for registration.

(2) Upon receiving motion to enforce and documents, the court shall without delay deliver documents to the court, authority or organizations keeping registry so that it registers the real estate, and shall stay the procedure until procedure of registration has been completed.

(3) When enforcement creditor proposes a building or a part of the building not recorded in the real estate registry as an object of enforcement, and declares that recording referred to in paras 1 and 2 of this Article, court shall order enforcement against non-registered real estate of the enforcement debtor, if enforcement creditor submits or designates, as an evidence of non-registered real estate, construction permit in the name of enforcement debtor, or, if construction permit is not in the name of the enforcement debtor, documents of legal transactions leading to enforcement debtor's acquisition of property.

(4) The court shall, on motion of enforcement creditor, order enforcement debtor or third party to submit documents referred to in para 3 of this Article, subject to fines referred to in Article 40 of this Law.

(5) The court shall, on motion of enforcement creditor, order the competent authority to deliver documents referred to in para 3 of this Article.

(6) When the court grants enforcement against real estate that may not be registered, in accordance with para 3 of this Article conditions of public auction shall specifically state that real estate is not registered, and an inventory in accordance with Article 140 para 3 of this Law shall be conducted in lieu of a record in the registry.

Chapter Three: ENFORCEMENT AGAINST DEBTOR'S CLAIM

Section 1. General provisions

Territorial jurisdiction **Article 142**

(1) Competence to decide on motion to enforce against debtor's money claim and for carrying out of that enforcement, shall, unless competence can be determined in accordance with Article 3 para 2 of this Law, be vested in the court of residence of enforcement debtor, and if enforcement debtor does not reside in the territory of the Republic of Serbia, competence shall be vested in the court of domicile of debtor's debtor, and if he/she does not have domicile of the territory of the Republic of Serbia, competence shall be vested in court of residence of debtor's debtor.

(2) Competence to decide on motion to enforce against debtor's claim for handover of item and for carrying out of that enforcement shall be vested in court where that item is located.

(3) Provisions of para 1 of this Article referring to domicile and residence shall be applied accordingly to seat of the juristic person.

Exemption from enforcement **Article 143**

The following shall be exempted:

1. statutory maintenance earnings, damages for loss or detriment of health or loss of working capacity and for lost maintenance caused by death of maintenance provider
2. earnings for corporal disability in accordance with provisions on disability insurance
3. welfare earnings
4. temporary unemployment earnings
5. child support earnings

6. stipends and grants for pupils and students
7. earnings of soldiers and military school enlists
8. remuneration for convicts, except for claims of statutory maintenance, as well as claims for damages caused by the criminal act of the convict
9. other earnings whose transfer is prohibited by law or are related to the personality of the creditor,

Limiting enforcement

Article 144

(1) Enforcement against salaries and pension, or against remuneration in lieu of salary, may be carried out up to the amount of guaranteed minimal wage, pension or remuneration in lieu of salary.

(2) Provision of para 1 of this Article shall be applicable to salaries of officers, military clerks and members of the reserve military corps during military maneuvers.

(3) Enforcement against earnings of war-time and peace-time disabled military personnel based on remuneration for disability, prothetic supplement and disability supplement may be carried out only for claims of statutory maintenance, damages for loss or detriment of health or loss of working capacity and for lost maintenance caused by death of maintenance provider, up to one half of the earning.

(4) Enforcement against earnings based on damages compensation collected through money installments awarded in accordance with rules on obligations law, contract on lifetime support, and against earnings stemming from contract on life insurance, may be carried out only on the amount exceeding the highest amount of permanent social security support that is paid out in the territory where debtor has his/her domicile.

Limiting claim for item handover

Article 145

If debtor's claim is for handover of an item, enforcement is possible to the extent it might be carried out if the item were in possession of the debtor and rules on enforcement for compensation of money claim against chattels were applicable.

Enforcement actions

Article 146

(1) Enforcement against claim shall be carried out through attachment of the claim and its transfer for compensation or instead of compensation, unless this Law provides otherwise for specific situations.

(2) Motion to enforce may contain request for ordering attachment of a claim only, however, in such case creditor shall submit motion for compensation or transfer of claim within 30 days from the day when

attachment order was delivered to him/her, or the day on which notice of statement of debtor's debt has been delivered (article 153 paras 1 and 3), or the day when the attached claim matured, and if it has not matured yet, submit request for compensation or transfer of the claim.

(3) Enforcement shall be aborted if such motion is not submitted within the prescribed period.

Section 2. Attachment of claim

Prohibition of compensation and disposition Article 147

Order on enforcement against debtor's claim represents a court prohibition for debtor's debtor to compensate that claim to the debtor, and, in addition, prohibition for enforcement debtor to collect such claim or dispose of it for the benefit of third parties or debtor's debtor (attachment of the claim).

Fine Article 148

Court shall issue a fine referred to in Article 40 for disregard of prohibition referred to in Article 147.

Lien Article 149

(1) Upon deliver of attachment order to the enforcement debtor, enforcement creditor shall acquire lien on the claim.

(2) Lien on the claim shall encompass interest proceeds of the attached claim.

Ancillary rights Article 150

(1) If the attached claim has been secured through lien or mortgage, enforcement creditor shall acquire position of sub-lien or supra-mortgage creditor.

(2) Attachment or acquisition of lien against claim that has been secured through pledge or mortgage is entered into appropriate registry where lien or mortgage have been recorded.

(3) Enforcement debtor shall hand over the object of the pledge to the creditor, if pawnee agrees to that.

(4) In cases referred to in para 3 of this Article, if enforcement debtor refuses to hand over the lien object to the creditor, possession transfer shall be effectuated in accordance with provisions of this Law regulating duty to hand over chattels.

(5) Guarantee provider of the attached claim shall retain such position.

Creditor's duty
Article 150

(1) A creditor who benefited from attaching the claim shall undertake all legal and factual actions necessary for maintenance of claim and ancillary rights.

(2) Creditor shall be liable to the debtor for due diligence performance of these actions.

Attachment in favor of several creditors
Article 152

(1) When more than one creditor requests enforcement against one and the same claim of the debtor, order of priority of liens shall be calculated with regard of the day on which motions to enforce have been received with the court.

(2) When the court receives more than one motion on the same day, liens shall have the same order of priority and the creditors shall compensate proportionally if they can not be compensated in full out of the claim,

Statement of debtor's debtor
Article 153

(1) Court shall, on motion of the creditor, request debtor's debtor to declare within period set by the court whether, and to what extent he/she admits to the attached claim and whether he/she is willing to compensate it, as well as whether his/her duty to compensate such claim is conditioned on performance of some other obligation.

(2) Motion for statement of debtor's debtor may be submitted by the creditor together with the motion to enforce or may be filed in a separate submission after that motion, but no later than commencement of compensation.

(3) Declaration of debtor's debtor shall be delivered to creditor without delay.

Section 3. Transfer and compensation out of debtor's money claim

a) General Provisions

Transfer order
Article 154

(1) Court shall, on motion of enforcement creditor, issue order on transfer of claim to enforcement creditor.

(2) If prior to that, an on motion of the creditor, attachment order has been issued, transfer order may be issued only after the attachment order has become final.

(3) If the creditor has proposed to have debtor's debtor state his/her position regarding the claim against which the enforcement is being sought, the court shall issue an order on motion to transfer within three days of the day on which notice on debtor's debtor statement has been delivered to the creditor.

Special conditions for transfer of claim partially exempted from enforcement and of attached claim

Article 155

Claims that are partially exempt from enforcement or is already attached in favor of other persons, shall be transferred upon creditor's deposition of guarantee that he/she will transfer the exempted part of the claim to the court.

Special conditions for transfer of divisible claim

Article 156

(1) Transfer of money claim may be ordered and carried out only for the amount necessary for compensation of creditor's claim.

(2) If several creditors request enforcement against the same, divisible, claim, transfer shall be ordered in corresponding amounts, for each creditor separately.

Carrying transfer out

Article 157

Transfer shall be carried out upon delivery of the transfer order to debtor's debtor.

Obligations of debtor and creditor

Article 158

(1) Debtor shall, within period set by the court, and on motion of creditor whom the claim was transferred to, provide explanations creditor needs for collecting the claim and shall hand over documents related to that claim.

(2) If debtor request so, creditor whom the claim was transferred to shall, within period set by the court, deposit guarantee to guarantee return of documents related to the claim once the claim has been collected.

(3) Court shall, on motion of creditor, carry out enforcement against debtor for handover of documents, if debtor does not hand them over himself/herself.

(4) Creditor may file an action to request handover of documents kept by the third parties, if debtor would enjoy the same right.

(5) Court shall record a notice on document handed over to the creditor and state that the transfer of claim, whose enforcement has been ordered, has been carried out.

Deposit with the court

Article 159

(1) If, besides creditor, other persons also state their rights regarding the transferred claim, debtor's debtor may on behalf of all those persons deposit the whole amount of claim, or just the matured part of it, with the court.

(2) Creditor whom the claim was transferred to may, when other persons state their rights against the transferred claim, request the court to invite debtor's debtor to deposit amount of the transferred claim with the court.

Methods of transfer

Article 160

Attached claim shall, on motion of the creditor, be transferred to creditor for collection or in lieu of payment.

b) Transfer for collection

Creditor's competences

Article 161

(1) If claim is transferred for collection, creditor is authorized to request debtor's debtor to pay the amount designated in the transfer order, if that amount has matured, to undertake all actions necessary for protection and exercise of the transferred claim and to exercise rights related to lien given as security for that claim and to request provider of guarantee for debtor's debtor in accordance with the type of the guarantee.

(2) Transfer for collection does not authorize creditor to enter into settlement with debtor's debtor, release him from the debt or to dispose of a transferred claim, nor is he/she authorized to agree with debtor's debtor to submit decision on validity of claim, if it is contested, to arbitration.

(3) Debtor's debtor may, against creditor whom the claim has been transferred to, lodge all objections he/she could otherwise lodge against debtor, as well as those objection he might have against creditor in particular.

(4) Creditor's rights acquired through transfer shall not be affected if debtor later decides to cede transferred claim.

Transfer for collection of claim recorded in the public registry

Article 162

Transfer for collection of claim recorded in the public registry shall be recorded ex officio.

Conditioning obligation of debtor's debtor upon handover of item

Article 163

(1) If obligation of debtor's debtor to compensate claim is dependant on debtor's obligation to hand over certain item that was in possession of the debtor, and that obligation has been determined in a final judgment, court shall, on motion of creditor whom the claim has been transferred to, order debtor to hand over such item to court for later handover to debtor's debtor

(2) Court shall, on motion of the creditor, carry out enforcement against debtor who has not handed over the item in the set period.

Informing debtor on action for collection of transferred claim

Article 164

Creditor who has filed action for collection of transferred claim shall, without any delay, inform debtor of litigation initiated, and shall be liable for damages caused to debtor if he/she fails to observe that duty.

Late collection of transferred claim

Article 165

(1) Creditor who does not take appropriate care regarding collection of transferred claim shall be liable for damages caused to debtor, or to another creditor whose claim represented basis for attachment of the claim.

(2) In such case, court may, on request of another creditor, repeal order transferring claim to creditor who did not take appropriate care and transfer the claim to another creditor.

Compensation of creditor

Article 166

Creditor whom claim has been transferred to for collection shall be compensated in the amount he/she collected.

Collection exceeding creditor's claim

Article 167

(1) Creditor who has collected from the transferred claim more than the amount of his/her claim shall deposit the surplus with the court.

(2) Court shall distribute that surplus to other lien creditors and to the debtor, if they are entitled to it.

(3) Court shall return deposited guarantee to the creditor who has returned surplus of collected amount.

Transfer in lieu of payment

Article 168

(1) Attached claim shall be transferred in lieu of payment to the creditor up to the amount of amount transferred, and shall have the effect equal to ceding the claim for compensation.

(2) If transferred claim has been secured through a lien recorded in public registry, court shall ex officio transfer debtor's rights to the creditor, and shall delete lien right recorded in favor of the debtor.

(3) Creditor, whom the claim has been transferred to in lieu of payment, shall be considered compensated by the very fact of the transfer, in the amount of the claim.

(4) Provision of para 3 of this Article shall apply without prejudice to provisions regarding debtor's responsibility for truthfulness and collectability of the transferred claim.

Section 4. Special provisions on enforcement against salary and other permanent money earnings

Application of provisions

Article 169

Provisions of this Chapter shall apply to enforcement against salary, unless otherwise provided by this Law.

Enforcement order

Article 170

(1) Order on enforcement against salary shall provide for attachment on part of the salary and shall instruct state authority, juristic person or some other employer paying salary to the debtor, to pay, or continue paying, the amount set in the enforcement order to the creditor.

(2) Salary, for the purpose of this Law, shall include all work-related earnings of the employee.

Salary increase

Article 171

Enforcement order shall also apply to the salary increase occurring after delivery of the enforcement order.

Where more than one person has maintenance right

Article 172

(1) If enforcement against salary is carried out for compensation of statutory maintenance right, or right for periodical payments for lost maintenance, based on death of maintenance provider, and where several persons have such right against the debtor, and the total amount of their claims exceeds salary that might be the object of enforcement, enforcement shall be ordered and carried out for each and every creditor in proportion of their respective claims.

(2) If another motion to enforce claims referred to in para 1 of this Article is submitted after carrying out of enforcement against salary, or another periodical source of income, has already commenced, court shall amend earlier enforcement order within meaning of para 1 of this Article and shall determine amount that shall be paid to the creditors in the future.

(3) In cases referred to in para 2 of this Article, enforcement order shall also be delivered to prior creditor who may lodge objection against that order.

Place of payment

Article 173

(1) If the claim may be paid out in cash, creditor shall collect it directly at the cashier where debtor's salary is paid out.

(2) Creditor might request to receive the seized amount through post, at designated address or at a bank account, after deduction of postal costs.

Change of employer

Article 174

(1) If debtor's employment relationship has ceased to exist, enforcement order shall also have effect against another employer where debtor has subsequently entered into employment relationship, starting with the day on which the enforcement order has been delivered to that other employer.

(2) Former employer shall, without delay, and in a certified mail, deliver enforcement order to the new employer and shall inform the court about delivery.

(3) Former employer shall, without delay, inform court if he/she does not have information where debtor has established a new employment

relationship, and the court shall inform creditor on that, setting a period in which he should inform the court about debtor's new employer.

(4) If the creditor does not act in accordance with para 3 of this Article, court shall abort enforcement.

Liability for failure to seize and payment of matured installments **Article 175**

(1) Creditor may motion the court to order employer in enforcement procedure to compensate to creditor all installments he/she failed to seize and pay in accordance with enforcement order.

(2) Motion referred to in para 2 of this Article may be submitted until the end of the enforcement procedure.

(3) Order on granting creditor's motion shall have the status of enforcement order.

(4) Employer that disregarded enforcement order of failed to act in accordance with paras 2 and 3 of Article 174 of this Law shall be liable for damages caused to the creditor.

Prohibition with consent of the debtor **Article 176**

(1) Seizure of debtor's salary upon his/her consent (administrative seizure) shall have legal standing of order on enforcement against salary, if it has been carried out before issuing of enforcement order.

(2) Exceptionally from para 1 of this Article, administrative seizure shall have no effect on carrying out of enforcement against salary for compensation of claims based on statutory maintenance, compensation of damages for loss of health and loss or detriment of working ability or for lost maintenance due to death of maintenance provider.

Social insurance earnings **Article 177**

Provisions of this Law applicable to enforcement against salary shall be applied accordingly on enforcement against earnings based on social security and other permanent money earnings.

Section 5. Enforcement against savings deposit and checking account

Enforcement against savings deposit **Article 178**

(1) Enforcement against savings deposit shall be carried out through attachment and payment.

(2) Enforcement creditor motioning for enforcement against savings deposit shall designate data on savings deposit, number and name of

the bank or other financial organization where debtor keeps his/her savings deposit.

(3) If enforcement creditor fails to provide necessary data on debtor's savings deposit, court shall request that data from organization where the deposit is kept, and creditor shall have a duty to designate such organization.

(4) Organization shall, without delay, provide court with the requested data and must not inform debtor about data request.

(5) Attachment is considered carried out by delivery of seizure order to the organization where the savings deposit is kept.

(6) Court shall deliver seizure order to the debtor only after the organization where his/her savings deposit is kept informs the court that the seizure has been carried out.

(7) Compensation of creditor shall be carried out in accordance with provisions on enforcement out of debtor's claim.

Enforcement against assets on debtor's checking account

Article 179

Provisions on enforcement against debtor's savings deposit shall apply accordingly to enforcement against debtor's checking account.

Section 6. Enforcement against securities

a) Enforcement against securities recorded in the public registry

Enforcement actions

Article 180

(1) Enforcement against rights out of securities that are recorded in registry in accordance with special law shall be carried out through attachment, assessment, sale and compensation.

(2) Issuing of enforcement order against security shall constitute attachment of security that represents object of enforcement.

(3) Enforcement order shall be delivered to enforcement creditor, debtor and Central Registry of Securities.

(4) Upon attachment, enforcement creditor establishes lien over attached shares.

(5) Central Registry of Securities shall, upon receiving attachment order, or on request of the enforcement creditor, register lien on security without delay.

(6) Once security has been attached, enforcement debtor may not dispose of it.

(7) Assessment and sale of the security and compensation of creditors out of the proceeds shall be carried out in accordance with provisions of this Law regulating enforcement against shares.

b) Enforcement against other securities

Enforcement actions

Article 181

Enforcement against other securities shall be carried out through attachment of claim contained in the security and transfer of that claim.

Attachment of the claim

Article 182

(1) Attachment of the claim, based on security that is transferred by endorsement, or requiring actual security in order to exercise such claim, shall be carried in the following manner: court official shall take that security away from the debtor and shall hand it over to the court.

(2) Legal actions necessary for maintenance or exercise of rights out of securities referred to in para 1 of this Article shall be carried out by court official, in the name of the debtor, and upon the conclusion of the court.

Transfer

Article 183

(1) Transfer of the claim based on security that is transferred by endorsement, or requiring submission of the security in order to exercise such claim, shall be considered carried out in the moment when the court affixes statement of transfer on that security and the security, so affixed, hands over to the creditor.

(2) Claim based on security that is transferred by endorsement, or requiring submission of the security in order to exercise such claim, or security that for other reasons may not be divided with regard to transfer and compensation, shall be transferred only for the full amount.

(3) If that amount exceeds the sum of debtor's claim, seized claim shall be transferred upon creditor's deposition of guarantee for transfer of surplus to the court.

(4) If several creditors submitted motions for transfer on different days, court shall transfer the claim to the creditor who was the first one to submit motion, and if several creditors submitted motions on the same day, claim shall be transferred to the creditor whose amount of claim is the highest.

(5) Provisions of this Law regulating transfer for collection and transfer in lieu of payment shall be apply to transfer of claims out of securities.

PART FOUR
Enforcement for Compensation
of a Non-Money Claim

Chapter One: HANDOVER OF CHATTELS

Section 1. Jurisdiction

Territorial jurisdiction
Article 184

Competence to decide on motion to enforce for handover of one or more designated chattels or for delivery of a specified quantity of interchangeable chattels, as well as competence to carry out enforcement, shall be vested in the court where chattels are located.

Section 2. Handover of individually designated chattels

When chattels are with enforcement debtor or a third party
Article 185

(1) Enforcement for handover of one or more individually designated or individualized chattels that are being kept by the enforcement debtor shall be carried out in the following way: court official shall take those chattels away from the enforcement debtor and shall hand them over to enforcement creditor with receipt.

(2) Enforcement shall be carried out in accordance with para 1 of this Article also when the chattel is kept by the third party who is willing to hand it over to the court official.

(3) If the third party is not willing to hand chattels over, enforcement creditor may motion the court to transfer to him/her enforcement debtor's claim for chattel handover against the third party.

(4) Provisions of this Law regulating enforcement for handover or delivery of chattels shall be applicable procedure on motion referred to in para 3.

When chattels are not found with enforcement debtor or third party
Article 186

(1) If chattels are not found with enforcement debtor or third party, court shall invite enforcement debtor to state where the chattels are, and if he/she refuses to do so in the set period, court shall, on motion of enforcement creditor, assess the value of the chattel, taking into account affection value it has for the creditor, and shall issue an order, ordering enforcement debtor to pay the value of the chattel to the enforcement creditor within a set period.

(2) Enforcement creditor may submit a motion within the meaning of para 1 of this Article within 8 days of the day he was informed that the chattels have not been found.

(3) On the basis of that order enforcement creditor may submit motion to enforce against enforcement debtor.

(4) If enforcement creditor does not submit motion to have enforcement creditor pay him/her value of the chattel within set period, court shall abort enforcement.

Section 3. Handover of interchangeable chattels

When chattels are with enforcement debtor or third party
Article 187

If executive title is given for delivery of certain quantity of interchangeable chattels that are with the enforcement debtor or a third party, enforcement shall be carried out in accordance with provisions on handover of individually designated chattels.

When chattels were not found with enforcement debtor or third party
Article 188

(1) If chattels are not found with enforcement debtor or third party, enforcement shall be carried out through appropriate application of provisions of Article 185 of this Law. When assessing value of a chattel, costs of their procurement elsewhere shall be taken into account.

(2) If value of chattels changes during enforcement procedure, enforcement creditor may request court to conduct new assessment and instruct enforcement debtor to pay price difference. In that case, provision of para 1 of this Article shall be applied accordingly.

(3) Rules contained in this chapter shall apply without prejudice to right of enforcement creditor to request from enforcement debtor, through litigation, damages caused because the chattel has not been handed over or has not been delivered.

Chapter Two: ENFORCEMENT FOR VACATION AND HANDOVER OF REAL ESTATE

Territorial jurisdiction Article 189

Competence to decide on motion to enforce for vacation and handover of real estate and for carrying out such enforcement shall be vested in the competent court of the place where real estate is located.

Method of carrying out enforcement Article 190

(1) Enforcement for vacation and handover of real estate shall be carried out in the following manner: court official shall, after removing all persons and chattels out of that real estate, hand the real estate over to possession of the enforcement creditor.

(2) Enforcement and a vacation of real estate may be carried out at least 8 days after delivery of enforcement order if no objection has been lodged, or 8 days after delivery of order denying objection of the enforcement debtor.

(3) If scope of vacation encompasses minors, court shall inform social care authority about enforcement.

(4) Necessary manpower and transport means for carrying out the enforcement shall be secured by the enforcement creditor on request of the court official, and such request shall be communicated to the enforcement creditor at least 8 days prior to carrying out of enforcement.

(5) Police shall provide all necessary assistance for carrying out actions referred to in para 1 of this Article, if requested to do so by the court.

(6) Court shall remove persons interfering with enforcement or shall fine those persons in accordance with Article 41 of this Law.

Removal of chattels Article 191

(1) Chattels that have to be removed shall be handed over to enforcement debtor, and if he/she is not present shall be handed over to adult member of his/her household or to his/her representative.

(2) If none of the above mentioned persons is present during enforcement or those persons refuse to receive chattels, chattels shall be handed over for safekeeping to another person, and the costs shall be borne by enforcement debtor. Enforcement creditor shall provide another person whom chattels will be handed over for safekeeping. Enforcement creditor may take enforcement debtor's chattels for safekeeping.

(3) Court official shall hand over removed chattels for safekeeping to another person or to enforcement creditor. Court official's action shall be confirmed by a conclusion. Court may later issue a conclusion and decide to give chattels to a third party instead of the original safekeeper.

(4) Court shall inform enforcement creditor about handover to another person and about costs of safekeeping, and shall set him/her appropriate period in which he/she may request chattel handover after covering costs of safekeeping.

(5) In addition to information referred to in para 4 of this Article, court shall warn enforcement debtor that, upon expiration of certain period, chattels shall be sold and that costs of safekeeping and costs of sale shall be compensated out of the sale price.

Sale of chattels

Article 192

(1) Court shall ex officio issue a conclusion on sale of chattels for account of enforcement debtor, if enforcement debtor does not, within prescribed period, require their handover and cover safekeeping costs.

(2) Portion of sale price, remaining after covering safekeeping costs and costs of sale, shall be deposited with the court in favor of enforcement debtor.

(3) Sale of chattels shall be organized in accordance with provisions of the chapter one of this Law on enforcement against chattels.

Enforcement for covering costs of procedure

Article 193

(1) Enforcement creditor may, in his motion to vacate and handover real estate, request, simultaneously to enforcement, order for enforcement against debtor's chattels that should be removed out of the real estate, for covering costs of enforcement procedure.

(2) Enforcement referred to in para 1 of this Article shall be granted and carried out in accordance with provisions of this Law regulating enforcement against enforcement debtor's chattels for compensation of money claim, on motion of enforcement creditor.

Chapter Three: ENFORCEMENT FOR COMPENSATION OF CLAIMS FOR PERFORMANCE, BEARING OF ACTION OR REFRAINING FROM ACTION

Territorial jurisdiction

Article 194

If enforcement debtor is obliged, according to executive title, to perform certain action or to bear certain action or to refrain from some action, competence to decide on motion to enforce and to carry out

enforcement shall be vested in a court located in the territory where enforcement debtor shall carry out executive title obligation.

Action that can be performed by other party

Article 195

(1) Enforcement for fulfilling obligation of an action that may be carried out by another party shall be enforced so that the court authorizes enforcement creditor to entrust another person to perform said action or to perform it himself/herself. Enforcement debtor shall bear cost of that action.

(2) Enforcement creditor may, in motion to enforce, motion the court to issue an order prohibiting enforcement debtor to deposit with the court in advance amount needed for compensation of costs that will be incurred when another person or enforcement creditor performs said action. Amount shall be determined freely by the court, taking into account price list of the person authorized to perform such actions. Enforcement creditor shall attach such price list alongside motion to enforce.

(3) Court shall issue final order on costs of the procedure referred to in para 2 of this Article on motion of enforcement creditor or enforcement debtor, upon performance of action.

(4) If it is later shown that a surplus of money has been acquired from enforcement debtor, on the basis of para 2 of this Article, then the amount needed for compensation of costs of performing action and costs of procedure, court shall, on motion of enforcement debtor, return the surplus if it is in possession of proceeds acquired from the enforcement debtor, or shall order enforcement creditor to return such surplus within a set period, if that surplus was at disposal of enforcement creditor.

(5) On the basis of para 2 of this Article, enforcement may be requested even before enforcement order becomes final, while on the basis of para 3 of this Article enforcement may be requested only after enforcement order becomes final.

Action that can not be performed by another party

Article 196

(1) If action referred to in the executive title can be performed only by enforcement debtor, the court shall, in an enforcement order, set a period for enforcement debtor to fulfill obligation and at the same time fine him for not fulfilling it, in accordance with Article 41 of this Law.

(2) Upon expiration of the set period, and if enforcement debtor has not fulfilled the obligation, the court shall ex officio carry out enforcement of order on fine.

(3) At the same time, court shall set another time period for fulfillment of obligation and set another, higher fine that the one already enforced, for case of another non-compliance.

(4) Court shall fine enforcement debtor and threaten new ones, setting new deadlines for fulfillment of obligation, until the total sum of fines reaches tenfold amount of the first fine.

(5) Enforcement debtor who fulfills his/her obligation within period set by the court shall, without delay, inform court about that and submit credible evidence regarding that. The following shall be considered to be credible evidence: certified written statement of enforcement creditor on how the obligation was fulfilled, court official's record on performing of the action, expertise and opinion of court expert stating that action has been performed, and the like.

(6) If an action that may be performed only by the enforcement debtor does not depend solely on his/her will (e.g. creation of some pieces of music art and the like), enforcement creditor shall not be entitled to request enforcement referred to in para 1 of this Article and may instead request only damages.

Refraining and bearing from action

Article 197

(1) Enforcement shall be carried out in a manner set out in previous article also when enforcement debtor acts contrary to obligation to refrain from certain action or to bear certain action.

(2) Court shall, on motion of enforcement creditor, order enforcement debtor to deposit guarantee for damages if enforcement creditor demonstrates likelihood that he/she would suffer damages because of the continued enforcement debtor's behavior contrary to obligation.

(3) Period of guarantee shall be determined by the court in light of circumstances of the case. On the basis of order for guarantee deposition, enforcement shall be carried out on motion of enforcement creditor.

Enforcement for restitutio in integrum

Article 198

(1) If the behavior of enforcement debtor was contrary to obligation contained in the executive title and if such behavior causes alteration that is not in accordance with a right of enforcement creditor, court shall, on motion of enforcement creditor, authorize enforcement creditor to establish status quo ante on his own means or, if needed, with help of court official, and enforcement debtor shall bear costs and risk of such action.

(2) Preliminary depositing of costs of establishing status quo ante and final determination of such costs shall be carried out in accordance with provisions on costs regulating the expenses of performing actions which, apart from judgment debtor, may be performed by another person.

Repeated trespassing

Article 199

(1) If enforcement was carried out on the basis of an executive title issued in trespass proceedings, or if enforcement debtor has fulfilled his/her obligation voluntarily, and thereupon performed trespassing again and this trespassing does not essentially differ from the previous one, the court shall, on a motion of enforcement creditor and on the basis of the same executive title, issue a new enforcement order, ordering return of possession, or an enforcement order imposing fine for failure to perform an action that can be performed only by enforcement debtor.

(2) Enforcement creditor may submit motion to enforce referred to in paragraph 1 of this Article within 30 days from the day becoming aware of the repeated trespassing, but not later than one year after the repeated trespassing occurred.

Damages

Article 200

Provisions of this chapter shall be without prejudice to the right of the enforcement creditor to resort to litigation and request damages caused by the fact that enforcement debtor behaved contrary to the obligation determined in executive title.

Chapter Four: ENFORCEMENT OF FAMILY LAW DECISIONS (TAKING CHILD AWAY AND HANDING IT OVER)

Territorial jurisdiction

Article 201

(1) Competence to decide on motion to enforce a court decision ordering handover of a child to parent or to another person, or to organization that the child was entrusted to for care and custody, shall be vested in the court that has general territorial jurisdiction over the party requesting enforcement, and in the court on the territory of which the child is located.

(2) Court on the territory of which the child is located shall have territorial jurisdiction for carrying enforcement out.

Standing for motion submission

Article 202

Child, parent or other person that the child was entrusted to for care and custody, as well as custody authority, may submit motion to enforce.

Method of enforcement

Article 203

(1) When carrying out enforcement, court shall take particular care of the need to protect interest of the child to the utmost extent.

(2) Court shall, in the enforcement order, leave enforcement debtor a time limit no longer than 3 days from the day on which order to hand over the child to the parent or to another person, or to organization that the child was entrusted to for care and custody, under threat of fine.

(3) Fine shall be passed and enforced in accordance with provisions of this Law regulating enforcement of an action that may be performed only by the debtor.

(4) If enforcement could not have been carried out by issuing and enforcing order on fine, enforcement shall be carried out by taking the child away from the person where child is at and handing the child over to the parent, or to another person, or to organization that the child is entrusted to for care and custody.

(5) Taking child away and handing it over as referred to in para 4 of this Article may be carried out only by a judge in collaboration with a psychologist of custody service, school, family counsellor or other specialized institution for mediating family relationships.

Continuation of enforcement

Article 204

Court shall, on motion of the party whom the child was entrusted to, continue enforcement on the basis of same enforcement order if the child is found again in the custody of the person it was taken away from, within 60 days of the day of the handover.

Taking the child away

Article 205

(1) Exceptionally from provisions of the previous Article, in case where it is determined that life, health and development of the child are threatened, the court shall without previous setting of period to comply with takeover and avoid fine, carry out enforcement by taking child away and hand it over to a parent or another person or organization where child is entrusted for care and custody.

(2) This enforcement shall be carried out in accordance with Article 196 of this Law.

Chapter Five: ENFORCEMENT FOR RETURNING EMPLOYEE TO WORK OR TO SERVICE

**Territorial jurisdiction
Article 206**

Competence to decide on motion to enforce on the basis of executive title ordering employer to return employee to work or to assign him/her to appropriate post, shall be vested in the court where employer's seat is located.

**Time limit for submission of motion to enforce
Article 207**

Motion to enforce referred to in previous article may be submitted within 30 days of the day on which enforcement creditor became entitled to submit such motion

**Method of enforcement
Article 208**

(1) Enforcement on basis of executive title ordering employer to return employee to work or to assign him/her to appropriate post, shall be carried out by imposing a fine against employer.

(2) Fine shall be levied in accordance with Article 40 of this Law.

**Compensation of lost wages in case of return to work
Article 209**

(1) Enforcement creditor who have submitted motion to be returned to work or to service, may motion the court to order enforcement debtor to pay him/her monthly compensation of salary due from the date on which judgment became final until the day on which he was returned to work, and order enforcement for collection of amounts so determined.

(2) Motion for compensation may be filed together with motion to enforce, or may be submitted later, but not later than the end of the enforcement procedure.

(3) Ruling granting motion for compensation shall have the effects of enforcement ruling.

(4) Enforcement debtor – employer may motion the court to repeal ruling referred to in para 3 of this Article if the circumstances on which it was based have changed after it was issued.

Chapter Six: ENFORCEMENT OF A DECISION ON DIVISION OF ITEMS

Territorial jurisdiction

Article 210

Competence to decide on motion to enforce division of jointly owned items and for carrying out of that enforcement shall be vested in the court where a jointly owned item is located.

Physical division

Article 211

(1) Physical division of jointly owned objects shall be granted if such division is envisaged in the executive title.

(2) Certain physical division actions shall, according to circumstances of the case, be carried out by judge, or the judge may delegate such authority to expert associate or court official.

(3) Court shall invite participants to be present at carrying the division out.

(4) If needed, court shall order expertise.

Division by sale

Article 212

If the jointly owned item shall, according to executive title, be sold in order to be divided, division shall be carried out in accordance with provision of this Law regulating enforcement on chattels or real estate, unless parties agree reach agree differently on certain issues.

Costs of the procedure

Article 213

(1) Costs of carrying enforcement out in accordance with this chapter shall be born by all owners, in proportion to their shares in the jointly owned item.

(2) Owner that has incurred additional costs shall reimburse to other owners.

Chapter Seven: ENTRY OF RIGHTS IN PUBLIC RECORDS (RECORDING OF THE RIGHTS) AND OTHER PUBLIC REGISTRIES

Territorial jurisdiction

Article 214

Competence to decide on motion to enforce for establishing a right over real estate through an entry in public record and other public registries shall be vested in the court that keeps public record where the

entry should be made or, if so authorized by the laws of the Republic, a court, on the territory of which another court or another authority keeps public record.

Method of enforcement

Article 215

Court shall order appropriate entry in the public record on the basis of execution determining a duty to make an entry in public registry. Ordered entry shall be carried out ex officio.

Entry of property right if debtor has not been recorded as owner

Article 216

If enforcement debtor has not been recorded as owner of the real estate, entry of ownership right of enforcement creditor on that real estate may be carried out if enforcement creditor, alongside motion to enforce, submits evidence, in accordance with provisions on entry of real estate rights, that the person recorded as owner is enforcement debtor's legal predecessor.

Entry of some other right if debtor has not been recorded as

owner

Article 217

If, according to executive title, enforcement creditor is authorized to seek entry of lien or some other right on real estate against enforcement debtor, except for ownership right, and enforcement debtor has not been recorded as owner of the real estate, enforcement creditor may in his/her motion to enforce request to have enforcement debtor's ownership recored, and thereupon perform entry of enforcement creditor's right, if he/she submits evidence, in accordance with provisions of entry of real estate rights, that enforcement debtor has become owner of that real estate.

Entry of the right in other public registries

Article 218

Provisions of this chapter shall apply accordingly to entry of rights in other public registries, unless a special law provides otherwise.

Chapter Eight: STATEMENT OF WILL

Non-conditioned claim

Article 219

(1) If a decision, which has status of executive title, obliges enforcement debtor to make a statement of will, such statement, containing what has been prescribed by the executive title, shall be considered made on the day on which said decision becomes final.

(2) If a court or administrative settlement obliges debtor to make a statement of will, such statement, containing what has been specified in the settlement, shall be considered made on the day on which his/her obligation out of the settlement has matured.

Conditioned claim

Article 220

When the fulfillment of obligation to provide statement of will is dependant on the fulfillment of some obligation of the enforcement creditor, it shall be construed that the enforcement debtor has provided the statement when the enforcement creditor has fulfilled his obligation, or when some other condition, evidenced by official document or in a document certified in accordance with law, has been met.

PART FIVE

Special Enforcement Provisions in Commercial and Related Matters

Chapter One: SCOPE

Enforcement in commercial matters

Article 221

Provisions of this chapter shall be applicable to commercial matters, when enforcement debtor is a juridical person, entrepreneur or a physical person performing a for-profit activity who has an account opened in accordance with provisions on payment transactions, and shall also be applicable when object of enforcement and enforcement measures are commercial entities.

Application of this chapter of the Law to other enforcement debtors in civil and administrative matters

Article 222

Provisions of this chapter of the Law shall be applicable even when enforcement debtor is not a juridical person, entrepreneur or a physical person performing a for-profit activity who has an account opened in accordance with provisions on payment transactions, if enforcement creditor in motion to enforce requests enforcement using enforcement measures or against object of enforcement regulated by this chapter and if a motion for summary enforcement procedure based on authentic documents referred to in article 244 of this Law is submitted.

Application of provisions of Law on Enforcement Procedure

Article 223

Matters not settled in this chapter of Law on Enforcement Procedure, in cases where enforcement debtor is a juridical person, entrepreneur or a physical person performing a for-profit activity who has an account opened in accordance with provisions on payment transactions, shall be governed by provisions of this Law.

Chapter Two: GENERAL PROVISIONS

Jurisdiction

Article 224

(1) Commercial court shall have competence to decide on enforcement and to carry out enforcement, unless otherwise provided by this Law.

(2) Court of general jurisdiction in the place where real estate is located shall always be competent for carrying enforcement out..

Contents of the motion to enforce in commercial matters

Article 225

(1) Motion to enforce against juridical persons shall, in addition to mandatory contents listed in Article 45 of this Law, contain following data:

1. debtor's identification number
2. debtor's tax number
3. names of commercial banks and numbers of debtor's accounts with commercial banks
4. name of the bank and account number of the creditor.

(2) If debtor does not provide creditor with data referred to in para 1 of this Article without delay, motion to enforce may be submitted even without them, and the court shall order organization for coercive collection to provide that data.

(3) Request to organization for coercive collection to provide data may also be lodged by the creditor if it submits evidence that enforcement procedure has already started.

(4) Organization for coercive collection shall provide requested data without delay.

Delivery

Article 226

(1) Enforcement procedure delivery in commercial matters shall be carried out in accordance with Article 9 of this Law.

(2) If delivery to a juristic person or entrepreneur has not been successful according to provisions of Law on Civil Procedure, delivery shall be carried out in the seat of the juristic person which is recorded in the registry of juristic persons. If such delivery fails, delivery shall be carried out at the address of authorized representative, if such address is recorded in the registry or provided by the competent authority.

(3) If delivery in accordance with Law on Civil Procedure and provisions of Article 9 of this Law has failed, delivery shall be carried out by displaying on noticeboard of the court and the delivery shall be considered done 8 days after the display.

Chapter Three: ENFORCEMENT AGAINST DEBTOR'S BUSINESS ACCOUNT

**Territorial jurisdiction
Article 227**

(1) Competence to decide on motion to enforce and carrying out of enforcement against money assets kept in accounts of the debtor shall be vested with the court of the territory where seat of the bank or other financial institution is located, or with the court of the territory where organizational part of the bank or other financial institution, where debtor's account is kept, is located.

(2) If a debtor has more than one account, territorial jurisdiction shall be vested in the court referred to in para 1 of this Law, at creditor's choice.

**Scope of enforcement against juristic person and entrepreneur
Article 228**

Enforcement for compensation of money claim against juristic person and entrepreneur may be carried out against all money assets on their accounts with the banks and other financial institutions, and against dinar equivalent or the foreign currency they keep at foreign currency accounts with the banks.

**Enforcement order
Article 229**

Enforcement order against money assets on debtor's accounts with banks or other financial institutions shall order said banks or other financial institutions to transfer the designated amount from the account of the debtor to account of the creditor, and for claims for which account transfer has not been ordered, to pay out that amount to creditor in cash.

**Carrying enforcement out
Article 230**

(1) Court shall deliver enforcement order to creditor, debtor and organization for coercive collection, in accordance with law.

(2) Organization for coercive collection shall, upon receiving enforcement order, instruct banks or other financial institutions to cancel all payouts from all accounts of the debtor and shall inform other banks and financial institutions that they may not open new accounts for that debtor.

(3) Organization for coercive collection shall instruct banks to promptly inform it on balances on accounts of the debtor.

(4) Upon receiving data referred to in para 3 of this Article, organization for coercive collection shall instruct banks or other financial institutions to carry out enforcement by transferring assets to the account of the creditor or to pay out in cash, in proportion to the balances on those accounts, unless otherwise provided in a special law.

(5) Assets on debtor's accounts shall be blocked in accordance with para 2 of this Article until the complete enforcement of the instruction.

Order of collection **Article 231**

(1) Organization for coercive collection shall act in accordance with Article 230 of this Law, observing priority of coercive enforcement collection against accounts in accordance with time of receipt of enforcement order or other document that serves as a basis for enforcement against the account of the debtor, and shall act in such way on the very same day it has received enforcement order, except if special provisions provides that claims of certain creditors enjoy priority enforcement and except for certain claims, including claims referred to in Article 126 para 1 point 2 of this Law.

(2) Bank or other financial institution shall carry out transfer of assets from the account of the debtor on the same day on which it has received instruction of the organization for coercive collection.

Periodical payments **Article 232**

(1) If enforcement order instructs debtor to make periodical payments that are due in different time periods (money rent for loss or deterioration of health, or loss of working ability or for loss of life of maintenance provider, etc.), organization for coercive collection shall instruct bank or other financial institution to carry out such payments without further (repeated) instructions.

(2) In case referred to in para 1 of this article, priority of all future periodical payments shall be estimated according to the time of receipt of the enforcement order.

(3) Organization for coercive collection and bank or other financial institution shall keep special record on enforcement orders for future periodical payments.

(4) If there are no assets at debtor's accounts at the time when payments referred to in para 1 of this Article are due, Article 230 para 5 shall apply accordingly.

Stay of enforcement **Article 233**

On motion of creditor, who submits evidence of declaring before court that he/she/it gives up any further enforcement, organization for

coercive collection shall order bank to stay enforcement, until the court issues order on abortion of the procedure.

Enforcement against a joint debtor

Article 234

(1) Court shall issue one enforcement order against two or more debtors that are jointly and severally liable on the same executive title, if they are encompassed by the same motion to enforce.

(2) Creditor may, in the motion to enforce, state the order of debtors for collection and, if such order has not been stated, collection shall be carried out in the order in which debtors have been listed in the enforcement order.

(3) If accounts of debtors that are jointly and severally liable are kept with different banks or other financial institutions, court shall deliver enforcement order to organization for coercive collection and organization shall deliver, to all banks or other financial institutions where accounts of jointly and severally liable debtors are kept, instruction for cancellation of payouts and instruction for providing data on accounts balance.

(4) Transfer of assets shall be carried out according to priority stated in the enforcement order. If assets on accounts of first designated debtor are not sufficient for compensation or enforcement creditor, transfer shall be continued until enforcement creditor is fully compensated.

Transfer from foreign currency account

Article 235

(1) If there are no money assets on debtor's accounts with banks or other financial institutions, organization for coercive collection shall instruct banks that keep foreign currency accounts of the debtor to transfer assets from those accounts, at exchange rate on the day of the transfer to debtor's account.

(2) Bank shall act on instruction of the organization for coercive collection on the same day it received instruction, and if there are no assets on the foreign currency account, bank shall act in accordance with instruction at the time assets are paid into foreign currency account, unless it receives information from organization for coercive collection that there is no further need for transfers from foreign currency account.

(3) Bank may not act on debtor's instructions regarding disposal of assets on foreign currency accounts until instruction of organization for coercive collection is carried out, or until it receives from organization for coercive collection information referred to in para 2 of this Article.

Chapter Four: ENFORCEMENT AGAINST SHARES IN LIMITED LIABILITY COMPANY

Section 1. General provisions

Territorial jurisdiction **Article 236**

Competence to grant enforcement and carry it out against shares of stock companies and shares in a limited liability company shall be vested in a commercial court of the territory where the company, against whose shares enforcement is carried out, is registered in a public registry of companies.

Enforcement actions **Article 237**

(1) Enforcement against shares of a stock company shall be carried out through attachment, assessment, sale and compensation of the creditor.

(2) Enforcement against share in a limited liability company shall be carried out through attachment, assessment, sale and compensation.

Section 2. Enforcement against shares of a stock company

Attachment **Article 238**

(1) Attachment on shares shall be effected through delivering order on enforcement against shares.

(2) Enforcement order shall be delivered to enforcement creditor, debtor and to the Central Registry of Securities.

(3) Enforcement creditor shall acquire lien over attached shares at the moment of attachment.

(4) Central Registry of Securities shall, upon receiving attachment order, or on request of enforcement creditor, enter lien on action into registry without delay. Upon moment of entry, third parties may not claim good faith vis-a-vis existence of enforcement creditor's lien right.

(5) Enforcement debtor shall not be authorized to dispose of the attached share from the moment of attachment.

Assessment and sale **Article 239**

(1) Court shall, with expert assistance, determine share value.

(2) If the share is quoted on stock exchange, its value shall be assessed on the basis of stock exchange report, as average price of shares at the stock exchange in the last thirty days. If value may not be

assessed in such manner, court shall order expert assessment on request of one of the parties.

(3) If shares are traded on the stock exchange, they will be cashed-in at the stock exchange, through auction or through a licensed broker, in accordance with law.

(4) Shares may also be sold on public auction or through direct bargain, to the extent this is allowed by the law regulating share trading.

(5) When deciding on the method of sale or encashment of shares, court shall take into account provisions applicable to that type of shares and possibilities to sell shares at the highest price.

(6) Provisions on compensation through sale of chattels shall apply accordingly to assessment and sale of shares and on compensation of creditor out of the proceeds.

Section 3. Enforcement against share in a limited liability company

Enforcement actions

Article 240

(1) Attachment on shares of the limited liability company shall be effected through delivery of the order on enforcement against shares.

(2) Enforcement creditor shall acquire lien through attachment.

(3) Attachment order shall be delivered to limited liability company, which shall, without delay, enter lien right in shareholder registry if it keeps one.

(4) Attachment order shall also be delivered to court or organization that keeps public registry of limited liability companies, and said court or organization shall enter lien right on share without any delay.

(5) Once lien is acquired, debtor may not dispose of the share.

(6) Provisions of this law applicable to assessment and sale of shares of the stock company shall apply accordingly to assessment and sale of shares of limited liability company.

Preemption right

Article 241

(1) Other shareholders of the limited liability company shall have preemption right at the sale of the share.

(2) Preemption right of other shareholders shall be exercised in accordance with provisions on preemption rights related to real estate.

Chapter Five: SUMMARY ENFORCEMENT PROCEDURE

Parties

Article 242

Summary enforcement procedure may be carried out if enforcement creditor and enforcement debtor are juridical persons, entrepreneurs or a physical persons performing a for-profit activity who have accounts opened in accordance with provisions on payment transactions with the banks and other financial institutions.

Jurisdiction

Article 243

Competence to order summary enforcement shall be vested in commercial court on the territory of the seat or domicile of the debtor.

Executive title

Article 244

(1) Summary enforcement may be carried out on the basis of authentic document that also serves as a mean of payment, such as:

1. Bills of exchange and cheques (protested and with a return charge) if necessary for establishment of a claim
2. bonds and other securities entitling their holders to cash in their nominal value
3. matured unconditional bank guarantee
4. matured unconditional letter of credit
5. debtor's certified statement, authorizing creditor to order money transfer, and
6. official document constituting a money obligation.

(2) Summary enforcement shall not be carried out on the basis of a foreign official document.

Motion to carry out summary enforcement

Article 245

(1) Creditor wishing to carry out summary enforcement on the basis of authentic documents referred to in the previous article shall explicitly state so in the motion to enforce.

(2) Unless creditor marks that enforcement shall be carried out on means of payment or that summary enforcement should apply, enforcement shall be carried out in accordance with provisions of this Law regulating enforcement on the basis of authentic documents.

Granting enforcement

Article 246

(1) Upon determining that all conditions for summary enforcement have been fulfilled, court shall issue order granting summary enforcement.

(2) Objection may be lodged against an order denying motion for summary enforcement.

Objection

Article 247

(1) Debtor may lodge objection against an order granting motion for summary enforcement for the following reasons:

1. authentic document referred to in Article 244 has false data entered into it (false document),
2. authentic document is signed by an unauthorized person,
3. obligation has been fulfilled earlier through payment instruction, and
4. obligation has not yet matured.

(2) Objection may be lodged within three days of the day on which order granting summary enforcement has been delivered.

Objection evidence

Article 248

(1) Objection shall be considered founded if debtor, with the objection, submits evidence on par with legal strength of executive title, such as:

1. for objection that document is false – final court judgement declaring its falsehood, or, when falsehood may be determined from the excerpt from Central Registry of Securities, excerpt from the registry
2. for objection that the document has been signed by unauthorized person, an excerpt from the registry on person authorized to represent at the time when document was issued,
3. for objection that obligation has been fulfilled, written or electronic payment instruction that has been carried out.

(2) In case of objection for non-maturity of document's obligation, lack of maturity shall stem from the document itself, and not from some other evidence.

Objection procedure

Article 249

(1) A council of three judges shall decide on objection. Council shall be from the same court that has issued order granting summary enforcement.

(2) If the court finds that objection is well-founded, it shall repeal order granting summary enforcement and shall hand the case over to litigation court for further procedure, just like in matters of enforcement on the basis of authentic document.

(3) If no objection is lodged within the prescribed period, or if the court determines that objection is unfounded, court shall order carrying enforcement out with such measures and on such objects as stated in the motion to enforce.

(4) Court shall issue order on objection within 8 days

Appeal against order that denies or rejects objection **Article 250**

(1) Debtor may lodge appeal against an order denying or rejecting objection against order granting summary enforcement .

(2) Appeal referred to in para 1 of this Article may be lodged within 3 days.

(3) Appeal shall not suspend enforcement.

(4) Decision on appeal shall be issued within 8 days of the receipt of the case in the court of second instance.

(5) Court of second instance may not, in the course of appellate procedure, repeal the order and return it for another decision; it may only repeal or affirm orders.

(6) If the second instance court repeals order on granting summary enforcement, enforcement court shall abort any further carrying out of enforcement without delay.

(7) If appeal is sustained, debtor shall have right to counter-enforcement in accordance with rules set out in this Law.

Carrying enforcement out **Article 251**

(1) If objection is not lodged within prescribed period, or if court determines that objection is unfounded, court shall order enforcement with such measures and on such objects, as are stated in the motion to enforce.

(2) Enforcement shall be carried out in accordance with provisions of this Law applicable for measures and objects of enforcement determined in order for carrying enforcement out.

(3) In accordance with Article 15, para 1 point 6 of this Law, appeal may be lodged againsts the order to carry enforcement out.

PART SIX

Security

Chapter one: GENERAL PROVISIONS

Initiation of the procedure

Article 252

(1) Providing security shall be initiated on a motion of the party, and on motion of other persons, only when the law provides so.

(2) Motion for security shall state the claim for which security is requested, legal grounds for security, facts and evidence that will serve the court to determine that legal grounds for security are likely to exist, type of security measures and motion to enforce security order, if the court grants the motion and orders security.

Security measures

Article 253

Security measures shall be enforcement for preliminary compensation, enforcement for security, lien right and injunctions (temporary measures).

Permissibility of security

Article 254

Security shall not be allowed against items and rights that, according to law, may not represent object of enforcement.

Appropriate application of provisions of certain laws

Article 255

Provisions of Law on Civil Procedure shall be applied accordingly when deliberating and deciding on motion for security, unless this Law provides otherwise, and in procedure of enforcing security order, provisions of this Law regulating enforcement procedure shall be applied accordingly, unless this Law provides otherwise.

Composition and competence of the court when security was requested before initiation of procedure on main claim

Article 256

(1) If security procedure has been initiated before commencement of litigation, or before commencement of some other procedure that should decide on whether the claim for which security is requested is well-founded, single judge shall proceed and decide in security procedure, even when court deciding on the dispute itself is composed differently.

(2) For ordering security referred to in para 1 of this Article, competence shall be vested in court competent to decide in the first instance on claim for which security is requested.

(3) Competence to decide on rights and items that are recorded in public records or other registries shall be exclusively vested in the court of the territory where the authority keeping records or registries is located.

Alternative:

a) in para 2: words «court competent to decide in the first instance on claim whose security is requested» shall be replaced with «municipal court», or

b) in para 2: words «court competent to decide in the first instance on claim whose security is requested», may be replaced with « court that would be competent to carry out enforcement decision on claim whose security is sought»

Composition and competence of the court when security is requested after initiation of procedure on main claim

Article 257

(1) If security procedure has been initiated at the very time of initiation of litigation or after initiation of litigation, or at the very time of initiation of some other procedure that should decide on whether the main claim whose security is requested is well-founded or after initiation of such procedure, competence shall be vested in court or other authority that decides on the main claim at the time when motion for security has been submitted, unless this Law provides otherwise.

(2) If the motion to enforce has been filed with the court that decides on appeal against decision on the main claim, said court shall inform first instance court on security measure granted without delay.

(3) Court that decided on motion for security in the course of extraordinary legal recourse shall act in accordance with para 2 of this article.

Jurisdiction when security has been requested in the course of enforcement procedure

Article 258

When security procedure has been initiated in the course of enforcement procedure, competence shall be vested in the court in charge of the enforcement procedure.

Special provisions on security procedure

Article 259

(1) In the course of security procedure, court may issue security order, before the motion has been delivered to the other party and before the other party was given opportunity to respond to the motion:

1. if the initiator of the motion might, due to the delay, suffer irreparable or hardly reparable damages;
2. in order to avoid direct danger of illegal damaging of items or loss or serious threat to a particular right, or
3. to prevent violence.

(2) Court shall, in the course of security procedure, examine only facts and evidence proposed by the parties and only to the extent it considers such facts and evidence important for deciding on security, and oral examination of the parties shall be carried out only if the court concludes that facts on legal grounds for ordering executions can not be evidenced by other means.

(3) When deciding on legal grounds for security, likelihood is sufficient, unless this Law provides otherwise.

(4) When deciding on security measures on marital, family and custody claims, publicity is excluded.

(5) Delivery of documents in security procedure shall be carried out through appropriate application of provisions on delivery in enforcement procedure.

Legal recourse (remedies)

Article 260

(1) Appeal against security order shall stay enforcement only when so provided by this Law.

(2) Appeal against security order, as well as the appeal against the order rejecting or denying motion for security, shall be lodged within three days of the day on which order has been delivered.

(3) Appeal referred to in para 3 of this Article shall, together with the court files of the security procedure, and without delay, be delivered to the court competent to decide on the appeal, and said court shall decide on it within 8 days of the delivery of court files.

(4) Non-observance of time limits prescribed in paras 2 and 3 of this Law shall be considered as dilatory behaviour of the judge.

(5) Appeal on security order issued during procedure on main claim shall be decided by a council comprised of three judges, while appeal on security order issued during procedure of extraordinary legal recourse on the main claim shall be decided by a special three-judge council of the same court.

(6) Motion for re-trial on security order shall be allowed only on grounds listed in Article 421 paras 1, 4, 5, and 6 of the Law on Civil Procedure, within 30 days of the day on which security order has been delivered.

(7) No revision shall be allowed in security procedure.

Security order

Article 261

(1) Security order shall contain court decision on security measure, brief reasoning of legal grounds for granting motion for security and instruction on whether appeal stays enforcement, and what is the time limit and appropriate court for lodging appeal. If appeal does not stay enforcement, security order shall have the effect of enforcement order.

(2) Order referred to in para 1 of this Article shall be delivered to the parties and to the court competent for carrying enforcement out without delay.

(3) Court competent to carry enforcement out shall undertake enforcement actions without delay.

Chapter Two: PRELIMINARY COMPENSATION

Claims that may be secured

Article 262

Motion to enforce for preliminary compensation may be submitted for securing a non-money claim that may not be secured through pre-entry or other temporary entry in the public record or in other public registry, if such claim is determined by the:

1. court decision that has not become final or enforceable yet;
2. administrative decision that has not become final or enforceable yet, and which would, upon its finality and enforceability, according to this Law, represent an executive title;
3. court settlement or settlement concluded before administrative authority, if that settlement would, according to provisions of this Law, represent executive title, and the time limit for fulfillment of settlement obligation has not expired yet, or
4. legal transaction of the parties that has been concluded before the court and with participation of the judge not limited to certification of signatures only, or in a legal transaction concluded before other state authority, with participation of the state official not limited to certification of signatures only.

Legal grounds

Article 263

(1) Court shall grant the motion referred to in Article 262 of this Law, if the party submitting motion evidences likelihood that the lack of that security may later result in preventing or significantly hindering enforcement, but may not base its estimation solely on examination of the party that submitted motion.

(2) Danger shall be considered to exist, and need not be evidenced, if the claim is determined in a:

1. court decision in a criminal matter on a property claim;
2. decision issued in a non-contentious procedure, against which a non-timely appeal has been lodged;
3. decision that would have to be enforced abroad;
4. contumation judgement, admission judgement or abdication judgement, where appeal has been lodged against such judgement(s), or
5. court or administrative settlement which might be challenged in accordance with law.

Procedure

Article 264

(1) Motion referred to in Article 262 of this Law shall be submitted to the court that issued judgment in the first instance, or to the court in front of which the settlement or another legal transaction, determining claim, has been concluded .

(2) Prior to deciding on motion referred to in para 1 of this Article, court shall allow the other party to respond to motion for security.

(3) If the opponent concurs with the motion, court shall issue preliminary compensation security order.

(4) Opponent that opposes the motion shall submit or propose evidence that proves likelihood that the preliminary compensation might cause him/her irreparable or hardly reparable harm.

(5) If the opponent evidences likelihood of facts referred to in para 4 of this Article, court shall deny motion, but may grant it only after the person submitting the motion, on opponent's proposal, deposits guarantee within period set by the court.

(6) Appeal against security order for preliminary compensation shall stay enforcement.

Security order

Article 265

(1) Order granting security motion for preliminary composition shall designate object of enforcement and enforcement measure.

(2) If decision or settlement, that has determined the claim that caused security for preliminary compensation, is repealed, and later on

a final and enforceable decision of the same content is issued, it shall be considered that the submitter of the motion has acquired right to compensate at the moment when he/she has acquired such right for the first time in procedure for carrying out security order for preliminary compensation.

Stay of preliminary compensation enforcement

Article 266

On request of the opposing party, court shall order staying enforcement for preliminary compensation and shall repeal enforcement actions already carried out:

1. if opposing party evidences likelihood that the claim has been compensated or sufficiently secured at the time when motion to stay enforcement has been submitted;
2. if opposing party deposits guarantee which might compensate the person submitting motion for security to a large extent or
3. if a final decision determined that the claim, for which security has been ordered, has ceased to exist or does not exist.

Chapter Three: ENFORCEMENT FOR SECURITY

Claims for which security may be ordered

Article 267

Motion to enforce for security may be filed for securing a money claim that may not be secured through pre-entry or other temporary entry in a public record or other public registry if that claim has been determined in a:

- 1) money order that has not yet become final or enforceable;
- 2) authentic document, if the party who filed the motion evidences likelihood of his/her interest not to request enforcement order on the basis of authentic document
- 3) court decision that has not yet become final or enforceable
- 4) administrative decision that has not yet become final or enforceable and which should, according to this Law, constitute executive title once it becomes final and enforceable,
- 5) court settlement or settlement concluded before administrative authority, if that settlement would, according to provisions of this Law, represent executive title, and the time limit for fulfillment of settlement obligation has not expired yet, or
- 6) legal transaction of the parties that has been concluded before the court and with participation of the judge not limited to certification of signatures only, or in a legal transaction concluded before other state authority, with participation of the state official not limited to certification of signatures only.

Security for maintenance claims

Article 268

When motion to enforce for security of maintenance claim has been submitted, court shall order enforcement for securing installments that are not yet due but are determined in decisions or settlements referred to in Article 266 of this Law, even without proving danger, if enforcement procedure for due maintenance installments had already been initiated before against the party opposing the motion.

Appropriate application of provisions on enforcement for preliminary compensation

Article 269

Articles 263-266 of this Law shall apply accordingly to enforcement for security.

Chapter Four: LIEN RIGHT

Section 1. General provisions

Items and rights on which lien may be acquired

Article 270

Court may, subject to conditions specified by this Law, constitute a lien right for securing claim of the party proposing security against any or all chattels and real estate owned by the other party, as well as on any or all transferrable property rights of the other party.

Acquiring lien right

Article 271

When the court issues security order on lien acquisition, proposing party acquires court lien on items and right of the opposing party at the moment prescribed by this law and his/her priority of compensation shall be determined in accordance with provisions of this Law on Enforcement Procedure.

Termination of lien right

Article 272

Lien right, ordered for securing a claim, and established in accordance with this Law, shall cease to exist at the moment prescribed by this Law.

Section 2. Acquisition of lien right against items and rights that are recorded in public records and other public registries

Claims eligible for security

Article 273

Motion for security may be granted through establishing a court lien dependant on condition or on a time limig for a money claim that may be secured through pre-entry or other temporary entry in a public record or other public registry if that claim has been determined in a:

1. money order (platni nalog) that has not yet become final or enforceable;
2. court decision that has not yet become final or enforceable
3. administrative decision that has not yet become final or enforceable and which should, according to this Law, constitute executive title once it becomes filan and enforceable,
4. court settlement or settlement concluded before administrative authority, if that settlement would, according to provisions of this Law, represent executive title, and the time limit for fulfillment of settlement obligation has not expired yet, or
5. legal transaction of the parties that has been concluded before the court and with participation of the judge not limited to certification of signatures only, or in a legal transaction concluded before other state authority, with participation of the state official not limited to certification of signatures only, whereby security may be granted by establishing a lien.

Statutory grounds for acquisition of lien right

Article 274

(1) Court shall grant motion referred to in Article 273 of this Law if the party who filed the motion evidences likelihood of a danger that, without such security, later enforcement may be prevented or significantly imparied.

(2) Danger shall be considered to exist and need not be evidenced if the claim has been determined in a:

1. court decision in a criminal matter granting a property claim;
2. decision issued in a non-contentious procedure, against which a non-timely appeal has been lodged;
3. decision that would have to be enforced abroad;
4. contumation judgement, admission judgement or abdication judgement, where appeal has been lodged against such judgement(s),
5. court or administrative settlement which might be challenged in accordance with law, or

6. if enforcement procedure for due maintenance installments had already been carried out against the opposing party in the past.

Time of acquisition of lien right

Article 275

(1) Lien right shall be acquired on the day of pre-entry or other entry in the public record or other public registry.

(2) Court shall deliver order on constituting a temporary lien right to the authority or organization that keeps record or other public registry, without delay, and said authority or organization shall deliver pre-entry or other entry within 3 days of the day on which order was received. Creditor may also submit entry motion to this authority or organization.

(3) Exceeding time limits prescribed by para 2 of this Article shall be considered as judge's delay of procedure, that is, a serious breach of employment responsibilities.

Termination of lien right

Article 276

(1) On motion of the opposing party, court shall order termination of lien right:

1. if opposing party evidences likelihood that the claim has been compensated or sufficiently secured at the time when it submitted a motion to abort security;
2. if opposing party deposits guarantee which might compensate the party that proposed security to a large extent ,or
3. if a final decision determined that the claim, for which security has been ordered, has ceased to exist or does not exist.

(2) Lien right shall cease to exist on the day on which pre-entry has or other entry in public record or other public registry, where such entry had temporarily constituted lien right, has been deleted.

(3) Court shall deliver order on terminating temporary lien right to the authority or organization keeping public record or other public registry, without delay, and said authority or organization shall delete pre-entry or other entry within three days of the day on which order has been received. Creditor may also submit motion to delete to this authority or organization.

(4) Exceeding time limits prescribed by para 2 of this Article shall be considered as judge's delay of procedure, that is, a serious breach of employment responsibilities.

Sale or encashment of items or rights subject to lien

Article 277

Lien right acquired in accordance with Articles 273 and 274 of this Law may be exercised through sale, encashment, or transfer of items or rights that have lien right constituted on them, but not before the person submitting the motion for secured claim obtains executive title, and shall be carried out in accordance with provisions of this Law on Enforcement Procedure.

Section 3. Acquisition of lien right on items and rights that are not recorded in public records or or other public registries

Claims eligible for security

Article 278

Motion for security may be granted through establishing a temporary court lien for a money or non-money claim that may not be secured through pre-entry or other temporary entry in a public record or other public registry, if the party who filed the motion evidences likelihood that he/she does not have legal interest for provisional compensation security, and at the same time evidences likelihood that there is a danger that the enforcement may not later be carried out without this security, or that enforcement would be significantly impaired. if that claim has been determined in a:

1. money order (platni nalog) that has not yet become final or enforceable;
2. court decision that has not yet become final or enforceable
3. administrative decision that has not yet become final or enforceable and which should, according to this Law, constitute executive title once it becomes final and enforceable,
4. court settlement or settlement concluded before administrative authority, if that settlement would, according to provisions of this Law, represent executive title, and the time limit for fulfillment of settlement obligation has not expired yet, or
5. legal transaction of the parties that has been concluded before the court and with participation of the judge not limited to certification of signatures only, or in a legal transaction concluded before other state authority, with participation of the state official not limited to certification of signatures only, if the party who filed the motion evidences likelihood that he/she does not have legal interest for provisional compensation security, and at the same time evidences likelihood that there is a danger that the enforcement may not later be carried out without this security, or that enforcement would be significantly impaired.

Presumptions of danger

Article 279

Danger shall be presumed to exist, and need not be evidence, if the claim has been determined in a:

- (1) court decision in a criminal matter granting a property claim;
- (2) decision issued in a non-contentious procedure, against which a non-timely appeal has been lodged;
- (3) decision that would have to be enforced abroad;
- (4) contumation judgement, admission judgement or abdication judgement, where appeal has been lodged against such judgement(s),
- (5) court or administrative settlement which might be challenged in accordance with law, or
- (6) if enforcement procedure for due maintenance installments had already been carried out against the opposing party in the past.

Time and method of acquisition of lien right

Article 280

Lien right shall be acquired through inventory, according to conditions laid out in this Law.

Appropriate application

Article 281

Article 276 and 277 of this Law shall apply accordingly to termination of lien right and to sale or encashment of items and rights.

Section 4. Establishment of lien right through agreement of the parties

Eligible claims for security

Article 282

Lien right may be established through agreement of the parties against all claims that have not been fully compensated, regardless of whether such claims are deliberated in litigation or some other procedure.

Jurisdiction

Article 283

(1) Competence over establishment of lien right shall be vested in a municipal court, regardless of the time when such establishment is proposed, or commercial court, if, in accordance with the law, it would have jurisdiction over litigation, based on the standing of the parties and the object of litigation, regardless of the time when establishment of lien is proposed.

(2) Territorial jurisdiction to decide on lien right on chattels shall also be vested in a court where the chattel is located, as well as the court on whose territory creditor has domicile or seat.

(3) Territorial jurisdiction over establishment on lien rights on rights shall also be vested in the court on the territory of which such rights are regularly exercised, as well as the court on the territory of which creditor has domicile or seat.

Initiation of procedure for establishing lien right **Article 284**

(1) Procedure for establishment of lien right may be initiated by a motion of the creditor, motion of the debtor, or by their joint motion.

(2) Creditor, who has in its general conditions of doing business envisaged security as a precondition for credit agreement, loan agreement, performance of work, performance of services, insurance agreement or for other agreements, may initiate procedure for establishment of lien right even before the inception of the claim.

(3) If procedure has not been initiated by a joint motion, court shall invite the party that has not submitted motion to state regarding motion within period that may not exceed 8 days.

Procedure of conclusion of the agreement **Article 285**

(1) If the procedure has been initiated by a joint motion or when a party that has not initiated procedure informs court that it is ready for establishment of lien right through agreement, court shall schedule a hearing for conclusion of the agreement.

(2) Agreement shall be regarded as concluded when parties state in the court record that they agree to establishment of court right against certain item or right for securing particular claim and when they sign the court record.

(3) Court shall issue an order denying conclusion of the agreement on establishing lien right if parties disposed of their rights contrary to mandatory rules and public morale.

(4) Appeal may be lodged against order referred to in para 3 of this Article.

Effect of the agreement establishing lien right **Article 286**

Court record on establishment of lien right shall have the status of court settlement and shall constitute an executive title.

Challenging of agreement establishing lien right

Article 287

Agreement establishing lien right may be challenged in the same manner and on the same grounds applicable to challenging of court settlement.

Moment of establishment of lien right

Article 288

(1) If a public record, or other public registries are kept on debtor's right or item against which a lien has been established, lien shall be acquired on the day on which the entry in the public record, or another public registry, has been made.

(2) The court shall, without delay, deliver the agreement on establishing lien to the authority or organization charged with keeping record or another public registry, and that authority, or organization, shall record entry within three days of the day on which it has received the order (ruling).

(3) Overstepping time limits referred to in para 2 of this Article shall be considered a delay of the procedure on behalf of the judge, that is, a serious breach of employment obligation.

(4) If no public records or other public registries are being kept with respect to debtor's right or item on which lien has been established, lien shall be acquired through inventory, or through seizure of rights, in accordance with the provisions of this law regulating inventory of chattels in the course of enforcement procedure.

Termination of lien right

Article 289

(1) Lien right shall be terminated when parties agree to terminate agreement on establishment of lien right. This agreement shall be concluded, under same conditions and in the same procedure, before the very court where agreement establishing lien right has been concluded.

(2) Lien right shall be terminated upon finality of the decision that terminates agreement establishing lien right.

(3) When lien right has been entered in a public record or other public registry, the court where agreement on establishment of lien right has been terminated, or some other court or authority that has finally decided to terminate agreement on establishment of lien right, shall inform on that without delay authority or organization keeping public record or other public registry, and said authority or organization shall delete entry within 3 days of the day on which order has been received. Request to authority or organization may also be lodged by the debtor.

(4) Exceeding time limits prescribed by para 3 of this Article shall be considered as judge's delay of procedure, that is, a serious breach of employment responsibilities.

(5) If lien right has not been entered in public record or other public registry, the court where agreement on establishment of lien right has been terminated, or some other court or authority that has finally decided to terminate agreement on establishment of lien right, shall inform on that without delay the court which organized inventory or attachment. Said court shall issue an order on terminating inventory or attachment withing 3 days of the day on which information has been received. No appeal may be lodged against this order.

(6) Exceeding time limits prescribed by para 5 of this Article shall be considered as judge's delay of procedure.

Restitution of sum obtained through exercise of lien right

Article 290

(1) If agreement establishing lien right, in accordance with Article 284 para 2 of this Law, has been concluded before the inception of the claim which is secured through established lien, and lien right is exercised through sale or encashment, while claim does not come into existence within 6 months of the day on which lien right has been exercised, debtor may, in the course of enforcement procedure and through motion to enforce or motion for counter-enforcement, request restitution of the amount obtained through sale or encashment, upon evidencing that the claim has not come into existence with an official document. If lien right has not been exercised in enforcement procedure, official document or document certified in accordance with law evidencing that claim has not come into existence, shall be regarded as an authentic document.

(2) Court before which agreement establishing lien right has been concluded shall decide on motion to enforce. Court that carried out enforcement procedure shall decide on motion for counter-enforcement.

(3) If debtor does not possess official document or document certified in accordance with Law which evidences that claim referred to in para 1 of this Law has not come into existence, court seized with motion to enforce or for counter-enforcement shall instruct debtor to resort to litigation or some other procedure.

Chapter Five: INJUNCTIONS (TEMPORARY MEASURES)

Section 1. General provisions

When an injunction may be issued

Article 291

Injunction may be issued before or in the course of court or administrative procedure, as well as after the completion of those procedures, until the moment on which enforcement has been carried out.

Inadmissibility of injunction

Article 292

Injunction shall be inadmissible if security may be obtained through another security measure that may obtain the same goal.

Guarantee in lieu of injunction

Article 293

(1) Creditor may in his/her motion for injunction, or at some later time, state that he/she would accept debtor's deposition of guarantee in lieu of injunction.

(2) Deposition of guarantee in lieu of injunction may also be ordered on motion of enforcement debtor.

(3) If debtor deposits guarantee, court shall abort procedure and repeal all actions already carried out.

Guarantee as a condition for granting injunction

Article 294

(1) Court may, on motion of creditor, order injunction even when creditor has not evidenced likelihood of existence of claim and danger, if creditor deposits prior to that, within a set period, court-determined amount of guarantee for damages, which may be caused to the debtor if injunction were granted and carried out.

(2) Court may, on motion of debtor, according to the circumstances of the case, act in accordance with para 1 of this Law also when the creditor has evidenced likelihood of existence of claim and danger.

Granting several injunctions

Article 295

Court may, in accordance with circumstances of the case, and on motion of the creditor, order several injunctions as well, if necessary.

Period for which injunction is ordered

Article 296

(1) Injunction order shall determine validity period of the injunction, and if injunction has been granted before filing of action or initiation of some other procedure – injunction order shall then also specify period in which creditor shall have to file action, or motion for initiation of some other procedure in order to justify undertaken measure.

(2) Court shall, on motion of the creditor, prolong the period of injunction, if circumstances under which it was ordered have not changed.

(3) Proposal referred to in para 2 of this Article may be submitted only before the expiration of the period for which injunction was granted.

Repealing of injunction **Article 297**

(1) If creditor has not filed action within the prescribed period, or had not initiated other procedure for injunction's justification, or the period for which injunction was granted has expired, court shall, on motion of the debtor, stay procedure and repeal its own actions.

(2) Procedure shall be aborted on motion of the creditor and all actions carried out shall be repealed, if circumstances for which injunction was granted have later changed, so that injunction is no longer necessary.

Compensation of debtor's damages **Article 298**

Debtor has the right for compensation against creditor, for damages suffered because of the injunction which was later found to be ungrounded or injunction that creditor failed to justify later.

Section 2. Injunction for security of money claims

Conditions for granting injunction **Article 299**

(1) Injunction for securing money claim may be granted if the creditor evidenced likelihood of existence of claim and of the danger that, if such injunction is not granted, debtor would prevent or significantly impair compensation of the claim, by getting rid of his/her property or assets, hiding them or disposing of them in any other way.

(2) Creditor need not prove existence of danger if he/she evidences likelihood that debtor would suffer only insignificant damages if injunction were granted.

(3) Danger shall be considered to exist in particular when:

1. claim would have to be enforced abroad;
2. enforcement procedure for due maintenance installments had already been carried out against the opposing party in the past,
3. debtor's statutory obligations, and obligations determined in final decisions of courts and other authorities exceed his regular income,
4. when an unsuccessful enforcement has been attempted against debtor, and the reason for lack of success was his/her refusal to provide informations on where his/her property is located, and provided false information on his/her property in earlier enforcement procedures.

Types of injunctions

Article 300

(1) In order to secure money claims, any measure serving the purpose of such security may be ordered, and in particular:

1. prohibiting debtor to dispose of chattels, taking such chattels away from the debtor and entrusting them to creditor or third person for safekeeping, or for safekeeping in court's deposit;
2. prohibiting debtor to dispose of or allow interests on his/her property or rights in real estate entered in his/her favor in the public record, with an entry of such prohibition in the public record;
3. prohibiting debtor's debt to pay out debtor's claim or to hand him/her over items, and prohibition to the debtor to receive such items, collect the claim and dispose of the collected items and amounts;
4. instructing bank or other financial organization where debtor has account opened to cancel payments out of debtor's account to debtor or to a third party up to the amount that is the object of injunction;
5. taking money or securities away from the debtor and depositing them with the court.

(2) Prohibitions and instructions referred to in para 1 of this Article shall be considered carried out when order is delivered to the person it is directed at.

(3) Instruction to the bank or other financial registration referred in point 4 of the paragraph 1 of this Article shall be delivered to organization for coercive collection, which shall further deliver it, without delay, to banks and financial organizations where debtor has account opened with, and shall at the same time prohibit other banks and financial organization to open account in favor of the debtor.

(4) Creditor, in whose favor injunction has been granted, may claim compensation from the person who was obliged to observe prohibition or instruction, for damages suffered as a result of such noncompliance.

(5) Debtor or a third party whom prohibition or instruction referred to in paras 1 to 4 of this Article was directed at, and who does not comply with prohibition or instruction, shall be fined in accordance with Article 40 of this Law.

Effects of injunctions

Article 301

Lien right is not established through injunction. However, court may order, especially if danger referred to in Article 299 para 3 of this Law, that injunction establishes a temporary lien right within meaning of Articles 273, 275, 278 and 280 of this Law.

Section 3. Injunctions for securing non-money claim

Conditions for granting injunction

Article 302

(1) In order to secure a non-money claim, injunction may be granted, if creditor has evidenced likelihood of existence of the claim and danger that compensation of the claim would otherwise be prevented or significantly impaired.

(2) Injunction may also be granted when creditor evidences likelihood that such measure is necessary to prevent use of force or infliction of irreparable harm.

Types of injunctions

Article 303

(1) In order to secure a non-money claim, any measure that would achieve the purpose of such security may be granted, and in particular:

1. prohibiting debtor to dispose of chattels, taking such chattels away from the debtor and entrusting them to creditor or third person for safekeeping, or for safekeeping in court's deposit;
2. prohibiting debtor to dispose of or allow interests on his/her property or rights in real estate entered in his/her favor in the public record, with an entry of such prohibition in the public record;
3. prohibiting debtor to carry out actions that harm creditor, as well as prohibition to debtor to carry out alterations of items that the claim is directed at;
4. prohibiting debtor's debt to hand him/her over items that the claim is directed at;
5. prohibiting disposing or creating interests in shares of a stock company or shares in a limited liability company where the claim is directed at those shares, and entry of this prohibition with the Central Registry of Securities or in the shareholder registry and public registry of limited liability companies, prohibition of disposal or exercise of rights derived from the shares and entrusting shares for management to third parties, including appointment of provisional management of the company;
6. instruction to the debtor to carry out specific actions necessary for protection of chattels or real estate, prevention of their physical alteration, damaging or destruction;
7. authorization for the creditor to, on his/her own or through a third party, carry out some action or procure certain item at the cost of the debtor, especially if that is necessary for reaching status quo ante;
8. payment of employment compensation to the employee during the course of dispute on legality of decision on terminating

employment relationship, if that is necessary for his/her life support, and life support of the persons that he/she is mandated by the statute to take care of, while at the same time determining enforcement measures for coercive collection of compensation or temporary reinstatement into employment;

9. temporary settlement of the disputed relationship, in order to prevent violence or a greater irreparable harm.

(2) Creditor, in whose favor injunction has been granted, may claim compensation from the person who was obliged to observe prohibition or instruction, for damages suffered as a result of noncompliance.

(3) Prohibitions and instructions referred to in para 1 of this Article shall be considered carried out when they are delivered to the person they are directed at.

(4) Debtor or a third party whom prohibition or instruction referred to in para 1 of this Article was directed at, and who does not comply with prohibition or instruction, shall be fined in accordance with Article 41 of this Law.