

ASSISTANCE IN FORCED EXECUTION PROCEEDINGS

The presentation hereby has in view the legal provisions in force on the 31st of March 2004

Applicable legislation in this field

- Code of Civil Procedure, republished in the Official Gazette no. 177/26th of July 1993
- Civil Code from 1864 republished in the brochure from the 1st of January 1997
- Government Ordinance no. 61/2002 on collecting of the budgetary debts, published in the Official Gazette no. 644/30th of August 2002

I. Concept

Forced execution is the procedure by the mediation of which the **creditor**, holder of the right recognized by a judgment or by another writ of execution, obliges – with the help of the competent bodies – its **debtor** who does not fulfill willingly his obligations deriving from such a writ, to fulfill them in a forced way.

II. Participants to the forced execution

The followings are participants to the forced execution: parties, execution bodies and judicial court.

The parties in the stage of the forced execution are the pursued debtor, the pursuer creditor and third parties participating in this stage.

There followings are execution bodies according to law: judicial executors, financial bodies insuring the forced execution of the budgetary debts, banking executors, executors of the Banking Debts Recovery Office.

III. Writs of execution

The writ of execution is the writing allowing the putting in forced execution of the debt they establish. According to the legislation in force the followings are writs of execution:

- a. judgments
- b. acts certified by the notary public
- c. decisions by arbitration
- d. foreign judgments
- e. deeds – bill of exchange, promissory note, cheque
- f. charging resolution

Features of the debt that is to be executed

According to the Art.379 Code of Civil Procedure, any pursuit shall only be performed for a sure, liquid and exigible debt, regardless whether the forced pursuit shall have as its object movable or immovable properties.

The debt is sure if its existence results from the act of debt itself or from other acts, even not authentic, issued from the debtor or acknowledged by it (Art. 379 paragraph 3, Code of civil procedure).

The debt is liquid if its quantum is determined by the act of debt itself or of other non-authentic acts, issued from the debtor, or acknowledged by it, or opposable to it on the basis of a legal provision or of the stipulations comprised in the act of debt.

IV. Object of the forced execution

Art. 371¹ Code of Civil Procedure stipulates that the obligations may be executed in a forced manner that have as object the payment of an amount of money, delivery of a good or of its use, canceling of a construction, plantation or of other works or the taking of other actions allowed by law.

In principle, forced execution only has as object goods belonging to the debtor. By exception, objects belonging to other person than the debtor may be object of forced execution, as in the following cases:

- a) forced execution started by a creditor whose debt is guaranteed with a mortgage on a building, building that is in the hands of another person than the debtor;
- b) the privilege of the state at the budgetary debts established by Art. 1725 Civil Code. Provisions of Art. 1725 Civil Code shall be enforced corroborated with the provisions of Government Ordinance no. 61/2002 that stipulates on the forth rank of the preference order the state's debts deriving from duties, taxes and other fiscal obligations established according to law, and on the forth rank the debts resulting from loans granted by the state.

V. Consent of forced execution

According to law, the instance of execution is the law court.

After the obtaining of the writ of execution, the creditor shall address a forced execution application to the judicial executor from the circumscription of the law court in which the execution is going to be performed or to the judicial executor from the jurisdiction of the law court in which the pursuable goods are. The judicial executor shall request to the law court in the circumscription of which it operates, the consenting of the forced execution, presenting for this purpose a copy of the writ of execution and of the creditor's application.

After the law court has consented to the execution application forwarded by the executor, it shall make an execution dossier to which the executor is obliged to file, within 48 hours from the date of the making, a counterpart of each document of execution.

VI. Summons

After that the competent court shall consent with the beginning of the forced execution, the judicial executor shall send a summons to the debtor that shall contain the mentions provided by law, through which he shall notify him to execute the obligation within the period provided for in the summons, otherwise the executor being authorized to proceed with the forced execution.

If the debtor does not comply with the request comprised in the summons, the executor shall continue the execution through forced pursuit of the debtor's assets.

The course of the forced execution may be influenced by the occurrence of certain causes of suspension of the forced execution, of interruption, cessation, lapsing.

VII. Movable forced execution

Movable forced execution is performed upon debtor's pursuable movables, by their forced selling (sale by public auction, direct sale and other modalities allowed by law), so that the resulting amount of money to cover the debt of the pursuer creditor, as well as expenses of execution.

If the debtor fails to pay the owed amount within the period indicated in the summons the judicial executor shall levy a distraint on his movables, concluding for this purpose a minutes of distraint.

The movables subject of the forced pursuit shall be sold directly or by public auction, being valorized in another way by the creditor's and debtor's consent.

Selling the goods on public auction is the most usual modality of their valorization for the obtaining of the amounts necessary for the satisfaction of the creditor's debt.

VIII. Immovable forced execution

The forced execution is performed upon debtor's pursuable immovable properties, by their forced selling (sale by public auction, direct sale and other modalities allowed by law), so that the resulted amount of money to cover the pursuer creditor's debt, as well as expenses of execution.

Stages of the immovable forced pursuit

For the selling of the building at an auction, the executor shall go to the place in which it is situated and shall conclude a *situation minutes* that shall comprise the usual mentions regarding the identification of the execution body, the number of the execution dossier, the writ of execution, etc. and also the evaluation of the condition of the building.

After the conclusion of the situation minutes, the executor shall notify the debtor through a *payment summons*, warning him to pay the amount owed on the basis of the writ of execution within 15 days from the reception of the summons.

Within 10 days from the communication of the summons, the debtor may request to the court for it to consent for the full payment of the debt, including interests and expenses for execution to be made from the incomes of the pursued building or from other incomes of his during a period of 6 months. If the court shall admit the debtor's request, it shall suspend the forced pursuit.

The price of the building shall be established by the executor directly by him or through the mediation of an expert.

Within 5 days from the establishment of the price of the building the executor shall draw up and shall post its ***publication of selling***. The publication of selling shall be posted at the headquarters of the execution body and of the execution court, at the place in which the pursued building is situated, at the mayoralty in the jurisdiction of which the building is situated,

as well as at the place of auction, if this is other than the place in which the building is situated.

The selling at auction is made publicly and shall be held separately for each building or item of property. The debtor cannot bid personally or through interposed persons. The executor shall declare as highest bidder the person who, at the term of auction, has offered the selling price.

IX. Garnishment

The amounts of money, securities or other pursuable intangible movables owed to the debtor by a third party or which he shall owe in the future on the grounds of certain existing legal connections are subject to forced execution through garnishment.

The garnishment is established at the creditor's request, by the judicial executor from the domicile or the debtor's headquarters or from the third party's domicile or headquarters, without summons, through an address accompanied by a certified copy of the writ of execution, communicated to the third party, also giving notice to the debtor about the measure taken.

In the address of garnishment the third person becoming garnished third party shall be notified about the interdiction to pay to the debtor the amounts or intangible movables that he owes or shall owe, declaring them garnished in the extent necessary for the fulfillment of the obligation executed in a forced manner. From the moment of unavailability and until the full payment of the obligations provided for in the writ of execution, the garnished third party shall make no other payment or other operation that could diminish the amount made unavailable.

Garnishment validation

If the garnished third party does not comply with the obligations incumbent to him for the performance of the garnishment, within 3 months from the date when the garnished third party had to register or to pay the pursuable amount, the creditor, the debtor or the body of execution shall be able to notify the court for the validation of the garnishment.

X. Forced execution of the non-picked up fruits and of the crops caught by roots

The creditor having a writ of execution regarding a money debt may use this form of forced execution.

The debtor may be:

- a) the owner of the cultivated land;
- b) the usufructuary of the land, if the land is encumbered with a right of usufruct;
- c) the land agent or sub-agent.

Regarding the object of the pursuit, this is formed by, according to the Art.463 from the Code of Civil Procedure the non-picked up fruits and the crops caught by roots.

Procedure of execution of the non-picked up fruits and the crops caught by roots.

According to Art.464 from the Code of Civil Procedure the forced execution will only be made within 6 weeks before the ripening of the fruits, crops and shall be preceded by a payment summons with two days before the pursuit. But the distraint may be levied in any moment.

If the debtor does not pay the amount for which he is pursued, the judicial executor proceeds with the execution, in the presence of a police officer, or the mayor or of the vice-mayor or, if the two are not present of two witnesses of age.

XI. Complaint to the execution

The complaint to the execution may be lodged by the interested party or injured by execution (pursued debtor, pursuer creditor, garnished third party who has become a party in the execution procedure, the third party stating that his goods are pursued for debtor's obligation, third parties injured through a wrongful or illegal measure of execution) and by the prosecutor.

The forced execution itself may be challenged as well as any act of execution (**the proper complaint**). The writ of execution itself may be challenged, but not regarding its validity regarding the merits, but only its meaning, scope and enforcement (**writ complaint**). Complaint may be filed against the refusal of the execution body to carry on an act of execution in the conditions stipulated by law.

The complaint may be lodged within 15 days from the date when:

- a) the protestor has taken notice of the act of execution which he challenges or of the refusal to fulfill an act of execution;
- b) the interested person has received, as the case may be, the communication or the notification regarding the establishment of the garnishment. If the garnishment is established on certain

periodic incomes, the term of complaint for the debtor starts on the date of the performance of the first holding back from these incomes by the garnished third party at the latest.

- c) the debtor contesting the execution itself has received the summons or from the date when he has taken notice of the first act of execution, in the cases in which he has not received the summons or the execution is made without summons.

The law court under the jurisdiction of which is the headquarters of the execution body is competent to judge the complaint.

Complaint to the writ is filed with the court that has pronounced the decision which is executed. If such a complaint aims at a writ of execution that does not come from a body of jurisdiction, the competence for settling belongs to the court of execution.

If the court admits the complaint to the execution, it, as the case may be, cancels the challenged act of execution or orders its correction, annulment or the cessation of the execution itself, cancellation or the clarification of the writ of execution or the performance of the act of execution whose fulfillment has been rejected.

In the case of the rejection of the complaint, the protestor may be compelled, upon request, to compensations for the damages caused by the delay of the execution and when the complaint has been exercised in bad faith, he shall be compelled also to the payment of a fine from lei 500,000 to lei 7,000,000.

XII. Distribution of the price obtained

The amount of money obtained by forced execution is issued to the pursuer creditor until the full covering of his rights, and the amount remained available is given to the debtor.

If the forced execution has been started by many creditors or when, until the issuing or distribution of the amount resulted by execution, other creditors have filed their writs, the judicial executor proceeds to the distribution of the amount according to the order of preference indicated by Art. 563 Code of Civil Procedure, if the law does not provide otherwise.

XIII. Prescription of the right to request forced execution

The right to request forced execution is subject to prescription within 3 years, if the law does not provide otherwise. In the case of the writs issued in the matter of immovable real actions, the term of prescription is of 10 years.

The right to request the forced execution of the budgetary debts is subject to prescription within 5 years from the date of the conclusion of the financial year in which this right appeared.

The prescription term begins from the date in which the right to request forced execution appears. By the fulfillment of the prescription term any writ of execution loses its executory power.