

THE FORCED EXECUTION OF THE OBLIGATIONS OF DOING AND NOT DOING

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Abstract

If the debtor's obligation to perform the title consists in leaving the possession of a good, in the handing over of a good or in its use, or in evicting the debtor from a dwelling or other premises, in the destruction of a building, planting or other work or performance of any other activity established for the realization of the rights of the creditor and the debtor fails to fulfill his obligation of goodwill within the term stipulated in the summons, the creditor will demand enforcement in view of the circumstances of the case and the nature of the obligation being executed, the court of enforcement for the purpose of applying a penalty.

Keywords: forced execution, penalty, cominatorial damages, summons, court.

JEL Classification K0 K3 K30

According to the provisions of Article 888 of the Code of Civil Procedure, where the obligation of the debtor provided in the enforcement order consists in the abandonment of the possession of a good, the handing over of a good or its use or the eviction of the debtor from a dwelling or other premises, the dissolution of a construction, planting or other work or in carrying out any other activity established for the realization of the rights of the creditor, and the debtor does not voluntarily execute his obligation within the time limit specified in the summons, the creditor shall demand the execution of execution, having regard to the circumstances of the case and the nature of the obligation being enforced, to refer the court of enforcement for the purpose of applying a penalty.

The assignment by court order of an immovable property or the obligation to surrender, to leave it or to use it, as the case may be, also includes the obligation to evacuate the building, unless the law expressly provides otherwise. Execution without excerpt At the creditor's request, if an urgent need is justified or there is a danger that the debtor may escape from pursuing, hide, destroy, or damage the assets to be surrendered, the court may order, by means of a declaration of enforceability, separate way, that forced execution be made immediately and without summons. Minutes of execution The executor will conclude a report on fulfillment of these obligations in the conditions of art. 679, setting out the execution costs to be paid by the debtor².

The minutes shall be communicated to the parties and a copy shall be kept in the file. The minutes shall be enforceable in respect of the execution costs established by the debtor. Impossibility of the forced handing over of the good Where the surrender of a good has

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² Art.679 of the Code of Civil Procedure

Unless otherwise provided by law, for all acts of execution executed in execution, the bailiff is required to conclude minutes containing the following:

- a) the name and location of the enforcement body;
- (b) the name and quality of the person who draws up the minutes;
- c) the date of drawing up the minutes and the number of the execution file;
- d) the enforceable title under which the act of execution is executed;
- e) name and domicile or, as the case may be, the name and location of the debtor and the creditor; f) the place, date and time of execution of the act of execution; g) measures taken by the executor or his findings; h) recording the explanations, objections and objections of the participants in the execution; i) other claims required by law or deemed necessary by the executor; (j) mentioning, where appropriate, the absence of the creditor or the debtor or the refusal or impediment to sign the report; k) mention of the number of copies in which the minutes were drawn up, as well as of the persons to whom it was handed over; l) the signature of the executor, as well as, where appropriate, of other persons interested in the execution or who assist in executing the enforcement act; m) the bailiff's stamp. The entries in paragraph (1) lit. a) -g), l) and m) are provided for under the sanction of nullity.

become impossible due to its destruction, concealment or deterioration or other such circumstances, the executor shall record this in a report drawn up in accordance with Art. 890, and, at the same time, will order the termination of the forced execution¹.

Obligation of the debtor to compensation If, in the enforceable title, it has not been established what amount is to be paid as equivalent to the value of the property in the event of its being surrendered or, where appropriate, the equivalent of the compensation due in the case of non-performance of the debtor's personal obligation the claim of the creditor will determine this amount by a judgment given by the parties quoting in the short term. In all cases, at the request of the creditor, the court will also take into consideration the damages caused by the voluntary non-fulfillment of the obligation before it becomes impossible to execute. The judgment is enforceable and subject only to the appeal. Suspension of the enforcement of this judgment can only be achieved by recording the amount determined. On the basis of the request, the creditor may establish precautionary measures.

Forced handing over of movable goods is done in accordance with Articles 893-895 of the Code of Civil Procedure. According to Article 893 of the Code of Civil Procedure, if the party obliged to hand over a movable asset determined by quality and quantity does not fulfill its obligation within 24 hours of the communication of the endorsement of the execution, its surrender shall be done by enforcement. In order to enforce the obligation stipulated in art. 893, the bailiff shall remove the property sought from the debtor or the person to whom he is located, placing the creditor in his rights established by the enforceable title.

The bailiff shall conclude, in accordance with Art. 890, a record of the performance of the execution, setting out the execution costs to be paid by the debtor. If, within 30 days from the date on which the bailiff moves to the place where the movable goods were to be removed, the lender did not surrender to the creditor, the bailiff may, at the request of the latter, make a final decision impossibility of teaching. The provisions of art. 891 and 892 shall apply accordingly even where the debtor, after the 30-day time limit, provides the surrender of the asset to the creditor. The forced surrender of immovable property is done in accordance with Articles 896-902 of the Code of Civil Procedure.

According to Article 899 of the Code of Civil Procedure, no evacuation of dwelling buildings may be made from 1 December until 1 March of the following year unless the creditor proves that, for the purposes of the provisions of the legislation he or she and his family have no proper dwelling or the debtor and his / her family have another suitable dwelling in which they could immediately move.

These provisions do not apply to the eviction of persons who abuse, in fact, without any title, home, or those who have been evicted because they endanger cohabitation or seriously disrupt public peace.

If the obligated party to evict or surrender a building does not fulfill this obligation within 8 days of the communication of the endorsement of the execution, it will be removed by forced execution and the building will be handed over to the entitled person.

Performing forced execution

In order to enforce the obligation, the bailiff will go to the spot, will summon the debtor to leave the property immediately, and in the event of opposition, he will evict the debtor with the property, together with all the persons who occupy the building in fact without any title

¹ Art.890 of the Code of Civil Procedure

As regards the fulfillment of the obligations stipulated in the present chapter, the executor shall conclude a report in the conditions of art. 679, setting out the execution costs to be paid by the debtor.

The minutes shall be communicated to the parties and a copy shall be kept in the file.

The minutes shall be enforceable in respect of the execution costs established by the debtor.

opposed to the creditor, with or without the help of the public, as the case may be, placing the creditor in his rights.

When the debtor misses or refuses to open the doors, the executor will be accompanied by public force agents or gendarmerie representatives as appropriate.

After opening the doors of the building, the presence of the said ones will be filled by 2 witnesses.

Execution in the manner of surrendering the real estate will continue on the day of its commencement even after 20.00, as well as in the next days, including the non-working ones, if it has not been finalized due to an opposition to execution by the debtor or other person or the operations required to complete forced execution could not be completed by 20.00.

If the execution concerns a building in which there are movable goods that are not the object of execution and which the debtor does not raise on their own or are sequestered in another pursuit, the executor will entrust these assets to the custody of a seizure administrator, who may even be the lender, at the expense of the debtor. This measure will be notified to the creditor in whose favor the goods have been seized. The provisions relating to custodian bailiffs are properly enforced. If the goods left in the warehouse are not seized in favor of another prosecution, the executor will fix, by means of the minutes, the period within which the debtor has to raise them, which may not be longer than one month. Minutes of forced handing over On performance of the execution according to the provisions of the present chapter, the bailiff shall draw up a report, the provisions of art. 890 being applicable. If the debtor refuses to receive the minutes, he / she is missing or, as the case may be, has left the building after commencement of execution, and his / her domicile is in that building, the bailiff, if the debtor does not communicate an address of his / her choice, -veral of forced handing over the door of the building or any other part of the building that makes it visible. Sale of goods left in the warehouse.

If the borrower does not pick up the goods within the timeframe shown in the report, and they have market value, they will be sold, including those that are by their nature insensible, according to the rules for the sale of traceable movable assets.

The price of the goods sold, after deduction of the forced execution costs, including the selling expenses and the remuneration of the seizure administrator, will be recorded in the name of the debtor, who will be notified of this in accordance with the provisions on the communication and handing down of summonses.

Goods that have no market value are declared abandoned. Also, at the request of the creditor, the bailiff may declare abandoned movable assets that have market value and have not been claimed by the debtor or other person to prove ownership, within 4 months of the date of the minutes of the forced handing over.

The debtor, as well as the local financial authority, will be notified of all this to take over the abandoned property. The provisions of art. 780 applies accordingly.

If the debtor or any other person, in the absence of prior express consent or judicial decision, enters or re-installs in the building, at the request of the creditor or other person concerned, a new forced enforcement on the basis of the same enforceable title, without summons and without any other prior formality.

In the case shown, any movable property, whatever its nature or value, which was not lifted at the time of the initial forced handing over or which was brought into the building after re-occupation, shall be deemed to have been abandoned as soon as it is reinstated.

On the basis of the minutes provided at the disposal of the criminal investigative body, certified copy, by the bailiff, the prosecution will be initiated.

Enforced enforcement of other obligations to do or obligations not to do.

Under Article 903 of the Code of Civil Procedure, these provisions are applicable to forced execution in the nature of the obligations to make or not to execute under an

enforceable title. If by the enforceable title the creditor was authorized to execute himself, or at the expense of the debtor, either to execute the obligation to do or, as the case may be, to remove or lift what the debtor did in breach of the obligation not to do it is no longer necessary to obtain a new enforcement order to determine the damages due by the debtor or, as the case may be, the value of the work necessary to restore the situation prior to the breach of the obligation not to do so.

In the latter cases, these amounts are determined on the basis of expertise or other supporting documents by the bailiff. In the case of an obligation to do so, the creditor may obtain enforcement in all cases where such a form of execution does not involve the debtor's personal constraint, that is, the freedom of the debtor is not at stake. It is the conclusion resulting from the text of art.1528 of the Civil Code, which stipulates that, in the event of non-performance of an obligation to do, the creditor may, at the expense of the debtor, execute himself or carry out the obligation. Unless the debtor is entitled to be late, the creditor may exercise this right only if the debtor notifies the debtor of it either with the delay or afterwards.

If by the enforceable title the creditor was authorized to execute himself, or at the expense of the debtor, either to execute the obligation to do or, as the case may be, to remove or lift what the debtor did in breach of the obligation not to do it is no longer necessary to obtain a new enforcement order to determine the damages due by the debtor or, as the case may be, the value of the work necessary to restore the situation prior to the breach of the obligation not to do so. In the latter cases, these amounts are determined on the basis of expertise or other supporting documents by the bailiff.

Under Article 904 of the Code of Civil Procedure, if the debtor refuses to fulfill an obligation to enforce a writ of execution, within 10 days of the communication of the declaration of enforceability, the creditor may be authorized by the executing court, by enforceable order, given the summons of the parties, to perform it himself or through other persons at the expense of the debtor.

Under Article 1530 of the Civil Code, the creditor is entitled to damages for damages for the damage caused by the debtor and the direct and necessary consequence of the unjustified non-execution or, as the case may be, the fault of the obligation. Under the provisions of Article 1724 of the Civil Code, when the buyer has not paid, the seller is entitled to either the forced execution of the payment obligation or the resale of the sale, as well as, in both cases, damages, if any.

Enforced execution of rates in the life insurance contract In the event of default, the creditor may demand the seizure and the sale of the debtor's assets, up to a sufficient amount to secure the payment of the rent for the future. This amount shall be determined, according to the law, on the basis of an expert opinion drawn up in accordance with the calculation methodology applicable to life assurance, taking into account, inter alia, the rates already earned by the creditor, his or her age and status.

Expenditure on expertise is borne by debirentier. Once it has been obtained from the sale of the debtor's assets, the amount is recorded at a credit institution and will be paid to the creditor in accordance with the amount and maturities agreed upon under the lifetime contract. If the debtor goes into liquidation, the creditor can realize his right to rent by entering in the picture of creditors a claim whose amount is determined according to the expert mentioned above.

In the case of an obligation not to do, there are arguments that may support the idea that it is suitable for forced execution in nature in case of violation and the obligation is passed in the enforceable title.

According to Article 905 of the Code of Civil Procedure, the creditor may, by enforceable order, with the summons of the parties, authorize, by enforceable enforceability,

to discontinue himself or any other person, at the expense of the debtor, the work done by him against the obligation of do not do it.

Under Article 1529 of the Civil Code, in the event of non-performance of the obligation not to do so, the creditor may request the court to remove or lift what the debtor did in breach of the obligation, at the expense of the debtor, within the limit established by court order.

If the debtor has committed an action, from which he was obliged to refrain from doing so, the execution of the action is as follows:

a) by granting damages to cover the loss suffered by the creditor through the action of the debtor in breach of the obligation not to do, which he has assumed;

b) by the creditor's right to demand the destruction of what he did in breach of the obligation not to do, or to destroy himself, at the expense of the debtor, in addition to damages.

By using these legal possibilities, forced execution in kind of the negative obligation violated by the debtor is achieved.

When the debtor persists in his attitude towards failing to perform his obligations, even if the creditor uses means of forced execution, the law provides the creditor with another legal means to compel the debtor to execute in kind, the obligations to do or not to do, there are also cominatorial damages.

Cominter damages Regressive damages are an indirect means of constraining the debtor to execute the obligations he has assumed under the contract and which consist of amounts of money to which the debtor is obliged to pay for each unit of time (day, week, month) of the delay until the fulfillment of the obligation. Their amount shall be determined by the decision of the court.

They are a means of legal constraint, a threat to the debtor, and have the purpose of determining him to execute the obligation in kind¹. Compensatory damages are a pecuniary sanction applied by the courts to ensure that an obligation to do or not to be enforced is determined by a court order and that the amount of money to be paid under this title is independent of the compensation which must be the equivalent of the damage caused and the reason for the grant of such damages is the exercise of their constraining effect on the debtor who persists in failing to fulfill his obligation by forcing him to pay to the lender certain sums in relation to the duration of the delay in fulfilling the obligation to do or not to do.

Legal characters:

- is a means of compelling the debtor to execute the obligation;
- periodic damages, as a means of compelling the debtor in the performance of his obligation, are not reparatory because they have no connection with the damage the creditor has attempted²;
- are a subsidiary means of achieving the obligation. Periodic damages are required only in exceptional cases, if there are no other means by which to enforce the obligation in kind;
- they are not limited in time because it is not known how long the debtor will not fulfill his obligation.

The legal nature of cominatorial damages is the middle of the debtor's coercion, in the case of "doing" or "not doing", to execute his obligation in kind. Granting them is not conditional upon the existence of any damage. If the debtor fails to execute, perform late or inappropriately executes the assumed obligation, the court must compensate for the damage caused by the creditor.

Periodic damages do not apply to an amount-of-money obligation, because in this case, the amount of money generates interest for late payment of the refund. Also, no cominatorial

¹Teofil Pop: The legal dimension of cominatorial damages, Law Journal no.12 / 1995, p.24.

² Decision No. 285/1997 of the Ploiesti Court of Appeal
Decision No. 294/1995 of the Bucharest Court of Appeal.

damages are applied even when theoretically it is possible to apply them when execution in kind is no longer possible or when the debtor's refusal to perform the obligation is clearly expressed. Periodic damages are provisional, civil sanctions.

It follows that in the substantive litigation the creditor transforms his claim for the payment of damages in a claim for damages and the court, on the basis of conclusive evidence, will determine the actual damage. Interim damages are temporary and their limit is fixed at the amount of the damage suffered and can ultimately serve to compensate by compensating them to compensatory damages¹.

If the special law provides for the debtor to be ordered to pay cominatorial damages or, as the case may be, for a civil fine for non-observance of an obligation to do or not to perform what can not be done by a person other than the debtor, provided in art. 906 of the Civil Procedure Code.

According to art. 906 of the Civil Procedure Code, if within 10 days of the notification of the execution of the execution of the execution the debtor does not perform the obligation to do or not to do, which can not be fulfilled by another person, it can be constrained in its execution, by applying penalties, by the enforcement court.

Where the obligation is not assessable in cash, the court seized by the creditor may oblige the debtor, by final judgment given by summoning the parties, to pay in favor of the creditor a penalty from 100 lei to 1,000 lei, set on the day of delay until execution the obligation provided in the enforceable title².

When the obligation has a valuable object in money, the penalty may be set by the court between 0.1% and 1% per day of delay, percentage calculated from the value of the object of the obligation.

If, within 3 months from the date of notification of the termination of the penalty payment, the debtor does not fulfill the obligation stipulated in the enforceable title, the enforcement authority shall, upon the creditor's request, set the final amount due to this title, quoting parts³.

¹ Decision of the Supreme Court No.1559 of 30 June 1984, published in the 1984 Reports of Judgments, pp. 123-124.

² Decision No. 73/2017 of the HCCJ (Complete DCD / C), published in the Official Gazette of Romania No. 914 / 22.11.2017, allowed the request for a preliminary ruling, filed by Cluj Tribunal - Civil Division in file no. 10022/211/2016 and consequently established that:

In interpreting and applying the provisions of art. 906 par. (1) and (2) Code of Civil Procedure, the conclusion of the settlement of the application for the payment of penalties on the debtor's day of delay of an obligation to make or not, valuable in money, which can not be satisfied by another person, is final, irrespective of the solution adopted by the enforcement authority, namely the admission or rejection of the creditor's request.

See also the Conclusion of Sept. 17, 2018, of the HCCJ Clearinghouse for Law Issues, published in M.Of.nr.898 / 25.10.2018.

Accepts petition request

Has the fixation of the material error streaked in the device of Decision no. 73 of 16 October 2017, delivered in File no. 1.363 / 1/2017 and published in the Official Gazette of Romania, Part I, no. 914 of November 22, 2017, in the sense that instead of: "in the interpretation and application of the provisions of Art. 906 par. (1) and (2) of the Code of Civil Procedure, the conclusion of the settlement of the application for the payment of penalties on a debtor's day of delay for making or not making money, which can not be satisfied by another person shall be final, irrespective of the solution adopted by the enforcement, admittance or rejection of the creditor's request ", shall read:" in the interpretation and application of the provisions of art. 906 par. (1) and (2) of the Code of Civil Procedure, the conclusion of the settlement of the application for payment of penalties per day of delay of the debtor an obligation to make or not to make, evaluate or not in money, which can not be fulfilled by another person, is final, irrespective of the solution adopted by the enforcement authority, namely the admission or rejection of the creditor's request. "Obligatory, according to the provisions of art. 521 par. (3) of the Code of Civil Procedure. Pronounced in public sitting, today, September 17, 2018.

³ When the value of the object has been set, the penalty may be set by the court between 0.1% and 1% per day of delay, calculated from the value of the object of the obligation.

If, within three months of the date of the notification of the termination of the penalty payment, the debtor fails to fulfill the obligation stipulated in the enforceable title, the enforcement authority shall, on the creditor's request, set the final amount due to this title, quoting parts.

Penalty may be removed or reduced by way of appeal to execution if the debtor fulfills the obligation laid down in the enforceable title and proves there are good reasons to justify the delay in execution.

The ending is enforceable.

The granting of penalties does not exclude the obligation of the debtor to pay damages, at the creditor's request, under the conditions of art. 892 or common law¹.

According to art. 907 of the Civil Procedure Code, for the non-fulfillment of the obligations stipulated in Chapter IV of the Civil Procedure Code regarding the forced execution of other obligations to perform or the obligations to do not, no cominatorial damages can be granted.

Public Power Competition

If, in the cases provided for in Art. 904 and 905, the debtor opposes the execution of the obligation by the creditor, the bailiff, at the request of the creditor, will obtain, according to the law, the contest of the police, gendarmerie or other public servants, as the case may be².

Making entries in the Land Book According to art.909 of the Code of Civil Procedure, if by enforceable title an enrollment in the land book was ordered against the person registered as the right holder, the creditor may apply directly or through the bailiff to the cadastre and real estate publicity office to have registration under this title. If the person against whom the enrollment was ordered was also obliged by the same executory title or by another to evict or, as the case may be, hand over the property to the creditor's hands, it shall proceed according to the provisions of art. 896 et seq., i.e. the forced handing over of immovable property. The provisions are also applicable in cases where the obligation contained in the enforceable title concerns the making of entries in public registers other than the land register. The cominatory damages are also enshrined by special rules. Such provisions, which refer to the sanction of payment of damages, are contained in art. 48 par. (2) of the Law no. 31/1990 on societies, in art. 64 par. (2) of the Land Fund Law no. 18/1991, republished, and in art. 24 paragraph (2) of

¹Art.11 of the Law no. 76/2012 on the implementation of Law no. 134/2010 on the Civil Procedure Code.

If the special law provides for the debtor to be ordered to pay cominary damages or, as the case may be, a civil fine for non-observance of an obligation to do or do what can not be done by another person than the debtor since the entry into force of the Code of Procedure civil, shall be entitled to apply the penalty under the conditions provided by art. 904 of the Civil Procedure Code.

Article 892 of the Code of Civil Procedure

If, in the enforceable title, it has not been established what amount is to be paid as equivalent to the value of the property in the event of its being surrendered or, where appropriate, the equivalent of the compensation due in the case of non-performance of the debtor's personal obligation the claim of the creditor will determine this amount by a judgment given by the parties quoting in the short term. In all cases, at the request of the creditor, the court will also take into consideration the damages caused by the voluntary non-fulfillment of the obligation before it becomes impossible to execute.

The judgment is enforceable and subject only to the appeal. Suspension of the enforcement of this judgment can only be achieved by recording the amount determined. The provisions of art. 751 and 752 are applicable accordingly.

On the basis of the request provided in paragraph (1), the creditor may take precautionary measures.

²Art.904 the execution of the obligation to do, from the Code of Civil Procedure

If the debtor refuses to fulfill an obligation to enforce in a writ of execution, within ten days of the notification of the conclusion of the declaration of enforceability, the creditor may be authorized by the executing court by enforceable order, with the summons of the parties, to either by himself or by other persons, at the expense of the debtor.

Art.905 the execution of the obligation not to do

The provisions set out in this section are also applicable in the case where the enforceable title includes an obligation not to do so.

The creditor will be able to request the executing court to authorize, by enforceable enforceability, with the summons of the parties, to discontinue himself or other persons, at the expense of the debtor, the work he has done against the obligation not to do so.

the Administrative Contentious Law no. 554/2004, which states that if the time-limit is not observed, "the claimant is entitled to compensation for delay"¹.

It follows that cominatorial damages are a pecuniary penalty that is applied by the courts to ensure that an obligation to do or not to be enforced is determined by a court order and that the amount of money set is to be paid under this title is independent of the compensation which must be the equivalent of the damage caused and the reason for such damages is the exercise of their constraining effect on the debtor who persists in failing to fulfill his obligation by making him pay to the creditor of amounts calculated in relation to the duration of the delay in fulfilling the obligation to do or not to do so.

Bibliography

- Teofil Pop - Legal dimension of cominatorial damages, Law Magazine no.12 / 1995
Pop Liviu, Popa Ionuț-Florin, Vidu Stelian Ioan - Elementary Civil Law Treaty. Obligations. Ed. The Legal Universe. 2012.
N.Grădinaru - Civil Law. Civil Obligations. Ed Danubius. Galați 2018.

¹ Art.48 paragraph 2 of the Law no. 31/1990 If the company fails to comply, any interested person may ask the tribunal to oblige the organs of the company to regularize them, subject to the payment of damages under common law. Art.64 of Law no.18 / 1991 If the local commission refuses to hand over the title issued by the county commission or puts it in real estate, the disaffected person may file a complaint with the court in whose territory the land is situated. If the court accepts the complaint, the mayor shall be obliged to execute immediately the handing over of the property title or, as the case may be, the effective possession of the property, subject to the payment of penalties under the conditions provided by art. 906 of the Civil Procedure Code. Art.24 paragraphs 2 and 3 of Law no.554 / 2004.

In the event that the debtor does not voluntarily perform his / her obligation, it shall be executed through forced execution, following the procedure provided by the present law. At the request of the creditor, within the limitation period of the right to obtain enforcement, which shall run from the expiry of the terms provided in paragraph (1) and which have not been complied with, the executing court shall, by final judgment given by summoning the parties, apply a fine of 20% of the minimum gross salary per day of delay to the head of the public authority or, as the case may be, is paid to the state budget, and the applicant grants him penalties, under the conditions of art. 905 of the Code of Civil Procedure. Decision No.898 / 2015 of the Constitutional Court. The Constitutional Court admits the exception of unconstitutionality and finds that the legislative solution according to which the conclusion provided by art. 24 paragraph (3) is "definitive" is unconstitutional.