

CONSIDERATIONS ON FORCED EXECUTION ON INCOME EARNED BY INDIVIDUALS

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Abstract

Considering the principle according to which the forced prosecution of the goods should not lead the debtor to be unable to provide his means of subsistence, the legislator establishes in art. 729 of the Code of Civil Procedure, which are the limits of the pursuit of the money income. The setting of the limits for the pursuit of salaries and other regular income is done exclusively by reference to certain parts of them (one third or a half) without interest in the amount of the periodic income. In the lawyer's view, regardless of the type of debt or debt, and regardless of the amount of regular income, creditors will not be able to pursue more than half of the debtor's regular income. In this sense, it is also aligned. (3) of art. 729, which establishes the maximum limit of traceable income, when the amount of the debtor's income is less than the amount of the net minimum wage in the economy. In such a case, only sums exceeding half the amount of the net minimum wage in the economy can be traced. Therefore, irrespective of the claim, it will not be possible to track the monthly income of the debtor, the amount of which is less than or equal to half of the minimum income for the economy.

Keywords: forced execution, enforceable title, attachment, debtor, bailiff, interest, penalties.

The main category of enforcement bodies is represented by bailiffs and is governed by the provisions of the Law no. 188/2000 regarding the bailiffs, which stipulate in art. 1, that "Enforcement of any enforceable title, with the exception of those relating to revenues due to the general consolidated budget, the budget of the European Union and the budget of the European Atomic Energy Community, shall be carried out only by the bailiff, even if by special laws otherwise". According to art. 2 par. (1) of Law no.188 / 2000, the bailiffs are appointed to perform a service of public interest².

Article 627 of the Code of Civil Procedure establishes the active role of the bailiff. Thus, throughout the course of the execution, the bailiff is obliged to act actively, stating, by all means admitted by the law, for the full and speedy fulfillment of the obligation stipulated in the enforceable title, in compliance with the provisions of the law, the rights of the parties and other persons concerned³.

Establishing the principle of the active role of the bailiff is the consequence of the fact that he carries out a public service whose normal course of action must be guaranteed by the state, in virtue of the positive general obligation regulated in art. 626 of the Code of Civil Procedure. The guideline prescribed for the executor to exercise his or her role is to use all the means admitted by the law in order to achieve the aim pursued, namely the full and speedy fulfillment of the obligation stipulated in the enforceable title.

In the light of the principle of legality and the principle of good faith, the legislature establishes that law-abiding persons must have conduct consistent with those established by a court order or other enforceable title and to execute voluntarily their obligations.

Under Article 632 of the Code of Civil Procedure, enforced enforcement may only be enforced under an enforceable title.

Enforceable judgments shall be enforceable, enforceable judgments, final decisions, and any other judgment or writings which may, under law, be enforced.

There are enforceable judgments:

1. the decisions given in the appeal, unless otherwise provided by law;

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² Law no.188 / 2000 on bailiffs, republished in the Official Gazette no.493 / 11.07.2011.

³ Law no.134 / 2010 The Civil Procedure Code, republished in OJ No. 247 / 10.04.2015, modified by GEO no.1 / 2016 for the amendment of the Law no. 134/2010 on the Civil Procedure Code and some related normative acts, published in the Official Gazette no.85 / 04.02.2016, approved with amendments by the Law no. 17/2017 published in the Official Gazette No. 196 / 21.03.2017.

2. the decisions given at first instance, without the right of appeal, or those in respect of which the parties have agreed to directly exercise the appeal, according to art. 459 par. (2)¹.

There are definite judgments:

- 1 judgments not subject to appeal or appeal;
2. the sentences given at first instance, without a right of appeal, not settled by appeal;
3. the sentences given at first instance, which have not been appealed;
- 4 the sentences given in the appeal, with no right of appeal, as well as those not settled by appeal;
5. the sentences given in the appeal, even though the substance of the case has been settled;
6. other decisions which, according to the law, can no longer be appealed.

The aforementioned judgments shall become final on the date of expiry of the term of the appeal or of the appeal or, as the case may be, at the date of its pronouncement.

Arbitration decisions may be enforced, even if they are challenged with the action for annulment, as well as other judgments of the bodies with definitive jurisdiction, as a result of their non-enforcement before the competent court.

European Enforcement Entities in respect of which European Union law does not require prior recognition in the Member State in which enforcement is sought shall be enforceable by law without any prior formalities.

Enforcement of a court judgment subject to judicial review, which is an enforceable title, can only be made at the risk of the creditor if the judgment can be appealed by appeal or appeal; if the title is subsequently amended or abolished, the creditor will be held, under the law, to pay the debtor in full or in part, as the case may be.

These provisions shall apply accordingly in the event of the enforcement of an arbitration award.

According to art. 638 of the Code of Civil Procedure are other enforceable titles: the summaries and minutes drawn up by the law enforcement bailiffs, the authentic documents, in the cases provided by law, the notarial enforceable titles issued under the conditions provided by law, as well as the credit or other securities writings to which the law recognizes executory authority. If the debtor does not voluntarily execute the obligation, the creditor may commence forced execution. Enforced execution of any enforceable title, with the exception of those relating to revenue from the general consolidated budget or the budget of the European Union and the budget of the European Atomic Energy Community, shall be performed only by the bailiff. The State is required to ensure through its agents the prompt and effective execution of court rulings and other enforceable titles, and in case of refusal, injured parties are entitled to full compensation for the damage suffered. The role of the state is the same regardless of whether a judgment or other enforceable title is enforced, such as an authenticated act by a notary who establishes a certain, liquid and exigible claim or a document establishing a tax claim.

The act authenticated by the notary public, which establishes a certain, liquid and exigible claim, is a writ of execution. In the absence of the original, the enforceable title may be the duplicate or the certified copy of the copy of the notary's archive.

In the case of annulment by the court of the document certified by the public notary, civil liability of the notary public can only be committed for the violation by him guilty of his professional obligations, followed by the damages, determined by a final court decision.

¹ In the case of appeals, if it has not been exercised, the appeal is inadmissible. However, a judgment which is amenable to appeal and appeal may be appealed, within the time-limit for appeals, directly to the court which would have jurisdiction to hear the appeal against the judgment given in the appeal, if the parties expressly consent, by authenticated or by verbal statement, given to the court whose decision is appealed and recorded in a minutes. In this case, the appeal can only be exercised for the wrongful violation or misuse of substantive rules.

Credit Titles: Bills of exchange, promissory notes and checks, as well as other debt securities, shall be enforceable if they fulfill the conditions laid down in the special law.

Private enrollments are enforceable titles only if they are recorded in the public registers, in the specific cases and conditions provided by law. Any other clause or convention is null and is considered as unwritten.

According to Article 626 of the Code of Civil Procedure, the State is obliged to ensure through its agents the prompt and effective execution of judgments and other enforceable titles, and in case of refusal, the injured are entitled to full reparation the damage suffered.

Failure by the State to comply with that obligation entitles injured parties to full compensation for the damage suffered as a direct action against the State.

According to art.628 of the Code of Civil Procedure, obligations can be enforced, the object of which is the payment of a sum of money, the handing over of a good or its use, the dismantling of a building, planting or other work, the custody of the minor, his place of residence and his visit or in taking another measure established by the enforceable title.

In the event that interest, penalties or other amounts, which are accrued to the creditor, have been stipulated or granted, without the amount being established, they shall be calculated by the bailiff, according to the law.

Also, the bailiff may, at the request of the creditor, update the amount of the principal principal's principal, irrespective of its source, according to the criteria contained in the enforceable title. If the enforcement order does not contain such a criterion, the bailiff shall, at the creditor's request, update the inflation rate calculated from the date on which the judgment became enforceable or, in the case of the other enforcement titles, from the date when the claim became due and until the actual payment of the obligation contained in any of these titles.

If the executory title does not include interest, penalties or other amounts, but they are fully entitled to the creditor, according to art. 1.535 of the Civil Code or other special legal provisions, these will be determined by the enforcement court at the request of the creditor, by termination with the summons of the parties.

For these sums, the execution of the court of execution or of the bailiff is an enforceable title.

Although forced execution can take place simultaneously and in any form, the debtor's income and assets may be subject to forced execution only to the extent necessary to achieve the rights of the creditors and only if they are traceable under Art. 629 of the Code of Civil Procedure¹. The text comes to protect the rights of the debtor, which could be subject to simultaneous tracking of assets and income which, cumulatively, far exceed the value of the claim. The law leaves the executor a margin of discretion with regard to the determination of the assets and incomes the pursuit of which is necessary and sufficient for the realization of the claim. However, the debtor dissatisfied with the simultaneous pursuit of goods and incomes with a net value superior to the executed claim may challenge the execution.

According to art. 727 of the Code of Civil Procedure indicates movable goods that can not be prosecuted and art. 728 of the Code sets out the assets that can only be tracked for the performance of certain obligations, that is, only in the absence of other traceable goods and under certain conditions. The immovable property that can be prosecuted and the limits of the pursuit can be determined in art. 813-818 of the Code, while the limits of the pursuit of monetary income are expressly dealt with in Art. 729 of the same normative act. Goods that have a special regime of movement may be prosecuted only in compliance with the special regime prescribed by law. Also, according to art. 224 of the Fiscal Procedure Code, taxes, duties, contributions and any other revenue of the general consolidated budget can not be

¹ The debtor's income and assets may be subject to forced execution if, according to the law, they are traceable and only to the extent necessary to achieve the rights of the creditors.

Goods subject to a special circulation regime may be prosecuted only under the conditions laid down by law.

prosecuted by any creditor for any class of debt under the forced execution procedure. With respect to the scope of the person's sphere, the rule is that forced execution can be initiated against any natural or legal person, whether governed by public or private law. The exception to the rule is a strict interpretation and refers to persons enjoying immunity from enforcement, which is part of the immunity from jurisdiction and must be expressly provided for by law. According to art. 631 par. (1) of the Code of Civil Procedure, whoever may be a debtor, but this does not mean that all persons have the status of debtor in relation to a specific enforceable title. In other words, in the case of violation of the general legal obligations not to do so, the lawsuit and enforced execution takes place only in contradiction with the person or persons who violated the negative obligation. Enforced execution is performed against the actual debtor in a specific enforceable title.

Title II of Book V of the Code of Civil Procedure, entitled "Forced Tracking on the Debtor's Property", which governs the legal regime of movable property, is based on the unlimited liability of the debtor, with all the assets. According to art. 1.518 of the Civil Code, unless otherwise provided by law, the debtor personally responds to the fulfillment of his obligations; the liability of the debtor may be limited only in the cases and under the conditions provided by law. The rule is that movable goods, including money income, are traceable and subject to forced execution. Although art. 629 of the Code of Civil Procedure speaks of goods which, "according to the law, are traceable", the legislator does not make an enumeration of them, but, on the contrary, establishes the assets which, according to the law, "can not be traced". Therefore, the debtor will have to notify the executor of the non-repayable character of a particular asset, indicating the reason for the exemption from the pursuit.

Considering the principle according to which the forced prosecution of the goods should not lead the debtor to be unable to provide his means of subsistence, the legislator establishes in art. 729 of the Code of Civil Procedure, which are the limits of the pursuit of the money income. The setting of the limits for the pursuit of salaries and other regular income is done exclusively by reference to certain parts of them (one third or a half) without interest in the amount of the periodic income. In the lawyer's view, regardless of the type of debt or debt, and regardless of the amount of regular income, creditors will not be able to pursue more than half of the debtor's regular income. In this sense, it is also aligned. (3) of art. 729, which establishes the maximum limit of traceable income, when the amount of the debtor's income is less than the amount of the net minimum wage in the economy. In such a case, only sums exceeding half the amount of the net minimum wage in the economy can be traced. Therefore, irrespective of the claim, it will not be possible to track the monthly income of the debtor, the amount of which is less than or equal to half of the minimum income for the economy.

The provisions of art. 729 of the Code of Civil Procedure provide, both in para. (1) and par. (3) that the limits of the prosecution are applicable when the money income is intended to secure the debtor's means of subsistence. The limits of the follow-up of the periodic income are those in art. 729, even if the debtor has other goods or non-regular income. The creditor may also be able to pursue the goods or income concerned in order to satisfy the claim without, in such a situation, claiming that regular income could be pursued in its entirety because it would not be intended to provide its means of subsistence.

On the other hand, the provisions of Art. 169 of the Labor Code stipulate that no deduction from salary can be performed except in the cases and conditions stipulated by the law and in the case of the plurality of employees' creditors the following order will be observed: the maintenance obligations, according to the Civil Code, the contributions and taxes owed to the State, damages to public property through illicit acts, and finally, covering other debts. Moreover, art. 169 para. (4) expressly states that "Withholding from accumulated wages may not exceed half of the net salary each month."

From the analysis of the legislation in force, the Constitutional Court found that the forced execution of income from salaries, allowances or any other form of remuneration provided on the basis of an employment relationship is made on the basis of the provisions of the Labor Code and the Code of Civil Procedure. As regards the forced execution of enforceable titles related to revenues due to the general consolidated budget, art. 236 par. (4) of the Code of Fiscal Procedure states that "Amounts representing the incomes of a debtor as an employed person, pensions of any kind, as well as special aids or allowances shall be subject to prosecution only under the conditions laid down in the Code of Civil Procedure ". In other words, this revenue can not be subject to enforceability under the Code of Fiscal Procedure, which remains subject to the rules of ordinary law.

With the entry into force of the Code of Civil Procedure on February 15, 2013, the legislator waived the requirement of enforceability, so that neither the judgments nor the documents to which the law recognizes the character of the enforceable title are subject to enforcement by enforceable form, they are subject only to the enforcement of forced execution at the enforcement court. As regards court rulings, they are no longer subject to such formalities, since it is self-evident that, being enforceable titles and taking into account the fact that they emanate directly from the judicial power, they give the lender the opportunity to use executive power agents for forced execution. Therefore, with regard to court decisions, the creditor must make a request for forced execution, a request subject to the consent of the executing court. With regard to enforcement titles other than court rulings, by amending the Civil Procedure Code by Law no. 138/144, the legislator reintroduced the enforceable sentence, this operation being carried out by the court in whose constituency the domicile or the seat of the creditor or the debtor is located , as the case may be, in the council chamber, without quoting the parties; In this respect, Art. 641 par. (3) of the Code stated that the court will verify that the document meets all the formal requirements required by law to be enforceable, as well as other requirements in the specific cases provided by the law. The enforcement of the enforceable title, other than a court order, was, therefore, conditional, first of all, on its execution by a writ of execution, and, secondly, on the enforcement request made by the creditor and approved by the court enforcement.

According to the provisions of art. 781 of the Code of Civil Procedure, the salary and all regular income assimilated to the salary shall be amounts of money which may be subject to forced execution by means of attachment, regardless of the title to which they are due by the third party to the intended debtor, except where the law declares insignificant , in whole or in part, certain amounts of money owed to the intended debtor. Also, bank money amounts may be denied, in which case the bonding shall be carried over both the bank balance of these accounts and the future proceeds. In respect of the pursuit of amounts owed by a third party to the debtor, including those in bank accounts, the provisions of Art. 729 of the Code of Civil Procedure, which establishes the limits for the pursuit of the intended debtor's income: salaries and all regular income assimilated to the salary are subject to absolute insensibility (in relation to any of the creditors), but partial, a share of the salary of the proceeds assimilated to it is reserved for the following creditors as follows: up to half of the net monthly income for the amounts due as a maintenance obligation or child allowance, respectively up to one third of the net monthly income, for any other debts. A special provision of social protection has been introduced in Art. 729 par. (3) in respect of labor income or any other amount that is regularly paid to the debtor and is intended to cover his livelihoods if they are lower than the amount of the net minimum wage in the economy. Thus, this revenue can only be tracked over the part that exceeds half the amount of the net minimum wage in the economy.

In applying the provisions of art. 729 of the Code of Civil Procedure, the provisions of Art. 787 of the same code establishes the obligations of the third party who, within 5 days of the communication of the attachment, and in the case of amounts due in the future from the

maturity date, must either record the amount of money if the denied claim is due; , as the case may be, to dispossess the embedded movable movable property and to send evidence to the bailiff, either to pay directly to the lender the amount withheld and due to him, in the case of amounts owed as a maintenance or child allowance, and in the case of amounts due as compensation for damages caused by death, injury to bodily integrity or health. In case of deductions exceeding the amount of the deductible amount from the debtor's income, art. 789 par. (1) of the Code establishes that the impoverished third party will retain and record the traceable amount by notifying the bailiffs who have established the attachments.

On the other hand, the legislator has already provided remedies, the provisions of art. 712 of the Code of Civil Procedure concerning the challenge to enforcement are fully applicable. If the third party fails to fulfill his obligations to perform the attachment, the pursuing creditor or the debtor may bring an action before the court of enforcement in order to invalidate the act of injunction. On the other hand, according to art. 790 par. (9) of the Code, the terrible third party who, in bad faith, refused to fulfill his obligations to perform the removal, may be fined by the decision to validate the attachment with an amount between 2,000 lei and 10,000 lei.