

ENFORCEMENT TITLES AS GROUND FOR ENFORCEMENT IN MACEDONIAN LAW

Abstract

This article analyzes the enforcement titles as ground for enforcement procedure in Macedonian law. Without existence of an enforcement title, no forcible enforcement can be carried out (*nulla executio sine titulo*). Due to the character of the enforcement proceedings and the coercive nature of the actions and activities that are carried out in order of realization of a particular monetary or non-monetary claim, the existence of the claim that should be collected in the proceedings for forcible execution must be determined by a certain qualified title. The enforcement title (*titulus executionis*) is a public document that determines the existence of the claim, its due, and the identification of the parties in the enforcement proceedings in an authoritative and certain manner. According to Macedonian law enforcement titles are the following: an enforceable court decision and court settlement, an enforceable decision and settlement in an administrative procedure if designated for fulfillment of a monetary claim, an enforceable notary public title, a conclusion of the enforcement agent determining the enforcement costs, a decision for issuing a notarial payment order and other title considered under the law as enforcement title including the assumptions and conditions for each executive title. In addition, this article also elaborates the role of the enforcement agents in the enforcement procedure from the aspect of their competencies related to enforcement titles. For this purpose, the article presents the conditions for appointment of an enforcement agent, their authorities and duties according to the Law on Enforcement of the Republic of Macedonia. Enforcement titles actually guarantee safe and complete fulfillment of the creditor's claim. Therefore, in the legal system, it is particularly important to have enforcement titles that will authoritatively determine the creditor's claim.

Kew words: *enforcement titles, cause of enforcement, notary public title, enforcement agent.*

I. INTRODUCTION

The enforcement procedure in the legal system of the Republic of Macedonia is regulated by the Law on Enforcement as a separate law (*lex specialis law*).¹ This law came in force on January 1st, 2017. Shortly after the independence, Macedonia had taken and applied the former federal Act on Enforcement Procedure of 1978, according to which civil enforcement was in exclusive jurisdiction of the courts. Under this Law, the courts had jurisdiction to allow and to conduct the enforcement of monetary and non-monetary claims. The responsibility for enforcement was entrusted to judges (executive judges), because it considered that the

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¹ Official Gazette of the Republic of Macedonia no. 72/16.

interpretation of the content of the court judgment in terms of its compulsory execution requires professional judicial knowledge. Judicial officers (court clerks) were also included in the enforcement procedure performing major technical (but sometimes even essential) tasks within the proceedings.²

Over the years the Law on Enforcement was often amended. The first Enforcement Procedure Act of 1997 (with amendments in 2000 and 2003) basically retained the same solutions as the former federal Act of 1978. Later on, the amendments of The Enforcement Act in 2005 resulted in a far-reaching reform of the enforcement legislature. Thus, the Law on Enforcement of 2005 (with amendments in 2006, 2007, 2008, 2009, 2010, 2011 and 2013)³ introduced a new system of enforcement in the Republic of Macedonia. Namely, the previous court-oriented system of enforcement was replaced with the bailiff-oriented system. The enforcement procedure has ceased of being under the jurisdiction of the courts and the enforcement was entrusted to enforcement agents - persons with public authorizations established by law, who conduct the enforcement.⁴

The Law on Enforcement of 2016 has three chapters and twenty-nine provisions.⁵ It regulates the principles of the enforcement procedure, the subjects of enforcement, responsibilities of the entities in the enforcement procedure, conditions for appropriate of an enforcement agent, enforcement titles, proposal for enforcement, realization of enforcement, enforcement activities, enforcement against movable property, enforcement against debtor's monetary claim, enforcement against a claim to hand or deliver movable property or to hand real estate, enforcement against other property rights, enforcement against real estate, special provisions for enforcement against property of legal entities to collect monetary claims, enforcement for collection of a monetary claim, vacating and delivering real estate, obligation for action, enduring and non-action, returning an employee to his/her employment, registration of rights in a public registry, division of movable property, and etc.

According to Article 6, the Law on Enforcement regulates the rules according to which the enforcement agents act in order to forcibly put in force: court decision for fulfillment of an obligation, unless otherwise stipulated by another law; decision passed in an administrative procedure for fulfillment of monetary obligation, unless otherwise stipulated by another law; and notarial titles and other enforcement titles stipulated by another law. The provisions of the Law on Enforcement also apply regarding forcible enforcement of ship or aircraft.⁶

² Zoroska – Kamilovska T., Rakocevic M., *A General Overview of Enforcement in Civil and Commercial Matters in Macedonia*, LeXonomica, Vol. 8, No. 1, pp. 29-49, June 2016, p. 31.

³ Official Gazette of the Republic of Macedonia no. 35/2005, with amendments 2006 (Official Gazette of the Republic of Macedonia no. 50/06, 129/06), 2008 (Official Gazette of the Republic of Macedonia no. 8/08), 2009 (Official Gazette of the Republic of Macedonia no. 83/09), 2010 (Official Gazette of the Republic of Macedonia no. 50/10, 83/10, 88/10, 171/10) and 2011 (Official Gazette of the Republic of Macedonia no. 148/11).

⁴ Zoroska – Kamilovska T., Rakocevic M., *A General Overview of Enforcement in Civil and Commercial Matters in Macedonia*, LeXonomica, Vol. 8, No. 1, pp. 29-49, June 2016, p. 31-33./Бабунски В., Судија на Врховен суд на Република Македонија, *Реформа на извршувањето во Република Македонија*, Скопје, Ноември, 2009. <http://www.vsrn.mk/wps/wcm/connect/vsrn/cd8e69bf-6fd2-433c-a09b/> <https://www.akademik.mk/noviot-zakon-za-izvrshuvane-ima-znachajni-promeni-vo-statusniot-i-vo-protresniot-del-gordan-stankovik/>.

⁵ <https://www.pravdiko.mk/predlozhen-e-nov-zakon-za-izvrshuvane/>.

Јаневски А., Обезбедување на побарувањата со пренос на сопственост на предмети и права според Законот за обезбедување на побарувањата. <https://www.akademik.mk/wp-content/uploads/2014/06/Prof.d-r-Arsen-Janevski-Obezbeduvane-na-pobaruvanata-so-prenos-na-sopstvenost-na-predmeti-i-prenos-na-prava-sporod-Zakonot-za-obezbeduvaene-na-pobaruvanata.pdf>

⁶ Article 1 of the Law on Enforcement, Official Gazette of the Republic of Macedonia no. 72/16.

According to the legal theory, the enforcement procedure is a legally regulated procedure for several participants (the competent authority, the parties and other participants). It is a separate civil procedure and the enforcement procedure includes procedural actions undertaken under certain conditions and in a particular form. All procedural actions between the entities determine the enforcement procedure.⁷

In Macedonia, the law system entails private enforcement by independent and highly professional enforcement agents. They conduct the enforcement in accordance with the executive title and in accordance with the legal authorizations. The modern concept of enforcement is deemed efficient and effective because it provides prompt and complete collection of the creditor's claim. Law on Enforcement precisely regulates the executive institutes, entities, assumptions and other conditions necessary for the enforcement.

II. DEFINITION AND TYPES OF ENFORCEMENT TITLES

The ground for enforcement is the enforcement title. Without existence of an enforcement title, no forcible enforcement can be carried out (*nulla executio sine titulo*). Due to the character of the enforcement proceedings and the coercive nature of the actions and activities that are carried out in order for realization of a particular monetary or non-monetary claim, the existence of the claim that should be collected in the proceedings for forcible execution must be determined by a certain qualified title. In that regard, the enforcement title (*titulus executionis*) is a public document that determines the existence of the claim, its due, and the identification of the parties in the enforcement proceedings in an authoritative and certain manner. The Law on Enforcement sets a quite long list of documents that have the character of enforcement titles. Law on Enforcement determines the type of enforcement titles. In that regard, the Law on Enforcement opts for a *numerus clausus* system – enforcement titles are only the titles that are determined by law.⁸

The Macedonian Law on Enforcement foresees the following enforcement titles: an enforceable court decision and court settlement, an enforceable decision and settlement in an administrative procedure if designated for fulfillment of a monetary claim, an enforceable notary public title, a conclusion of the enforcement agent determining the enforcement costs, a decision for issuing a notarial payment order and other titles considered under the law as enforcement titles.⁹

In the Macedonian legislation there is no general definition of enforcement titles. However, there is legal category as *numerus clausus* specified by the law.

The developed system of enforcement titles is a consequence of the new modern system of enforcement in the Republic of Macedonia. It is evident that enforcement documents are adopted by different bodies with different forms and precisely defined content. In addition, they have to fulfill certain assumptions for enforcement.

⁷ Јаневски А., Зороска – Камилувска Т. *Граѓанско процесно право, книга трета, Извршно право*, Скопје, 2011, п. 4-5.

⁸ Zoroska – Kamilovska T., Rakocevic M., *A General Overview of Enforcement in Civil and Commercial Matters in Macedonia*, LeXonomica, Vol. 8, No. 1, pp. 29-49, June 2016, p. 31-33.

⁹ Article 12, paragraph 1 of the Law on Enforcement, Official Gazette of the Republic of Macedonia no. 72/16.

a. Court decision and court settlement

A court decision, in the sense of the Law on Enforcement, shall be a judgment, a decision, a payment and another order of the courts, the selected courts and arbitrations, and as a court settlement considers the settlement concluded before those courts. A court decision shall be enforceable if it becomes legally effective and if the deadline for voluntary fulfillment of the obligation has expired. The deadline for voluntary fulfillment of the obligation shall be from the date of delivery of the decision to the debtor. On the basis of a decision that has become executive in one part, the enforcement shall be carried out only in that part. The enforcement will also be carried out on the basis of a court decision that did not become effective and a decision taken in an administrative procedure that did not become final, if by law it is stipulated that the appeal does not keep the execution of the decision.¹⁰

The judgment is a Meritor decision which ends the court proceedings in the first instance. The judgment is a kind of court decision that decides on the merits of the claim. In legal theory, the judgment process is defined as an act of judgment, that as a rule after the discussion to decide on the main issue which is the subject of the proceedings. The court shall decide upon the main issue and the secondary claims, by a judgment. If there are several claims, as a general rule, the court shall decide upon all those claims with a single judgment. If several litigations are adhered for the purpose of joint contention, and only a single litigation has reached a phase for adopting a final decision, judgment can be reached only in regard to that litigation.¹¹

According to Law on Litigation Procedure, the court can order the defendant to perform certain action, only if it is due before the closing of the main contention. If the court adopts a claim for support, it can also bound the defendant to actions that are not due. The judgment by which the defendant is obliged to hand in or take over loaned or leased items can be adopted before the termination of those relations. If the plaintiff requested in the lawsuit to be ruled certain items, and at the same time in the lawsuit or before the closing of the main contention has stated that is agreed instead of the item to receive certain financial amount, the court, should it adopt the petition, shall pronounce in the judgment that the defendant can be exempted from giving the item if the referred financial amount is paid.

When in the judgment the party is ordered to perform certain action, a time period shall be determined when it shall complete the referred action. Unless otherwise determined with special regulations, the time period for performing the action shall be 15 days, but for actions not consisting of monetary payments, the court can determine longer time period. In the disputes on bills of exchange this time period shall be eight days. The time period for performing the action shall start running as of the first day after the service of the judgment to the party being ordered its performance.

However, the deadline for fulfillment of the obligation is defined differently in the Law on Litigation Procedure. The time period for fulfilling the duties imposed on the parties, shall be determined by the court in line with the circumstances of each individual case. In the payment order the court shall state that the defendant is obliged in a period of eight days, and in the disputes on bills of exchange in a period of three days after receiving the payment order, to fulfill the claim within the lawsuit together with the costs calculated by the court or to file an objection

¹⁰ Articles 13 and 14 of the Law on Enforcement, Official Gazette of the Republic of Macedonia no. 72/16.

¹¹ Article 311 of the Law on Litigation Procedure, Official Gazette of the Republic of Macedonia no. 7/11 and 124/15.

against the payment order within the same time period. In the payment order the court shall remind the defendant that it will dismiss the objections not filed on time.¹²

In the procedure for the disputes of minor value, the time period for an appeal shall be eight days.¹³ The court can prolong the period of eight days for actions that are not consisted of litigation activities.

Court settlement is regulated in Law on Litigation Procedure.¹⁴ The parties during the course of the whole procedure can settle upon the subject of the dispute (court settlement). The settlement can refer to the whole petition or only to a part of it. The court, during the course of the procedure, shall point out to the parties to the possibility for court settlement and shall help them conclude a settlement. No settlement can be concluded in the court in terms of the claims which cannot be at disposal of the parties. When the court of first instance adopts a decision which does not allow settlement of the parties, it shall cease the procedure until this determination becomes legally valid.

The settlement agreement of the parties shall be inserted in the record. The settlement shall be deemed concluded when the parties sign the record once the record is read to them. The parties, on their request, shall be issued certified copy of the record with the settlement attached. During the course of the whole procedure, the court shall ex officio mind whether a procedure is being conducted on a subject for which a court settlement has been previously concluded. If it determines that a procedure is ongoing for a court settlement that has been already concluded it shall dismiss the lawsuit.

The person who intends to file a lawsuit can attempt to reach a settlement, through the court of first instance in the area where the opposing party has its permanent, i.e. temporary place of residence. The court where such proposal is addressed shall summon the opposing party and introduce it to the settlement proposal. The costs for this procedure shall be covered by the person submitting the proposal.

The court settlement, that is, the settlement concluded in an administrative procedure is executive if the claim arrives after the settlement. The arrival of the claim shall be proven by a settlement record or by law certified document. The arrival which cannot be proved in the manner referred by the law shall be proved by an effective decision taken in a litigation procedure that determines arrival. On the basis of the settlement that has become executive in one part, the enforcement will be carried out only in that part.

Court settlement is an agreement in which the parties define their civil-legal relations of which they can freely dispose. It is concluded in written form in front of the competent court (in a contentious or non-contentious procedure) and it has the legal status of a final court judgment.¹⁵ The court will not allow a settlement in which the disposals of the parties are in contradiction with the coercive regulations, or the provisions of international agreements ratified in compliance with the Constitution of the Republic of Macedonia and if they are contrary to the moral. The Law on Litigation Procedure stipulates that the agreement of the parties to settle shall enter into the record, and it is concluded when the parties' sign the record after the record for the

¹² Article 420, paragraph 1 of the Law on Litigation Procedure (Official Gazette of the Republic of Macedonia no. 7/11 and 124/15).

¹³ Article 438, paragraph 3 of the Law on Litigation Procedure (Official Gazette of the Republic of Macedonia no. 7/11 and 124/15).

¹⁴ Article 307-310 of the Law on Litigation Procedure (Official Gazette of the Republic of Macedonia no. 7/11 and 124/15).

¹⁵ Јаневски А. Зороска – Камиловска Т. *Граѓанско процесно право, книга прва, Парнично право*, второ изменето и дополнето издание, Скопје, 2012, р. 338.

settlement have been read. The parties may conclude a settlement about the subject of the case (court settlement) during the whole course of procedure before the court.¹⁶ The settlement may refer to the overall claim or a part of it. In the Macedonian civil procedural law the parties even have the opportunity to conclude a settlement before the start of the litigation. In fact, a person who intends to file a complaint may try to achieve a settlement through the first instance court on whose territory the opposing party has residence (respectively, a place of dwelling). If the parties succeed to settle in this way that settlement will have legal force of court settlement.¹⁷

An enforcement of a decision of a foreign court may be carried out in the Republic of Macedonia if the decision meets the requirements for recognition provided by law or international agreement ratified in accordance with the Constitution of the Republic of Macedonia.

b. Decision and settlement in an administrative procedure

A decision in an administrative procedure shall be considered to be a decision or conclusion reached by a state administration body or a legal entity in the course of performing their public authorizations determined by the law, whereas a settlement in an administrative procedure shall be considered to be a settlement concluded in accordance with the Law on the General Administrative Procedure.¹⁸

The decisions and the settlements in an administrative procedure should state the fulfillment of a monetary obligation. Decisions and settlements that are concluded in accordance with the Law on General Administrative Procedure, referring to non-monetary claims are implemented in the administrative enforcement procedure.¹⁹ The body competent for deciding shall adopt a decision regarding the matter being subject of the procedure, on the basis of the facts established in the procedure. If the decision is adopted by a collective body, such decision can be made only if more than half of the members are present and it shall be adopted by the majority votes of its present members, unless other kind of majority is determined by law or other regulation.

In cases when a law or other regulations determine that two or more bodies shall decide on a single matter, each of them shall be obliged to decide on that matter.²⁰ These bodies will agree which one of them will issue a decision, and the decision must state the act of the other body. In exceptional cases, it may be stipulated by special regulations that the decision can have another title. The decision shall be adopted in a written form. In exceptional cases, anticipated by the law or by special regulations adopted thereon, the decision can be adopted orally. The written decision shall contain: introduction, disposition (pronunciation), explanation, instructions on the legal remedies, the name of the body, number and date, signature of the official person and the seal of the body. In cases stipulated by law or by regulations adopted thereon, some of these parts can be omitted from the decision. If the decision is processed in electronic format, instead

¹⁶ Sinisha Triva, Dika Mihajlo, *Gragansko Parnicno procesno pravo*, Zagreb, 2004, p. 570.

¹⁷ Gorgieva D., Stoileva Z., *European enforcement order for uncontested claims – new challenge for the Macedonian civil procedural law*, SEE Law Journal, Vol. 1 No. 1, January 2014, p. 45-64./ http://www.seelawschool.org/pdf/3_European_Enforcement_Order_for_Uncontested_Claims.pdf

¹⁸ Article 13 of the Law on Enforcement, Official Gazette of the Republic of Macedonia no. 72/16.

¹⁹ Јаневски А. Зороска – Камиловска Т. *Граѓанско процесно право, книга трета, Извршно право*, Скопје, 2011, p. 43.

²⁰ Articles 205 and 206 of the Law on General Administrative Procedure, Official Gazette of the Republic of Macedonia no. 38/05, 110/08, 52/11 and 124/15.

of signature and seal it shall contain facsimile, i.e. electronic signature in accordance with law. If the decision is released orally, it shall be issued in writing, unless otherwise determined by law. The original or a verified copy of the decision must be submitted to the parties.

The disposition shall include the decisions regarding the case as a whole and decisions regarding all requests submitted by the parties that have not been decided on separately during the course of the procedure. The disposition must be brief and precise, and if necessary, it can be subdivided in several sections. The disposition can include the decision regarding the costs of the procedure, if any, determining their amount, who is obliged to pay them, to whom and in what time frame. If the disposition does not include a decision regarding the costs, it shall be stated that a special conclusion will be adopted thereon. If the decision imposes performance of certain actions, the disposition shall state the time frame for the performance of such actions. If it is stipulated that the appeal shall not delay the enforcement of the decision, such stipulation shall be stated in the disposition.²¹

In case of two or more parties participate in the procedure with opposing claims, the official person who conducts the procedure shall attempt, during the course of the whole procedure, to arrange a settlement for the parties, completely or at least on certain disputed issues. The settlement must always be precise and clear and not to the detriment of the public interest, ethics or the legal interests of third persons. The official person that conducts the procedure shall be obliged to observe these conditions ex officio. In case it is determined that the settlement has been made to the detriment of the public interest, ethics or against the legal interests of third persons, the body that conducts the procedure shall reject such settlement and shall adopt a special conclusion. The settlement shall be entered into the record. The settlement shall be considered as concluded when the parties sign the read record of the settlement. The verified copy of the record shall be handed over to the parties if they ask for it. The settlement shall have the effect of an enforceable decision adopted in the administrative procedure.²²

The settlement concluded in an administrative procedure is executive if the claim arrives after the settlement. The arrival of the claim shall be proven by a settlement record or by law certified document. The arrival which cannot be proved in the manner referred by law shall be proved by an effective decision taken in a litigation procedure that determines arrival. On the basis of the settlement that has become executive in one part, the enforcement will be carried out only in that part.

c. Notary public title

The notary public title shall be enforceable title if it has become enforceable according to special provision that regulates the enforceability of such title. The decision for issuing a notarial payment order becomes an enforcement title after the notary certifies it as final and enforceable.²³

Notary documents are documents on legal matters and statements drawn out by the notary public in a form of notary public act, they are records on legal matters that were executed by the notary public or were executed in his/her presence, as well as certificates of facts that are

²¹ Article 211 of the Law on General Administrative Procedure, Official Gazette of the Republic of Macedonia no. 38/05, 110/08, 52/11 and 124/15

²² Article 137 of the Law on General Administrative Procedure, Official Gazette of the Republic of Macedonia no. 38/05, 110/08, 52/11 and 124/15

²³ Article 16 of the Law on Enforcement, Official Gazette of the Republic of Macedonia no. 72/16.

certified by a notary public. Public notary documents may be enforcement titles, in cases regulated in the Law on public notary.²⁴ The notarial act as an enforcement document affects immensely the acceleration of the judicial circulation. Based on the enforcement document, parties have the possibility to agree, at the moment of concluding the contract, about its direct enforcement without the need for a legal procedure.

The form of a notarial act is obligatory in: contracts on regulating property relations of marital and extra-marital spouses; contracts on gifts without delivering the item; acts of creation, organization, dismissal, statutory changes of judicial persons that exercise economic activities, institutions, foundations, apart from trade associations; judicial works undertaken by blind and/or deaf people, who cannot read and/or write, or dumb people who are not able to write; contracts which enable the disposal of the wealth of underage children or persons who have been denied or limited the capacity to act, as well as in all other cases determined.²⁵

By enabling the notarial act to have the feature of a public document (validity), especially the feature of an enforcement document, the avoidance of the whole litigious procedure is made possible. The notarial act will have the quality of an enforcement document if a certain obligation for doing (*facere*) is verified with it, and for which parties concerned can agree upon, as well as if it contains the debtor's statement, through which s/he agrees that based on this act, the request can be realized, namely the forceful bailiff can be carried out.²⁶

The notary payment order is a specific notarial act. The solution for notarial payment order is issued on the basis of a proposal by the creditor.²⁷

A special process assumption pertaining to each enforcement document is to have certain content, that is, to be eligible for enforcement. The enforcement title that does not have the content specified by law is not a legal ground for enforcement. According the principle of formal legality or the principle of strict legality, the enforcement agent must conduct the enforcement according to the content of the enforcement title. The enforcement agent cannot examine the legality and the correctness of the enforcement title, the content or the existence of a claim determined by the enforcement title. The enforcement title is eligible for enforcement if it includes: a debtor, a creditor, a subject, a type, scope, and a period of fulfillment of the obligation.

The notary public title is required to fulfill the conditions for the content of the enforcement title prescribed by the Law on Enforcement, but it is also necessary compiled in accordance with the Law on Notary.

d. Notary payment order

The notary payment order is regulated in the Law on Notary. Proposal for issuing a decision for notarial payment order on the basis of a credible document shall be submitted to the notary public on the territory of which the dwelling is situated, that is, the place of residence of the debtor-natural person, that is, the debtor's seat-legal entity. The proposal for issuing a decision for notarial payment order on the basis of a credible document include: complaint

²⁴ Official Gazette of the Republic of Macedonia no. 72/16.

²⁵ Article 52 of the Law on Notary, Official Gazette of the Republic of Macedonia no. 72/16.

²⁶ Zendeli E., Selmani – Bakiu A., *The Notary service – Justice services*, See Review, DOI: 10.1515/seeur-2017-0010, p. 135-147./<https://www.degruyter.com/downloadpdf/j/seeur.2016.12.issue-1/seeur-2017-0010/seeur-2017-0010.pdf>.

²⁷ Article 68-81 of the Law on Notary, Official Gazette of the Republic of Macedonia no. 72/16.

against the decision by which a notarized payment order was issued or after relation to the decision on costs, objection against the decision of the notary public with whom they reject the proposal as untidy, proposal for the abolition of the certificate of legality and enforceability, objection against the decision of the notary public for the cancellation of the certificate for legality and enforceability, objection against the decision of the notary public which he has refused the proposal to abolish the confirmation of legality and enforceability, appeal against the court's decision and contains a lawyer's press and signature, unless the creditor is the Republic of Macedonia.

The proposal for issuing a decision for a notarial payment order based on an authentic document contains a request for issuing a payment order by which it is liable the debtor, under the fear of forced execution, shall pay the monetary claim which arises from the document in a specified period, as well as information on the creditor, the debtor, type and scope of the claim, the timing of fulfillment of the obligation and its maturity. If it is not visible from the authentic document when the claim is due, together with the Creditor shall also submit a written statement that the claim has arrived and mark the day of the maturity of the claim.

The proposal for issuing a decision for a notary payment order, in sufficient copies and attachments, shall be submitted for a due cash claim proven by authentic document, attached to the original proposal or in a certified transcript with notary. As authentic document in the sense of the law, shall be considered: an invoice; a bill of exchange and a check with a protest and a return account; certificate of certified business books of a bank, savings house, financial company, donor financial leasing or insurance company; public document and documents which according to special regulations have the significance of public documents.

The notary public ex officio shall put a certificate of validity of the decision with which a notarized payment order has been issued if within the deadline referred to the law does not receive an objection, that is, dismissed objection as untimely or inadmissible. The notary public shall issue a certificate of enforcement of the decision by which it is issued notary public payment order, if the deadline for voluntary fulfillment of the obligation specified expired with the solution. Upon written request by the creditor or the lawyer as the creditor of the creditor, the notary shall place a certificate of the validity and enforceability of his copy of the decision by which a notarial payment order was issued, which was submitted to him. The enforceable decision by which a notarial payment order is issued shall be enforceable document. Upon a written proposal of the party or ex officio, the notary public shall issue a decision to abolish the certificate of legality and enforceability after it has established that is ungrounded, within eight days after the receipt of the written proposal of the party or after having established the official duty that the confirmations are unfounded placed.

Against the decision of the notary public with which the certificate of validity is revoked, the creditor has the right to object within eight days from the day of receipt of the solution. Against the decision of the notary public rejecting the proposal for the cancellation of the certificate of the legality and enforceability, the unsatisfied party has the right to object within a period of eight days from the date of receipt of the decision.

The creditor or lawyer as a creditor of the creditor may request withdrawal of the proposal for issuing a notarial payment order without the consent of the debtor, only until the submission of the objection. The notary shall, with a decision, determine the withdrawal of the proposal and abolish the past decision, and if the creditor or the lawyer as a proxy to the creditor does not require the preparation of a formal decision, the notary in the record shall conclude the withdrawal without making a formal decision.

The decision by which the notary public issues a notarized payment order shall have the form of a stamp. The stamp has the following content: data on the notary public who issues the payment order, an indication that it is a decision by which the notary payment order is adopted and is debited to the debtor, within eight days after the receipt of the decision, settles the claims of the creditor together with the interest, estimated costs of the proceedings including the notary's award, costs and rewards of the lawyer and court fees as well warning that forceful enforcement will follow if it does not act upon the decision, legal remark against the decision by which the notary's payment order was issued and against the decision on the costs, the debtor has the right to file an objection within eight days from the day of receipt of the decision through the notary public who brought the decision to the competent authority.

e. Conclusion of the enforcement agent determining the enforcement costs

The conclusion of the enforcement agent for determining the costs of enforcement is an executive document in accordance with the Law on Enforcement.

The Law on Enforcement does not contain more detailed provisions on what should include the conclusion of the enforcement agent for determining the costs of enforcement in order to represent an executive document. Accordingly, the conclusion must meet the conditions as any other enforcement title in Macedonian law. This means that with regard to the execution of the conclusion, the provisions for an enforceable clause are elaborated in the third part of this paper.

With the Decision U. no 143/2016-0-1 of 29 November 2017, the Constitutional Court of the Republic of Macedonia repealed article 12, paragraph 1, point 4 of the Law on Enforcement. After this Decision of the Constitutional Court, the conclusion of the enforcement agent determining the enforcement costs is no longer an executive document in the Macedonian law.

III. CLAUSE OF ENFORCEMENT

A clause of enforcement or a certificate of enforceability is a condition for the enforcement of the enforcement procedure. In fact, the clause of enforceability is a confirmation that the particular document is enforceable. With the enforcement clause, the creditor proves that the document is an executive title and the enforcement of the claim determined in the enforcement title may be permitted and enforced.²⁸

An enforceable clause is an official certificate from a competent authority (court or other authority) that the particular document is an enforcement title. It provides the document itself, not as a separate act. The clause of enforcement confirms that the decision is valid and that the deadline for voluntary fulfillment of the obligation has expired. Enforceability clause constitutes a procedural prerequisite for the procedure for execution.²⁹

Depending on the type of enforcement title, an enforceable clause may be provided by a court, the administrative authority that has decided in the first instance or from another authority.³⁰ In the notary public act, the clause of enforceability is provided by the notary who

²⁸ Станковић Г., *Граѓанско процесно право, ванпарнично и извршно процесно право*, Ниш, 2007, р. 149.

²⁹ Јаневски А. Зороска – Камиловска, *Граѓанско процесно право, книга трета, Извршно право*, Скопје 2011, р. 51.

³⁰ Dika M., *Građansko ovršno pravo, I knjiga, opće građansko ovršno pravo*, Zagreb 2007, р. 250.

compiled the concrete notarial act. The creditor submits a request for securing a certificate of enforcement and a notary's act in original to the notary who drafted the notary's act.

IV. THE ROLE OF THE ENFORCEMENT AGENT IN THE MACEDONIAN LEGAL SYSTEM

In the Macedonian legal system enforcement agents are appointed by the Ministry of Justice on the basis of a public call. Candidates applying for an enforcement agent needs to fulfill the following conditions: to be a citizen of the Republic of Macedonia; to have working capacity and be in good general health condition, which is ascertained by a certificate issued from a competent health institution in the field of labour medicine; to be graduated lawyer with completed four years of legal studies or a graduated lawyer with 300 credits according to the European Credit Transfer System (ECTS); to have bar exam; to have passed qualification exam, ranking exam for the particular competition, psychological test and test for integrity; to have working experience on legal matters at least two years after passing the bar exam; to have active knowledge of the Macedonian language; to possess internationally acknowledged certificate for proficiency in at least one of the three usually spoken languages of the European Union (English, French, German), issued by an official European tester, not to be convicted by final court decision to an unconditional sentence of over six months imprisonment, or not to be banned from practicing his profession as an enforcement agent; to give a statement before a notary public that he/she will provide the equipment and the facilities required for appropriate execution of the enforcement actions; and to give a statement before a notary public about his/her property condition with all the consequences for giving a false statement.³¹

According to the Enforcement Act, the duty of enforcement agent is incompatible with the performance of other activities and functions. The enforcement agent cannot perform public functions or managerial, supervisory and administrative functions in trade companies, state institutions, payment services, trade activities and intermediary, notary or attorney activities. Furthermore, the enforcement agents cannot be employed by a religious community or religious group.³²

The number of enforcement agents for the territory of a primary court is determined by the Minister of Justice on the basis of previously obtained consent from the Government of the Republic of Macedonia. The number of seats is determined on the basis of an opinion from the president of the primary court on the number of final and enforceable decisions of the primary court, from the Notary Public Chamber of the Republic of Macedonia on data of the number of enforceable notarial titles, as well as upon obtained opinion from the Chamber of Enforcement Agents.

The enforcement agents are established as a separate legal profession with the highest standards in terms of legal and professional background and appropriate process of selection. At the very beginning, there were numerous dilemmas and controversies regarding this radical reform. The scholars and practitioners were afraid that this “privatization” of the enforcement services would lead to uncontrolled activities of the enforcement agents, demolition of the

³¹ Article 33 of the Law on Enforcement, Official Gazette of the Republic of Macedonia no. 72/16.

³² Article 39 of the Law on Enforcement, Official Gazette of the Republic of Macedonia no. 72/16.

dignity of the debtors and unfounded intrusion into their assets, especially due to the fact that the enforcement is conducted without previous allowance for enforcement given by the court.³³

According to the above, enforcement agent has a central role, authorities and duties in Macedonian enforcement procedure. Their authorizations and duties are determined by law. The enforcement agent is competent to conduct the enforcement. He has no jurisdiction in the decision of the enforcement titles.

For comparison, the notary public service shall include: the compilation and issuance of public documents for legal matters in the form of a notarial act, statements and certificates of facts on the basis of which they establish rights or obligations, make decisions in the procedure for issuing notarial payment orders, confirmation of private documents, issuing certificates, verification of a signature and a handwriting, verification of a transcript and a translation, storage of documents, documents, money, and items of value for the purpose of handing them over to others, or organs, as well as carrying out entrusted tasks determined by law.³⁴

According to the above mentioned, the notary public has an active role in compiling the enforcement titles as opposed to the enforcement agent. Enforcement agent is a person with public authorizations competent to conduct the enforcement. During the performance of the enforcement the enforcement agent can take up actions on the whole territory of the Republic of Macedonia. The power of the notarial act as an enforcement document affects immensely the acceleration of the judicial circulation. Based on the enforcement document, parties have the possibility to agree, at the moment of concluding the contract, about its direct enforcement without the need for a legal procedure.

V. CONCLUSION

The enforcement procedure in the legal system of the Republic of Macedonia is regulated by the Law on Enforcement as a separate law (*lex specialis law*). It regulates the principles of the enforcement procedure, the subjects of enforcement, responsibilities of the entities in the enforcement procedure, conditions for appropriate enforcement agent, enforcement titles, proposal for enforcement, realization of enforcement, enforcement activities, and etc.

The Law on Enforcement regulates the rules according to which the enforcement agents act in order to forcibly enforce: court decision for fulfillment of an obligation, unless otherwise stipulated by another law; decision passed in an administrative procedure for fulfillment of monetary obligation, unless otherwise stipulated by another law; and notarial titles and other enforcement titles stipulated by another law.

The enforcement procedure is a legally regulated procedure for several participants (the competent authority, the parties and other participants). It is a separate civil procedure. The enforcement procedure includes the procedural actions undertaken under certain conditions and in a particular form.

Ground for enforcement is the enforcement title. Without existence of an enforcement title, no forcible enforcement can be carried out. The enforcement title is a public document that determines the existence of the claim, its due, and the identification of the parties in the enforcement proceedings in an authoritative and certain manner. The enforcement title is regularly a result of a previously terminated court procedure.

³³ Zoroska – Kamilovska T., Rakocevic M., *A General Overview of Enforcement in Civil and Commercial Matters in Macedonia*, LeXonomica, Vol. 8, No. 1, pp. 29-49, June 2016, p. 37.

³⁴ Article 3, paragraph 2 of the Law on Notary, Official Gazette of the Republic of Macedonia no. 72/16.

According to the Law on Enforcement, enforcement titles in Macedonian law are: an enforceable court decision and court settlement, an enforceable decision and settlement in an administrative procedure if designated for fulfillment of a monetary claim, an enforceable notary public title, a conclusion of the enforcement agent determining the enforcement costs, a decision for issuing a notarial payment order and other title considered under the law as enforcement title.

A court decision, shall be considered to be a judgment, decision payment order or other order pronounced by the courts, by the elected courts and the arbitrages. Court settlement shall be considered to be the settlement concluded before courts, the elected courts and the arbitrages.

Court settlement is an agreement in which the parties define their civil-legal relations of which they can freely dispose. It is concluded in written form in front of the competent court (in a contentious or non-contentious procedure) and it has the legal status of a final court judgment.

A decision in an administrative procedure shall be considered to be a decision or conclusion reached by a state administration body or a legal entity in the course of performing their public authorizations determined by the law, whereas a settlement in an administrative procedure shall be considered to be a settlement concluded in accordance with the Law on General Administrative Procedure. The decision and the settlement in an administrative procedure should state the fulfillment of a monetary obligation.

The notary public title shall be enforceable title if it has become enforceable according to special provision that regulates the enforceability of such title. The decision for issuing a notarial payment order becomes an enforcement title after the notary certifies it as final and enforceable.

The notary public ex officio shall put a certificate of validity of the decision with which a notarized payment order has been issued if within the deadline referred to the law does not received an objection, that is, dismissed the objection as untimely or inadmissible. The notary public shall issue a certificate of enforcement of the decision by which it is issued notary public payment order, if the deadline for voluntary fulfillment of the obligation specified expired with the solution.

A clause of enforcement or a certificate of enforceability is a condition for the enforcement of the enforcement procedure. An enforceable clause is an official certificate from a competent authority (court or other authority) that the particular document is an enforcement title. The clause of enforcement confirms that the decision is valid and that the deadline for voluntary fulfillment of the obligation has expired. Enforceability clause constitutes a procedural prerequisite for the procedure for execution.

The enforcement agents are established as a separate legal profession with the highest standards in terms of legal and professional background and appropriate process of selection. At the very beginning there were numerous dilemmas and controversies regarding this radical reform. Enforcement agent has a central role, authorities and duties in Macedonian enforcement procedure. Their authorizations and duties are determined by law. The enforcement agent is competent to conduct the enforcement. He has no jurisdiction in the decision of the enforcement titles.

The legal system of the Republic of Macedonia has a modern concept of enforcement law. In the Macedonian legislation enforcement titles are a legal category that is *numerus clausus* specified in the law. Enforcement titles actually guarantee safe and complete fulfillment of the creditor's claim. Therefore, in the legal system, it is particularly important to have enforcement titles that will authoritatively determine the creditor's claim.

It can be concluded that the enforcement titles in the Macedonian law are completely normed. In the Macedonian legal system, they are firm guarantee for the fulfillment of the

creditor's obligation. In addition, the existence of the enforcement act is a "security" or "guarantee" for the creditor. In the existence of an enforcement title, the debtor is aware that his obligation can be fulfilled by enforcement. Yet, it allows the debtor to voluntarily fulfill the obligation.

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