



**THE NEW LAW
ON ENFORCEMENT
AND SECURITY
PROCEEDINGS**

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The new Law on Enforcement and Security Proceedings – a clearer division of competencies between participants in proceedings and their status in the Serbian legal system

Adoption of the Law on Enforcement and Security Proceeding in 2011 was of great significance for the Serbian legal system, partly due to introduced novelties in the course of enforcement proceedings, as an important stage in realization of creditors' rights, and also for having introduced a new judicial profession hitherto unknown in Serbian law - enforcement officers (in practice referred to as private enforcement officers).

After more than three years of application of this law it has been noticed that numerous deficiencies could not be remedied by partial changes, only by the adoption of new law as a whole.

The new Law on Enforcement and Security Proceeding was adopted on December 18th 2015. Considering that it has introduced many changes, implementation of the law has been postponed until July 1th 2016.

The new law primarily aims to eliminate deficiencies of the existing law: achieving a compromise between effective implementation of the enforcement process and harmonization of court practice; broadening of enforcement officers' powers; greater possibility of judicial control over the work of enforcement officers; clearer definitions of legal solutions in order to avoid ambiguities in practical judicial application; clearer definition of the status and role of enforcement officers.

For existing and future creditors certainly the most significant amendment relates to distribution of powers in the enforcement proceedings between the Court and enforcement officers (which the new Law now refers to as the public enforcement officers). Unlike the current legislation, which incorporates the principle of competence parallelism between the Court and enforcement officers, the new Law introduces substantial changes. In this respect, a distinction is made between the competence to render decisions on initiating enforcement proceedings and the competence for actions settling the creditor (the process of execution).

Regarding the decision on initiation of enforcement proceedings, the new Law endorses the solution provided in the existing law which stipulates that the court has jurisdiction to initiate proceedings, except in the case of claims resulting from communal services and related activities).

Significant changes were made regarding the competence in the second stage of enforcement procedure (the process of execution). In fact, at this stage of the enforcement procedure, the competence of the court is significantly reduced, so that the court will be now only be responsible for the execution of joint sale of movable and immovable property in order to fulfill obligations which do not consist of monetary giving, enforcement of decisions regarding family matters and returning an employee to work. In all other cases enforcement officers will be in charge.

In accordance with modifications to existing distribution of competence, the new Law in its final provisions provides that in case the decision on execution is abolished and enforcement officers are exclusively competent, an enforcement creditor shall within 15 days from the abolition date nominate an executor to carry out the execution, otherwise enforcement proceeding will be suspended.

Also, regarding the competence in the enforcement proceeding, the new law in transitional and final provisions regulates a well-known issue that has emerged in practice - whether enforcement officers may be engaged in cases in which the enforcement proceedings were initiated prior to the introduction of enforcement officer profession into Serbian legal system.

On this issue and in such cases, the new Law provides that creditors are under an obligation, within time interval from May 1st 2016 until July 1st 2016, to state whether they are willing for an execution to be conducted by the court or an enforcement officer. It should be emphasized that this is an obligation of enforcement creditors; if creditors do not provide a statement regarding this issue within the stipulated deadline, the court will suspend enforcement proceedings.

Apart from the allocation of competences between the court and the enforcement officers, very significant changes of the new Law refer to the possibility of seeking legal remedies against decisions issued during enforcement proceedings. The currently applicable law knows of only one remedy, making an objection against a decision of the court. The main drawback of the applicable law is the fact that the court which made a disputed decision also decides on subsequent objection to it, although in a different composition. In this sense, it has been very difficult to establish uniformity of judicial practice, as every court on the same issue formulated in practice its own view, at its own discretion, without taking the practice of other courts into consideration. This issue has become problematic in first months of implementation of the applicable law.

In order to eliminate this serious deficiency, the new Law reintroduced the appeal mechanism, which is a right guaranteed by the Constitution. In this respect, the new Law makes a distinction between the decision on execution issued on the basis of a) executive title, and b) on the basis of an authentic document. Against execution decision issued on the basis of executive title only remedy is an appeal that may be filed by an enforcement debtor, also by an enforcement creditor if the court refuses or rejects the motion for enforcement. In the case of execution based on an authentic document, the main remedy is (as until now) making an objection against a decision of the court.

The key change was made with the possibility of annulling an objection decision from the execution decision. The new Law provides that an appeal may be submitted against an objection decision, irrespective of whether an objection is allowed or rejected. It is understood that in both cases an appeal will be considered by a higher court, depending on specific jurisdiction of the court of first instance.

Finally, significant changes were made with respect to the legal status of enforcement officers. The new law seeks to determine legal position of enforcement officers in accordance with the legal nature of work they perform. Until now, enforcement officers have been quite erroneously regarded as proxies of enforcement creditors, and that they should only take into account interests of a creditor who hired them. However, enforcement officers do not derive their authority to act from the authority given by creditors, but directly from the law. Therefore, enforcement officers should protect public, not private interest. The new Law seeks to strengthen control over the work of enforcement officers, by Ministry of Justice and the Chamber of Enforcement Officers with respect to their legal status, and also by exercising judicial control over decisions enforcement officers make.

The new Law on Enforcement and Security Proceeding established high goals. The primary stated aim of the Law is to remove the shortcomings of the existing law, in order to efficiently carry out the enforcement procedure, not to the detriment of legal certainty and without putting the rights of parties in jeopardy. There is a sufficient time interval until the new Law enters into force, in which existing and future creditors and debtors (as well as their attorneys) should familiarize themselves with the adopted changes.

It is difficult to assess before the implementation whether the new Law will achieve its pre-set goals, but certainly with correct application of the Law the results should become visible.

At this point the only certainty following the adoption of the new Law is the increase cost of enforcement procedure due to broadened competence of enforcement officers. The practice has shown that costs associated with hiring enforcement officers are substantially higher than costs of execution carried out by the Court. As a result, the new legislative solutions are likely to necessitate a revision of current enforcement officers' tariffs, fees and compensation costs.



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