

June 2016

In focus: Law on Enforcement and Security

On December 18th 2015, the National Assembly of the Republic of Serbia adopted the Law on Enforcement and Security Proceedings (hereinafter: the “Law”), which enters into force on July 1st 2016, except for provisions of the Law relating to the obligation of the Chamber of public enforcement officers and the competent minister to adopt regulations for the purpose of implementing the Law, which became applicable as of December 29th 2015.

The primary goal of this new Law is to create a normative framework which shall regulate the enforcement procedure in a comprehensive, clear and consistent way and remove ambiguities and different interpretations that have emerged in practice during application of the existing Law on Enforcement and Security, by reaching a compromise between the efficiency of the enforcement procedure on the one hand and protection of the rights of parties and legal security on the other hand.

In this regard, the provisions of the Law extend the competence of public enforcement officers and at the same time more specifically define their status, duties and powers, offer a clearer division of powers of public enforcement officers and the court in the enforcement procedure, as well as an efficacious control of the work of public enforcement officers, and re-introduction of the institute of appeal as a regular legal remedy in the enforcement procedure.

Below are some of the most important novelties introduced by the new Law:

1) Division of competence between the court and public enforcement officer

The competence to decide on the proposal for enforcement or security, as well as the competence to conduct enforcement, has been clearly defined by the Law. Both the new and existing law prescribe the competence of the court to decide on the proposal for enforcement based on an executive or credible document, as well as on the proposal for security, except in the case w of a proposal for enforcement based on an credible document for the purpose of settling monetary claims incurred from utility services and related activities, wherein the same is decided by the public enforcement office.

One of the most important novelties brought by the new Law is a significant reduction in the court's jurisdiction to carry out enforcement, and that in most cases, the same shall be in the exclusive competence of the public enforcement officer.

Namely, the Law prescribes that the court shall from now on be exclusively competent to conduct enforcement only in the following cases: enforcement through the joint sale of real-estate and movables; enforcement of receivables in the form of acting, non-acting and tolerance; enforcement of executive documents

concerning family relations, and enforcement for returning an employee to work.

The Law prescribes the exclusive competence of public enforcement officers for the conduct of all other executive documents, such as the decision on enforcement based on a credible document, the decision on adopting the preposition for counter enforcement and the decision on enforcement of the decision on court imposed penalties.

The enforcement creditor is obliged to indicate the specific and territorially competent public enforcement officer who will conduct enforcement. The public enforcement officer may not refuse a request for conducting enforcement, except in the case of his unavailability.

2) Principle of formal legality

The Law now expressly provides that the court is not authorized to examine the legality and regularity of an executive instrument, thereby eliminating dilemmas in court practice on the issue of whether the court may, in some cases, examine the legality and regularity of the executive document when it is obvious that it is contrary to public policy, compulsory regulations or morality.

3) The appeal and complaint

The most important novelty of the new Law on Enforcement and Security is the introduction of the appeal as a regular legal remedy, which **provides for two instances in the enforcement procedure**, unlike the former legal solution which, provided the complaint as the only remonstrative

remedy which is decided by the council of the first instance court.

An appeal is used to refute a decision by the first instance court or public enforcement officer, unless the Law specifies that an appeal is not allowed, or that such a decision is contested by a complaint.

a. Appeal against the decision on enforcement based on an executive document

The Law provides for an appeal against the decision on enforcement on the basis of and executive document which is submitted within 8 days from receipt of the decision, and which is decided on, depending on the type of proceedings, by the higher court or the Commercial Appellate Court, within 15 days from receipt of the appeal, response to the appeal and the case files. The Law also expands the number of grounds for appeal, giving the appellate court wider powers to examine the contested decision, with the intention of making a correct and lawful decision, since that is the last legal remedy that the parties have. As a rule, an appeal does not delay enforcement of the decision.

b. A complaint as a regular legal remedy against decisions of the court on the proposal for enforcement on the basis of an executive document

The new Law has kept the existing solution in terms of determining the complaint as a legal remedy against the decision of the court on proposal for enforcement based on a credible document, as well as deciding on the same by a tripartite council of the same court. The novelty in this Law is the right of parties to submit an appeal to the

second instance court on a ruling which decides on the complaint. A complaint against the decision on enforcement based on a credible document delays the enforcement until validity, unless the same was made on the basis of a bill of exchange.

4) Removing the institute of declaration of assets and introducing new powers for the enforcement creditor

The new Law has not provided for the institute of declaration of assets given that the same proved to be an ineffective tool in the process of enforcement because it did not enable enforcement creditors to obtain information on the assets of enforcement debtors in a faster and simpler manner. Instead of a declaration of assets, the Law imposed the duty of state bodies of public authority holders to deliver without charge all the information requested by enforcement creditors and their proxies, and which are related to the assets of enforcement debtors.

5) Delaying enforcement

The Law reintroduces into the legal life the institute of delaying enforcement. The possibility of delay exists in four cases: at the proposal of an enforcement creditor, upon agreement of the parties, at the proposal of an enforcement debtor and at the proposal of a third party. The decision on delaying comes into effect from the moment of its adoption.

6) Temporary injunctions

Also important are novelties in the field of temporary injunctions, and at this point we highlight some of the most important.

Above all, temporary injunctions can be used to secure claims from condemnatory requests, are requests for the adoption of declarative and constitutive court decisions, whereby the Law puts an end to the previous fluctuation of court practice when interpreting whether the above requests (declarative and constitutive) may be secured by temporary injunctions.

Also, the Law now provides the following as mandatory elements of the proposal for determining a temporary injunction: specifying the type of temporary injunction, its duration, determining the proposal and means by which the temporary injunction is carried out, as well as indicating the specific territorially competent public enforcement officer who conducts enforcement. The intention of the legislator is, through the decision on temporary injunction, to factually constitute a decision on conducting enforcement, all in order to ensure the efficiency of the procedure for securing claims.

7) Costs of the procedure

The costs of the enforcement procedure are previously borne by the enforcement creditor who is obliged to advance the court or the public enforcement officer for expenses of the enforcement procedure, in the manner, amount and term defined by them. The enforcement creditor will no longer have to pay the full amount of costs for determining and conducting enforcement to the court and the enforcement officer, but costs are now paid only to the entity conducting enforcement. The public enforcement officer determines the advance of costs according to the Tariff of public enforcement officers.

8) Transitional and final provisions

The law provides that enforcement proceedings which began before the entry into force of this Law shall continue under the applicable Law.

Enforcement creditors in whose favor, prior to the commencement of work of public enforcement officers in the Republic of Serbia, an executive decision was rendered on the basis of executive or credible document or a decision on security and who, on May 1st 2016 are still conducting the enforcement procedure or security procedure, are obliged to, in the period from May 1st 2016 to July 1st 2016, state whether they are willing to have the enforcement carried out by the court or public enforcement officer. If they do not declare within the specified time, the procedure shall be terminated..

Disclaimer: The text above is provided for general guidance and does not represent legal advice.

Copyright Cvetkovic, Skoko & Jovicic 2016