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JUDICIAL SYSTEM



NOMIKI BIBLIOTHIKI

ENFORCEMENT OF DOMESTIC JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS

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I. GENERAL INTRODUCTION

Which are the sources of Greek enforcement law?

Greece has a statutory legal system. The corpus of Greek Law regarding enforcement of judgments is in the eighth book of the Greek Civil Procedure Code (Art. 904-1054), which includes provisions on the methods and means of enforcement, as well as rules applicable to each. Some special laws introduce specific provisions for the enforcement of domestic judgments based upon the nature of the creditor. The most notable and important special laws are:

- the Code of Collecting Public Revenue (Legislative Decree 356/1974) which applies when the Greek State is the Creditor/Claimant.
- Legislative Decree of 17.07.1923 which applies when the Creditor/Claimant is either a Bank operating in Greece or a corporation (Greek Société Anonyme or foreign company) that has acquired a special licence from the Greek State

Greek enforcement law has been radically amended in recent years (Law 4335/2015, Law 4472/2017 and Law 4512/2018). The expressed aim of these amendments is to speed up and increase the efficiency of enforcement by simplifying the execution proceedings, by consolidating the judicial review procedure and by introducing electronic auctions.

Which is the subject matter of the Greek enforcement law?

The subject matter of the Greek enforcement Law can be divided in three main categories:

- The general requirements to every enforcement procedure.
- The enforcement proceedings per se, which differ depending on the nature of the creditor's claim.
- Judicial Review of the enforcement procedure

II. GENERAL REQUIREMENTS

Which are the general requirements for enforcement?

Any enforcement has to meet specific criteria regarding: (a) the executory title, (b) the enforced claim and (c) the parties to the enforcement.

What are executory titles?

Executory titles are the documents that incorporate claims capable of being materialized through enforcement proceedings. Executory titles include (Art. 904 Civil Procedure Code):

(a) Domestic Judgments, (b) Arbitral Awards, (c) Settlements and Court Costs allocations ratified by Greek Courts, (d) Notarial documents, (e) Orders of payment rendered by Greek judges, (f) Enforceable foreign titles (including foreign Judgments and foreign Arbitral Awards), g) Other orders or acts deemed enforceable by statute.

Under which conditions does a domestic Judgment constitute an executory title, i.e. is per se enforceable?

A domestic Judgment falls under the category of executory title when:

- The Judgment orders some kind of performance by the Claimant, i.e. the Judgment grants to the Claimant coercive relief. On the other hand Declaratory Judgments, which merely declare the existence or non-existence of a legal relationship, as well as Constitutive Judgments, which per se create or modify legal relationships (e.g. Divorce Judgment), do not constitute executory titles and are thus excluded from enforcement.
- The Judgment is Final, i.e. the Judgment is not subject to ordinary methods of review (e.g. Appeal) and thus it is a formal *res judicata*.
- Non-Final Judgments are by default non-enforceable and they do not fall under the category of Executory Title. However, non-Final Judgments can be declared as provisionally enforceable by an explicit court order under certain conditions (Art. 907-914 Civil Procedure Code). On some occasions, i.e. claims regarding (a) return of possession in leased chattel/premises by the lessee, (b) overdue rent, (c) bills of exchange, promissory notes and cheques, (d) overdue salaries and (e) maintenance (e.g. alimony, child support etc), the declaration of provisional enforceability is obligatory for the court (Art. 910 Civil Procedure Code). The provisional enforceability can be suspended by means of a Court Order provided that the non-Final, provisionally enforceable Judgment has already been admissibly contested with an opposition against default or with an appeal (Art. 912 Civil Procedure Code).

Which claims can be enforced?

Any pecuniary or non-pecuniary claim that has been granted by Court can be enforced provided that (negative prerequisites):

- The claim does not depend on a suspensive condition or a term (Art. 915 Civil Procedure Code). In case that the claim is depended on conditions, such must be proven by documents.
- The claim has been definitely defined in quantity and quality by the Executory Title (Art. 916-917 Civil Procedure Code).

Who is party to the enforcement procedure?

Entitled to the enforcement of a Judgment are (Art. 919 and 921 Civil Procedure Code): (a) the claimant, (b) his heirs and (c) his successors.

Subject to the enforcement of a Judgment are (Art. 919-921 Civil Procedure Code):

(a) the defendant, (b) his heirs and (c) his successors, (d) each general partner in case the Defendant is a partnership.

Can a Judgment against the Greek or a foreign State be enforced?

Yes. In general any Judgment can be enforced against any private (but not public e.g. public buildings) assets of the Greek State.

Any enforcement against a foreign state requires the prior consent of the Greek Ministry of Justice (Art. 923 Civil Procedure Code).

III. ENFORCEMENT PROCEEDINGS IN GENERAL

Which are the main Stages of the enforcement proceedings?

The main stages of the enforcement proceedings include: (a) **Initial Proceedings**, which are common in every enforcement procedure and (b) **Main Proceedings**, which differ according to the nature of the claim.

Are the Methods of enforcement common for all Claims?

No. Greek Law provides for several methods of execution primarily based on the nature of the creditor's claim. Each of these methods is activated by special means, applied to the particularities of the enforced claim. The main distinction is made between non-pecuniary and pecuniary claims. A common but nevertheless subsidiary method of enforcement is the Oath of Manifestation (Art. 952 Civil Procedure Code), which is available upon failure of the other enforcement proceedings: In case that the creditor is not able to satisfy his pecuniary or non-pecuniary claim through the main proceedings, the debtor may be forced by Court to take an oath regarding the location and the value of his property. Failure to take such oath or perjury may result in imprisonment.

IV. INITIAL PROCEEDINGS

What is required for the commencement of an enforcement procedure?

The following are required for opening an enforcement procedure:

- The creditor must obtain a certified copy of the enforceable instrument (i.e. Judgment) from the competent authorities (i.e. Court). The certified copy bears the executory formula, i.e. an official command addressed to all competent court enforcement officers and other law enforcement personnel to execute the instrument to be enforced (e.g. Judgment) in the name of the Greek people (Art. 918 Civil Procedure Code).

- The creditor must pay fees for the issuance of the above certified copy, equal to 1.5%-3.6% of the total amount of the Claim, depending on its nature (i.e. commercial, civil etc).
- The creditor must serve the debtor with a certified copy of the Judgment along with a formal notice inviting him to voluntary execution within a term of three working days. The creditor is not allowed to proceed with any other enforcement measures during the above term. This service marks the official commencement of the enforcement proceedings (Art. 924 and 926 Civil Procedure Code).
- Anytime between three working days and one year after the service of the formal notice to the debtor, the creditor may initiate the main phase of the enforcement proceeding by officially instructing a court enforcement officer (bailiff) to proceed with enforcement (Art. 927 Civil Procedure Code). This marks the commencement of the main phase of the enforcement procedure.

V. MAIN PROCEEDINGS FOR NON-PECUNIARY CLAIMS

Which are the methods of enforcement for non-pecuniary claims?

The Greek Law follows the principle of execution in natura, which in effect results in specific performance. The main methods of enforcement for specific performance are:

- **Obligation to deliver a particular movable thing or fungible goods** (Art. 941-942 Civil Procedure Code).

Procedure is carried out exclusively by a court enforcement officer (bailiff), without any judicial intervention. The bailiff is vested with the authority to dispossess the debtor of his possession and put the property/goods in the possession of the creditor.

In case that a movable thing is not found in the place of execution, the debtor is obliged to take a relevant oath of manifestation, certifying that he is neither in possession nor aware of the location of the object.

In case that fungible goods are not found in possession of the debtor, the creditor may claim compensation for non-performance.

- **Obligation to deliver specific immovable property/aircrafts/ships** (Art. 943 and 944 Civil Procedure Code).

Procedure is carried out exclusively by a bailiff, without any judicial intervention. The bailiff is vested with the authority to dispose the debtor of his possession and put the property in the possession of the creditor.

- **Obligation to deliver a child** (Art. 950 Civil Procedure Code).

These rules apply when the debtor is obliged to deliver to the creditor a child based on a family law claim (e.g. parental care or custody). In case the debtor refuses to deliver the child, the former may be fined with an amount up to 100,000 €. In case the child is not found in the place of execution, the debtor is obliged to take a relevant oath of manifestation, certifying that he is not aware of the location of the child.

- **Obligation to perform a specific fungible act** (Art. 945 Civil Procedure Code).

These rules apply when the debtor is obliged to perform an act that can be performed by a third party. In case that the debtor does not perform the act, the creditor is entitled to have the act performed by any third party, on the expense of the debtor (substitute performance). In such a case the creditor may seek reimbursement for the relevant expenses through a separate claim against the debtor, which will be enforced as any other pecuniary claim. Furthermore, the court may, at the creditor's request, specify in advance, i.e. upon ordering the performance of the specific fungible act, the expenses of a substitute performance, so that the creditor will not need to raise a separate claim.

- **Obligation to perform a specific infungible act** (Art. 946 Civil Procedure Code).

These rules apply when the debtor is obliged to perform an act which cannot be performed by third parties (i.e. personal obligations such as a performance from a renowned artist, disclosure of information etc). The court that ordered the specific performance of the infungible act can also order, in case that the debtor does not abide by the Judgment, (i) the payment of a fine up to 50,000 € in favour of the creditor and (ii) the debtor's imprisonment up to a year. The enforcement for infungible acts is expressly excluded for (a) the restitution of marital cohabitation, (b) in case that the debtor's refusal to perform the act is based on a reasonable cause.

- **Obligation to tolerate or omit a certain act** (Art. 947 Civil Procedure Code)

These rules apply when the debtor is obliged not to perform or to oppose a certain act (e.g. obligation to desist trademark infringement). The Court that ordered the toleration/omission of a certain act can threaten the debtor, in case that he does not abide by the Judgment, (i) with a fine up to 100,000 € in favour of the creditor and (ii) with imprisonment up to a year for each violation. In addition, the Court may subject the debtor to a guarantee for the omission or tolerance of the act, at the request of the creditor. However, the final adjudication of these penalties requires a separate Judgment, which certifies the breach of the prohibitory order and subjects the debtor to such penalties.

- **Declaration of will** (Art. 949 Civil Procedure Code)

In some cases a Judgment may order a debtor to provide a declaration of will regarding a contract (in practice to accept an offer to a contract), e.g. one party seeks to enforce a preliminary contract that aims at the formation of a final contract and the Court issues a Judgment which replaces the debtor's approval. As soon as such Judgment becomes *res judicata*, the debtor is deemed to have accepted the contract and the creditor may initiate enforcement which results in the formation of the sought final contract.

VI. MAIN PROCEEDINGS FOR PECUNIARY CLAIMS

How can a pecuniary claim be enforced?

Any money claim can be satisfied through forced liquidation of the debtor's assets.

Can other creditors participate in the proceedings for pecuniary claims?

Yes. Other creditors with mature claims can join the process of forced liquidation by announcing their claim to i) the competent notary public who is administering the public sale, the debtor and ii) the creditor who is enforcing the liquidation (leading creditor). Creditors who have announced their claims are entitled to participate in the distribution of the proceeds and may also intervene in any judicial review process or even take the initiative of the enforcement proceedings in case that the leading creditor abandons the process.

Which are the stages for the enforcement for pecuniary claims?

The main stages are:

- Attachment of assets
- Intervention of other creditors
- Liquidation of assets-public auction
- Distribution of proceeds

What kind of assets can be attached?

Almost any type of asset can be attached. The main categories include:

- **Movable property** (Art. 953 Civil Procedure Code).
Any kind of movable property in the possession of the debtor can be attached. However movable property which (a) is absolutely necessary for the sustenance of the debtor and his family and/or (b) is necessary for the practice of a profession/ for labour of any debtor who thus earns his living, is exempt from attachment. The attachment procedure includes dispossession of the debtor by a bailiff and delivery of the property to a custodian until liquidation.
- **Immovable property/Ships/Aircrafts** (Art. 992 et seq. Civil Procedure Code). Subject to attachment are (a) any immovable property, ships/aircraft owned by the debtor and (b) any other in rem rights of the debtor over immovable property, provided that the former may be separated from ownership (e.g. usufruct). The attachment procedure includes drafting of a formal legal document by a bailiff (writ of attachment) which is then transcribed in the relevant land registry or cadastre. The immovable property/ in rem right is put into custody until liquidation.
- **Claims and movable property in the possession of a third party (Garnishment)** (Art. 982 et seq. Civil Procedure Code).
Any claims that the debtor has towards third parties (e.g. bank deposits, owed fees rents etc) may be attached through garnishee proceedings. The same applies for movable property owned by the debtor but in the possession of a third party. Expressly excluded from garnishment are certain claims necessary for the sustenance of the creditor (e.g. wages, pension etc) provided that the creditor's own sustenance is not in danger (e.g. claim for maintenance-child support etc).

Garnishee proceedings are initiated when the creditor serves through a bailiff to any third party a relevant official document, by virtue of which the latter is requested to disclose before Court any relevant claims/movable property owned by the debtor. In such a case the third party is prohibited from disposing of the attached claim/movable property. These rules apply for dematerialized securities traded in a market, e.g. paperless shares, paperless bonds etc. However, paper securities, including paper registered shares (see Art. 2 para 1 Law 1818/1951) follow the rules of attachment of movable property.

- **Other Assets** (Art. 992 et seq. Civil Procedure Code).

Assets that cannot be attached through any of the above methods (e.g. intellectual property rights, patents, etc) can be attached through a special court order, which specifies all the suitable means for effectuating attachment and liquidation.

What is the process for liquidation?

Liquidation is effected primarily through a public sale procedure which is administered by a notary public (compulsory auction). All compulsory auctions are held between 7 and 8 months after attachment.

Since 21.02.2018 all compulsory auctions are conducted exclusively through electronic (online) procedures (e-auctions), i.e. compulsory auctions do no longer require the physical presence of the participants. The online platform for e-auctions is <https://www.eauction.gr>. Candidate bidders can participate in the bidding process provided that i) they have registered with the electronic platform, ii) they have declared their intention to participate in a specific auction, which is posted in the platform and iii) they have provided a guarantee deposit or a cheque or a letter of guarantee equal to 30% of the starting bid. The starting bid is set at 2/3 of the commercial value of the auctioned assets, which are appraised by the bailiff or by experts hired by the bailiff.

The conducted electronic auctions are of open bidding type during which successive bids are submitted. The participating candidate bidders are to continuously place a higher bid than the timely last submitted bid until the expiration time of submission bids.

After the expiration of bid submissions, and according to foreseen time-limits, the competent notary public (auction employee) redacts a report, stating the successful tenderer (act of adjudgment).

Ownership passes to the successful tenderer as soon as the property is either delivered to him (movables) or the act of adjudgment is transcribed in the relevant public registry (immovables/ships/aircrafts).

How are the proceeds distributed?

The proceeds are distributed to all the creditors who participated in the liquidation process.

In case that the proceeds, after deducting the costs and expenses of the enforcement proceedings, are less than the total claims of the participating creditors, then they are proportionally distributed. However certain categories of creditors have priority over the proportional distribution as follows:

- Claims for wages and personal maintenance, claims of the State and of other public entities have a minimum priority on 25% of the total proceeds.
- Secured claims (mortgage, prenotation of mortgage, pledge) as well as claims regarding the maintenance of the property have a minimum priority on 65% of the total proceeds.
- Unsecured claims have a minimum priority on 10% of the total proceeds.

A recent provision (Art. 977a Civil Procedure Code) has changed the above priorities in favour of claims for wages (super-priority) and secured claims, provided that all claims against the debtor were raised after 17.01.2018.

Does the Greek enforcement Law provide for debtor's imprisonment for failure of payment?

Yes but on a limited scale. Imprisonment is expressly excluded for failure to meet contractual obligations and is practicably limited to tort case. Imprisonment can be ordered only by a special court judgment (Art. 1047 et seq. Code of Civil Procedure).

Does the Greek enforcement Law provide for receivership?

Yes. Receivership, i.e. compulsive administration by a third party, is possible for any immovable property or business owned by the debtor. Receivership can be ordered only by a special court judgment (Art. 1034 et seq. Civil Procedure Code). In practice receivership is rare because of the prior application of bankruptcy proceedings.

VII. JUDICIAL REVIEW

Can the Debtor contest the enforcement proceedings?

Yes. The Debtor is granted with a general legal remedy known as Opposition to enforcement (Art. 933 Civil Procedure Code). The grounds of Opposition to enforcement may include: (a) inefficiencies of the executory title, (b) irregularities in the execution proceedings and (c) objections referring to the creditors' right to enforcement. It should be noted that an Opposition to enforcement is inadmissible to the extent that it includes objections that fall under the *res judicata* of the enforced Judgment. Furthermore, an Opposition to enforcement is subject to strict time and procedural restrictions. An Opposition to enforcement follows simplified procedural rules which aim at a quick resolution of any relevant disputes so as not to stall the enforcement proceedings. A successful Opposition to enforcement leads to cancellation of all the enforcement proceedings and gives a right to the Debtor to request the reinstatement of any property affected by the enforcement (Art. 914 Civil Procedure Code).

Can the Debtor suspend the enforcement proceedings?

Yes. The Debtor may request suspension of the enforcement proceedings from the competent court. However, the Debtor's right to request suspension has been significantly re-

stricted by the latest amendment of the Civil Procedure Code with the expressed aim to speed up the enforcement process.

Can third parties contest the enforcement proceedings?

Yes. Any third party affected by the enforcement proceedings (e.g. the creditor attaches movable property that is in the possession of the Debtor but that owned by a third party) has the right to oppose the enforcement with a relevant legal remedy. (Art. 938 Civil Procedure Code).

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