

Overview of Legal Remedies in Croatian Enforcement Proceedings

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Overview of Legal Remedies in Croatian Enforcement Proceedings

Debtor's appeal

Challenged decision: writ of execution based on *enforcement title document*

Legal grounds: 1. lack of enforcement title; 2. lack of enforceability; 3. enforcement title document was repealed, annulled, altered or otherwise put out of force; 4. if the parties have agreed in an official document or a document legalised by a notary public that the creditor shall not seek enforcement; 5. if the period for enforcement has expired; 6. object exempted from enforcement, or on which enforcement is limited; 7. creditor is not authorised to seek enforcement on the basis of an enforcement title document or against the debtor; 8. condition in the enforcement title document is not fulfilled; 9. the claim has ceased; 10. the realisation of the claim is prevented due to the later fact; 11. the claim from the enforcement title document is time barred. (After the deadline expired under grounds 7, 9-11 where that ground could not have been justifiably raised within the deadline for appeal.)

Court assessment *ex officio*: grounds 1, 3, 5 and 6 (for *res extra commercio* and claims arising out of taxes and other levies), as well as erroneous application of substantive law and substantial violations of the enforcement procedure.

Deadline to appeal: 8 days.

Suspension of enforcement: no.

1) Adjudicating on the Debtor's appeal

1a) If the 1st instance court holds the appeal is **founded**, it may alter the writ of execution either fully or partially and reject the motion for enforcement, or repeal the writ of execution and dismiss the motion for enforcement or declare that it does not have subject-matter or territorial jurisdiction and assign the case to the competent court, within 30 days.

1b) If the 1st instance court holds the appeal is **unfounded**, it forwards the case to the 2nd instance court within 30 days.

1c) The 2nd instance court awaits for 8 days for the debtor's response and rules within 60 days taking into account the situation at the time when the ruling is issued.

2) Instruction to Commence Litigation Proceedings

Where appeal is based on grounds 7 or 9-11, the 1st instance court has to service the appeal to the creditor, so that he could respond within 8 days, and then decide on it.

2a) If the creditor acknowledges the reasons for the appeal, the enforcement is terminated.

2b) If the creditor disputes the reasons or fails to respond, the 1st instance court instructs the debtor to initiate, within 15 days, litigation seeking a ruling that the enforcement is impermissible.

2c) If debtor proves the appeal grounds by public document or by the facts which are generally known or may be established by applying the rules on legal presumptions, the 1st instance court upholds the appeal and suspends the execution.

Debtor's motion for suspension

Challenged decision: writ of execution based on *enforcement title document* or *trustworthy document*

Conditions: probability that enforcement would cause him irreparable damage or nearly irreparable damage or to prevent violence

Legal grounds: 1. legal remedy filed against enforced decision; 2. motion for *restitutio in integrum* or a motion for retrial concerning enforced decision; 3. an action to set aside enforced arbitration award; 4. an action to repeal or annul the enforced settlement or a notarial deed; 5. the debtor appealed against the writ of execution or commenced the litigation; 6. the debtor appealed against a ruling confirming enforceability of the enforcement title document or made a motion for the retrial; 7. the debtor or a party in the proceedings seeks rectification of irregularities in the course of enforcement; 8. enforcement, under the enforcement title document, depends on simultaneous fulfilment of an obligation by the creditor, and the debtor refuses to fulfil his obligation because the creditor has not fulfilled his obligation or shown any willingness to do so simultaneously; 9. the Croatian Government declared a state of disaster and on that day the debtor is resident or seated on the respective territory; 10. there is ongoing *ex officio* criminal proceedings on the claim being enforced.

Creditor's motion for suspension

Challenged decision: writ of execution based on *trustworthy document*

Conditions: only once and provided that the enforcement has not commenced.

Third party's motion for suspension

Challenged decision: writ of execution based on *trustworthy document*

Conditions: the person has sought declaration that enforcement on an object is impermissible, makes probable that he would suffer irreparable or nearly irreparable harm, and commences related litigation.

Adjudicating on motion to suspend

a) The suspension sought by the debtor or third party may be conditioned by providing security.

b) If the creditor accepts suspension or both of them agree with a third party, the court orders suspension without deciding whether conditions are met.

Legal remedies against enforcement

Remedy against the writ based on enforcement title document

Suspension of enforcement

Remedy against the writ based on trustworthy document

Counter-enforcement

Objections by third parties

Debtor's motion for counter-enforcement

Conditions: after the enforcement has been completed

Legal grounds: 1. the enforcement title document is repealed, altered, annulled, put out of force or otherwise without effect; 2. the creditor's claim was settled by the debtor outside the court during enforcement proceedings so it is settled twice; 3. the writ of execution is repealed and the motion for enforcement is dismissed or rejected, that is, the writ of execution was altered by a legally effective decision; 4. the enforcement on an object was declared impermissible.

Deadline: 3 months from becoming aware, but not later than 1 year from completing the enforcement.

Debtor's objection

Challenged decision: writ of execution based on *trustworthy document*

Legal grounds: 1. the same as in case of debtor's appeal if objection is raised only against the part ordering enforcement. (After the deadline expired under grounds 7, 9-11 where the fact has occurred after the writ of enforcement has been issued.); 2. the same as for objecting to the payment order, if objection is raised against the part ordering the payment (or the entire decision).

Deadline to appeal: 8 days.

Suspension of enforcement: no.

Adjudicating on the Debtor's objection

a) If the writ is objected against only in the part ordering enforcement, proceedings continue as in case of debtor's appeal.

b) If writ is objected against in its entirety or in part ordering the payment, the court puts the writ out of force and the proceedings continue as in case of an objection against the payment order. In situations where the objection concerns only a part of the payment order, the other part becomes final and the enforcement is carried out.

Third party's objection on impermissibility

Challenged decision: writ of execution based on *trustworthy document*

Conditions: after the enforcement has been completed

Legal grounds: third party is a holder of a right on an object, which is an obstacle to enforcement on that object (exception is co-ownership over moveable).

Deadline: until the enforcement is completed.

Suspension of enforcement: no.

Adjudicating on third party's objection

a) If the objection is proven by final decision, public document, or by the facts which are generally known or may be established by applying the rules on legal presumptions, the 1st instance court decides in the enforcement proceedings.

b) If the creditor fails to respond or a party challenges the objection, the 1st instance court instructs the third party to commence, within 15 days, litigation against parties to enforcement proceedings seeking declaration on impermissibility of enforcement.

This poster is prepared by **Ivana Kunda & Danijela Vrbljanac**, the Faculty of Law of the University of Rijeka, for the Poster Session: Debate about National Arrangements of Cross-border Enforcement in 12 Countries, at the conference **Corporate Entities at the Market and European Dimensions** held in Portorož (Slovenia), on 19-21 May 2016. This is an activity within the project "Remedies concerning Enforcement of Foreign Judgements according to Brussels I Recast" co-funded by the EU Justice Program.

