

EUROPEAN ENFORCEMENT ORDER FOR UNCONTESTED CLAIMS - NEW CHALLENGE FOR THE MACEDONIAN CIVIL PROCEDURAL LAW

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Abstract

As a compromise between the tendencies for greater efficiency in European civil procedures and the procedural guarantee for fair trial, the European Parliament and the Council of Europe created the Regulation (EC) No 805/2004. This Regulation is the most significant trend in the European judicial cooperation in civil and commercial matters because it creates a new system of enforcement called the European Enforcement Order for uncontested claims, which abolishes the exequatur and allows the free movement of enforcement titles on uncontested claims within the Territory of EU. The application of this Regulation in the Republic of Macedonia will be a challenge for the Macedonian civil procedural law, which will seek changes in the legislation.

Key words: Approximation, European enforcement order, enforcement titles, Macedonian Civil Procedural Law, minimum standards, Regulation 805/2004

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Introduction

The Approximation of the Macedonian Civil Procedural Law¹ to the *acquis communautaire*² is one-way process that requires changes in the Macedonian civil procedural legislation. The Regulation (EC) No 805/2004³ of the European Parliament and of the Council of 21 April 2004 (in the further text the Regulation) created the European Enforcement Order for uncontested claims (in the further text EEO) which is one of the instruments of the secondary EU law which will directly bind the Republic of Macedonia at the moment when it will achieve full EU membership⁴. Therefore, the question has been raised whether the Macedonian civil procedural law is approximated to it. The main goal of this paper will be to determine how much the Macedonian Civil Procedural Law is adjusted to this European alternative⁵ procedure, and what changes it will in future cause to the Macedonian Functional Civil Procedural Law.

The EEO⁶ was introduced for the first time in the post-Amsterdam's stage⁷ of development of European Civil Procedure Law under strong influence by the principle of mutual trust in European judicial process systems. The EEO is received in non-exclusive, non-contradictory, dispositional European procedure by which the European lawmaker for the first time eliminates *exequatur*⁸ for uncontested monetary claims in civil and commercial matters. It allows free movement of judicial and non-judicial titles that have been certified as EEO in a Member State of origin without the need for declaration of enforceability and without any possibility of opposing its recognition in the Member State of enforcement. Its application will undoubtedly ease the enforcement and increase the accessibility to justice. Macedonia wants to become a Member state of the EU, so it must adjust its civil procedural legislation to the EU's.

The adjustment⁹ to the Regulation will mainly require amendments and supplements in the Law on enforcement¹⁰, which regulates the issue of enforcement of foreign court judgments in the Republic of

- 1 On the current situation in Macedonia's civil procedural law seen in: Арсен Јаневски, Татјана Зороска Камиловска, Извршно право, (Скопје: Правен факултет Јустинијан Први, 2001) and Арсен Јаневски Татјана Зороска Камиловска, Граѓанско процесно право (Скопје: Правен факултет Јустинијан Први 2009).
- 2 More in Бернадет Бордаш, "Acquis communautaire Европске Заједнице у области меѓународног приватног права," Зборник трудова правног факултета у Новом Саду, (2009): pp. 207-228.
- 3 It is one of the instruments for judicial cooperation in civil and commercial matters and it is a result of the new political project of the Amsterdam Treaty in the EC which creates a space of freedom, security and justice in which freedom of people's movement should be assured.
- 4 The Republic of Macedonia accepts to become a full EU member. In approaching to the *acquis communautaire* on 09 April 2001 it signed the Agreement for Stabilization and Association and successfully meets the legal Copenhagen criteria.
- 5 The Use of the Regulation in the European civil procedural law is the dispositional right of the creditor, who may choose among classical enforcement, the mechanism of Regulation or any other European alternative procedure to collect his claim. This tool is not *lex specialis* in the area of enforcement of judgments in the EU.
- 6 For the first time the term European enforcement order for uncontested claims was used in 1992 during the twelfth congress of the Chamber des huissiers Nationale de Justice in Bordo.
- 7 Jan Bolt, "Procedural Laws in Europe. Towards Harmonisation," review of The Procedural Laws in Europe. Towards Harmonisation, by Marcel Storme, Maklu, 2003, 819 and Дијана Ѓорѓиева "Европски извршен наслов за неспорни побарувања" Thesis, Универзитет Св. Кирил и Методиј, 2010, p. 8.
- 8 More in Marek Zilinsky, *De Europese Executoriale Titel*. (Amstelveen: Kluwer, 2005), 242, Mikael Berglund, *Cross-Border Enforcement of Claims in the EU, History, present time and future* (Netherlands: Kluwer Law International, 2009), p. 72.
- 9 The term adjustment is more proper then the term harmonization, because the harmonization of European civil procedure law is undesirable, and also impossible. More about these terminological dilemmas in: Wendy Kennett, *The Enforcement of Judgments in Europe* (Wadham College, Oxford: 2000), 4-5, X. E. Kramer and C. H. van Rhee (eds.), *Civil Litigation in a Globalizing World*, 127, Jan Bolt, "Procedural Laws in Europe. Towards Harmonization," review of *Procedural Laws in Europe. Towards Harmonization*, by Marcel Storme, Maklu Publishers, Antwerpen/Apeldoorn 2003, pp. 821-826, Eleanor Cashin Ritaine, "Harmonizing European Private International Law: A Replay of Hannibal's Crossing of the Alps?" *Official Journal of the international Association of Law Libraries* (2006): pp. 419-439 and Magdalena, Tulibacka, "Europeanization of civil procedures: in search of a coherent approach" *Common market Law review* (2009): pp. 1527-1565.
- 10 Law on Enforcement, Official Gazette of the Republic of Macedonia No. 35/2006, 50/2006, 129/2006, 8/2007, 83/2009, 50/2010, 83/2010, 88/2010, 171/2010, 148/2011.

Macedonia and the Law on civil procedure¹¹ for the approximation of Macedonian Civil Procedural Law to the minimum standards of the Regulation. Because the Law on International Private Law¹² governs the recognition procedure of foreign court judgments in Macedonia, the question is raised how and whether the Regulation will affect it.

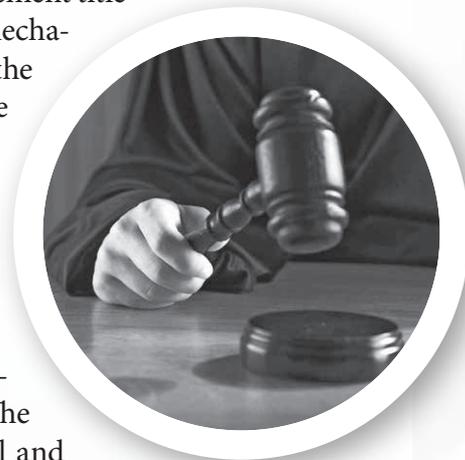
1. The concept of the legal institute European enforcement order for uncontested claims and Requirements for certification

The EEO is obtained as an aggregate term of two procedures: cognitive procedure for making judgments and a procedure for certification of certain types of national enforcement titles (judgments, court settlement and authentic instruments) as EEO. In fact, the EEO is not a supranational¹³ enforcement title of the *acquis communautaire*. It is a national enforcement title of a Member State of the EU, which after being confirmed by the mechanism of the Regulation acquires supranational effect. This means that the Certificate for EEO is a kind of European passport¹⁴ which follows the judgments, court settlements and authentic instruments and makes them universally enforceable.

The Certificate for EEO does not cause any legal effect without the judgment, court settlement or the authentic instrument. The Certificate for EEO is a procedural requirement which gives the national enforcement title a freedom of movement.¹⁵

The national enforcement title or an instrument shall meet the general and the specific requirements in order to be certified as EEO. The General requirements concern the scope of the territorial, temporal and personal application of the Regulation.

The Regulation determines its scope of application autonomously, which depends on the matter of dispute in concern and the nature of the relationship between the parties.¹⁶ It applies in civil and commercial matters, whatever the nature of the court or tribunal. The concept of civil and commercial matters should be considered as an independent notion of the national law, which may be particularly problematic in the Common Law legal systems based on so-called triple structure (civil, criminal and administrative law). That is the main reason why the concept of civil and commercial matters is shaped through the practice of the European Court of Justice¹⁷, and not through *lex causae* or *lex fori*.¹⁸ It also does not apply to the status or legal capacity of natural persons, rights in



11 Law on civil procedure, Official Gazette of the Republic of Macedonia No.79/2005, 110/2008, 83/2009, 116/2010.

12 Law on International Private Law, Official Gazette of the Republic of Macedonia No.87/2007.

13 European Commission, Practice Guide for the Application of the Regulation on the European Enforcement Order 805/2004, p. 7.

14 Jean-François Van Drooghenbroeck, Stan Brijs, "The challenge of the European Enforcement Order for judicial practice Published online." ERA Forum (2007) 8:49 – 89, 27 March 2007, p. 52.

15 Ѓорѓиева, p. 9.

16 See more: European Commission, Practice Guide for the Application of the Regulation on the European Enforcement Order 805/2004, 7 and European Parliament and Council of Europe, Regulation (EC) No. 805/2004 creating a European Enforcement Order for uncontested claims (Strasbourg, 2004), article 2.

17 The Court of Justice has played a pivotal role in setting out the foundations of the EU focus on civil procedure. More see Magdalena Tulibacka, "Europeanization of civil procedures: in search of a coherent approach," Common market Law review (2009): p. 1535.

18 European Commission, Practice Guide for the Application of the Regulation on the European Enforcement Order 805/2004, p. 9.

property arising out of a matrimonial relationship, wills and succession¹⁹, bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings, social security and arbitration. The absence of a complete solution for the conflict of laws²⁰ in these legal areas in the Member States of the EU or their separate legal formulation within the EU instruments is the reason why this Regulation is only applicable in civil and commercial matters.²¹

The territorial application of the Regulation is the territory of the EU, except Denmark²², and the temporal application is *ex nunc*²³. That means it only applies to the given judgments, to court settlements that are approved or concluded and to documents formally drawn up or registered as authentic instruments since the Regulation has entered into force on 21 January 2005²⁴. The personal application means that the Regulation applies regardless of nationality or the residence of the parties who may be natural or legal persons.

The specific requirements may be divided in two groups. The first group would be the requirement that every national enforcement title (judgments, court settlements and authentic instruments) shall meet to be certified as EEO, and the second group would be the requirements that only concern the judgments in order to be certified as EEO.

The specific requirements that every national enforcement title shall meet to be certified as EEO are: the judgment shall be enforceable in the Member State of origin and the claim shall be uncontested and monetary.

The enforceability of the judgments, court settlements and authentic instruments depends on *lex nationalis processus* and *lex fori* in the country of their origin.

The uncontested claim is a legal category that is determined by the Member State in which a judgment has been given, the court settlement has been approved or concluded, or the authentic instrument has been drawn up or registered. The classification of the claims as uncontested depends on the behavior of the debtor. According to the behavior²⁵ of the debtor, the Regulation distinguishes between active and passive uncontested claims.²⁶ The claims are active uncontested when the debtor explicitly acknowledged the creditor's claim and he is aware of the legal consequences of his recognition. In the words of the Regulation of the claims are active uncontested when the debtor has expressly agreed to the claim by admission or by means of a settlement which has been approved by a court or concluded before



19 The recognition or enforcement of these matters are covered by other existing Community instruments see: Council of Europe, Regulation (EC) No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility, (Brussels, 2003).

20 See more: Jenard Möller, Report on the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters, OJ 1979 C 59/1, pp. 10-11.

21 Vittorio Pozzi, "Titoli esecutivi europei: problemi e prospettive." Dottorato, Alma mater studiorum Press. 2007, p. 39.

22 European Parliament and Council of Europe, Regulation (EC) No. 805/2004 creating a European Enforcement Order for uncontested claims, (Strasbourg, 2004), article 2.

23 Van Drooghenbroeck and Brijs, 50. and Kunštek, Edvard, "Pretpostavke za izdavanje potvrde o Europskom ovršnom nalogu," Pravni fakultet Sveučilista Rijeka, (2007): p. 446.

24 European Parliament and Council of Europe, Regulation (EC) No. 805/2004 creating a European Enforcement Order for uncontested claims, (Strasbourg, 2004) article 26 and 33. In the case of Bulgaria and Romania after 1 January 2007.

25 Pozzi, p. 54.

26 See more: Frederike Portmann. "Die Verordnung (EG) 805/2004 zur Einführung eines europäischen Vollstreckungstitels für unbestrittene Forderungen (EuVTVO) und ihre Konsequenzen für den Schuldnerschutz." PhD diss. Universität Münster, 2008, 27-31, and Bettina, Heiderhoff. "Die Vollstreckbarerklärung nach der EuGVVO und die Bestätigung nach der EuVTVO eine vergleichende Studie zur Forderungsdurchsetzung in England." Thesis, Universität Leipzig, 2005, pp. 8-12.

a court in the course of proceedings, or when the debtor has expressly agreed to the claim in an authentic instrument.

The Regulation supports the fiction of passive recognition of claims. Claim are passive uncontested claims when the debtor is inactive in the proceedings or deliberately does not participate in the proceedings, and which behavior may be considered as implicit recognition of the creditor's claim. The Regulation distinguishes between two situations of passive uncontested claims: lack of contention by the debtor and no more contentious claim. The Lack of contention by the debtor in passive uncontested claims are known as a “no longer disputed claim” or a “lack of dispute strictu sensu”. They arise from the debtor’s omissions during the court proceedings, which according to the Law of the Member State of origin means implicit recognition of the creditor's claim. This aspect covers the situation when the debtor during the trial has never objected, or filed a response to the complaint or other writing which starts the contentious procedure.

The phrase “No more contentious claim” means that the Regulation accepts the principle of affirmative *litiscontestation* (*Qui tacet consentire videtur*), which means that if the debtor has never objected to the claim, in compliance with the relevant procedural requirements under the law of the Member State of origin, in the course of the court proceedings or the debtor has not appeared or been represented at a court hearing regarding that claim after having initially objected to the claim in the course of the court proceedings, the court can render a judgment with which accept the creditor's claims.

For issuing a Certificate for EEO the debtor shall not have objected to the nature or the size of the monetary claim in the enforcement title. The monetary claim shall be nominally fixed, whose term of payment is determined or determinable in order to protect the debtor if he falls into delay.²⁷

Besides the previously mentioned special requirements that are common for judgments, court settlement and authentic instruments there are also some other special requirements that only concern judgments. In order to be certified as EEO for uncontested claim a judgment shall not be contrary to the rules of protectionist and exclusive jurisdiction of Regulation 44/2001 and it shall be adopted in proceedings in the Member State of origin meeting the minimum standards on procedures for uncontested claims.

The requirement that the judgments shall not be contrary to the rules of protectionist and exclusive jurisdiction of Regulation 44/2001 enacts the protectionist jurisdiction. The protectionist²⁸ jurisdiction under Regulation covers insurance²⁹ contracts and consumer³⁰ contracts (it does not apply to employment contracts) and it is based on the principle that the procedure shall start in the place where the defendant has a residence in order that the procedure a priori will not be directed against him. The rules of exclusive jurisdiction are related to the matter of dispute in concreto and they do not depend on the nationality of the parties. They are listed and the courts of the Member States observe them ex officio. This jurisdiction applies in situations for which Regulation 44/2001 provides *forum exclusivum*³¹.

27 Арсен Јаневски, Татјана Зороска Камиловска, “Европски извршен наслов за неспорни побарувања”, Зборник на трудови “Право Републике Србије и право Европске Уније – стање и перспективе,” Правни факултет у Нишу, Мај 19, 2009, p. 34.

28 A judgment on an uncontested claim given in a Member State shall, upon application by the creditor at any time to the court of origin, be certified as an EEO if the judgment was given in the Member State of the debtor's domicile within the meaning of Article 59 of Regulation 44/2001 in cases where a claim is uncontested within the meaning of Article 3 (1) b or c and it relates to a contract concluded by a person (the consumer) for a purpose which can be regarded as being outside his trade or profession and the debtor is the consumer.

29 See more: Council of Europe, Regulation No. 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels, 2000), article 8-14.

30 See more: Council of Europe, Regulation No. 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, (Brussels, 2000), article 15-17.

31 Council of Europe, Regulation No. 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, (Brussels, 2000), article 22.

The process of Europeanization covers the issues of jurisdiction and conduct of court proceedings.³² The judgments shall be made in proceedings which meet minimum standards³³ on procedures for uncontested claims. The minimum procedural standards are positive procedural requirements that are based on the idea to protect the interests of the debtor (they guarantee fair trial³⁴), and at the same time they give a chance to the creditor for effective collection of his claim. They essentially represent procedural requirements which the court proceedings in the Member State of origin shall meet.³⁵

The Minimum standards have been exclusively oriented towards the protection of the rights of defense in the courts of the Member State where the judgment was given. In other words, Regulation makes no explicit reference to the need of establishing a set of uniform minimum procedural standards to govern the enforcement proceedings per se in the Member State of enforcement.³⁶ It also does not impose any obligation³⁷ to the Member States to adapt their national legislation with the minimum standards, but it encourages them to do that.³⁸ The minimum standards for uncontested claim procedures concern the service and the content of the document instituting the proceedings or an equivalent document and the debtor's opportunity to seek judgment review. The minimum standards concern the service of the document instituting the proceedings or an equivalent document. The minimum standards which concern the service do not require a lot of formalities in order to stop the delay of the proceedings ex ante and disallow the service to become legal fiction (*fictio iuris*).

The Regulation defines the autonomous methods of service of the document instituting the proceedings. Through these methods, it is trying to find a compromise between the characteristics of the service of the document instituting the proceedings in continental and Anglo-Saxon law. These methods of service apply when there is absence of an explicit debtor's objection in the court proceedings, and the debtor did not participate in the proceedings. The methods are divided into two groups: service with proof of receipt by the debtor³⁹ and Service without proof of receipt by the debtor⁴⁰.

Minimum standards for uncontested claim procedures concern the content of the document instituting the proceedings. The fulfillment of these standards should allow a debtor consciously and

32 Tulibacka, p. 1532.

33 The purpose of Regulation is to create an EEO to permit, by laying down minimum standards, the free circulation of judgments, court settlements and authentic instruments throughout all Member States without any intermediate proceedings needing to be brought in the Member State of enforcement prior to recognition and enforcement.

34 Kloza Dariusz, *E-commerce and the recognition and enforcement of judgments in the EU*, Tilburg University, the Netherlands, 2009, p. 27.

35 Portmann, p. 98.

36 Pelayia, Yesiou-Faltsi, "European Enforcement Order after Five Years of Experience in Greece." *Revue Hellenique de Droit International*, 61 (2008): p. 737.

37 This is because the *acque communautaire* has a lack of competence to intervene in the civil procedural laws of Member States.

38 European Parliament and Council of Europe, Regulation (EC) No. 805/2004 creating a European Enforcement Order for uncontested claims, (Strasbourg, 2004), Preamble, article 19.

39 According to Article 13 of the Regulation these methods are: personal service attested by an acknowledgement of receipt, including the date of receipt, which is signed by the debtor; personal service attested by a document signed by the competent person who effected the service stating that the debtor has received the document or refused to receive it without any legal justification, and the date of the service; postal service attested by an acknowledgement of receipt including the date of receipt, which is signed and returned by the debtor; and service by electronic means such as fax or e-mail, attested by an acknowledgement of receipt including the date of receipt, which is signed and returned by the debtor.

40 According to Article 14 of the Regulation these methods are: personal service at the debtor's personal address on the persons who are living in the same household as the debtor or are employed there; in the case of a self-employed debtor or a legal person, personal service at the debtor's business premises on persons who are employed by the debtor; deposit of the document in the debtor's mailbox; deposit of the document at a post office or with competent public authorities and placing in the debtor's mailbox of written notification of that deposit, provided that the written notification clearly states the character of the document as a court document or the legal effect of the notification as effecting service and setting in motion the running of time for the purposes of time limits; postal service without proof where the debtor has his address in the Member State of origin; and electronic means attested by an automatic confirmation of delivery, provided that the debtor has expressly accepted this method of service in advance.

freely to decide whether to defend himself in the court proceedings initiated against him. Cumulatively the document shall contain: names and addresses of the parties, the amount of the claim, the interest on the claim if it is sought after, the interest rate and the period for which interest is required, unless statutory interest is automatically added to the principal under the law of the Member State of origin, and the statement of the reason for the claim. The debtor also must be warned about the procedural steps necessary to contest the claim. He must be aware about the procedural requirements for contesting the claim, including the time limit for contesting the claim in writing or the time for the court hearing, as applicable, the name and the address of the institution to which to respond or before to appear, as applicable, and whether it is mandatory to be represented by a lawyer and the consequences of an absence, objection or default of appearance, in particular, where applicable, the possibility that a judgment may be given or enforced against him and the liability for costs related to the court proceedings. This information must be clearly stated in or together with the document instituting the proceedings, the equivalent document or any summons to a court hearing.

Minimum standards for judgment review.⁴¹ The Regulation permits a debtor to request review of the judgment when the document instituting the proceedings or an equivalent document is submitted without proof of receipt by the debtor or the service was not effected in sufficient time to enable him to arrange for his defense, without any fault on his part, and the debtor was prevented from objecting to the claim by reason of force majeure, or due to extraordinary circumstances without any fault on his part, provided in either case that he acts promptly.

The main weakness of the Regulation is that it only alternatively states the reasons why the debtor can request review of the judgment, but it does not define procedures or remedies for the review. This means that the debtor may request review of the judgment with the remedies stipulated in national procedural law of the Member State of origin of the judgment in compliance with the reasons in Article 19 of the Regulation.

1.1. Macedonian enforcement titles which can be certified as EEO

The Regulation precisely defines⁴² the enforcement titles that can be certified⁴³ as EEO. Those are judgments⁴⁴, court settlements⁴⁵ and authentic instruments⁴⁶. The regulation also stipulates that the judgments, court settlements and authentic instruments must be enforceable and the claim must be monetary and uncontested.

41 See more Pozzi pp. 111-123, Portmann, pp. 137-140 and Ѓорѓиева pp. 40-43.

42 Tereaca Cornel. "Main Enforceable Titles." ACTA Universitatis Lucian Blaga, 2010 (2010): pp. 252-259.

43 For the situation in Romania see: Gabriela Raducan, "Circulatia Titlurilor or Executorii in Spatiul Judiciar European - De la Bruxelles I la Regulamentul ce NR. 805/2004." Law Annals from Titu Maiorescu University, 2008 (2008): pp. 201-230. For the situation in Germany and Spain see: Haym Annette, "The European Enforcement Order for Uncontested Claims," Ghmann Wrede Haas Kappus & Hartmann, Barcelona, accessed 28 December 2005, Part 6. The German Law of Implementation of the Regulation (EC) 805/2004 (Deutsches Durchfhrungsgesetz zur VTVO) entered into force on 21 October 2005, adding eight new provisions to the German Code of Civil Procedure (ZPO). The national rules concerning the regulation were integrated in §§ 1079 et sqq. ZPO and include provisions for the certification of the judgement as European enforcement order (§§ 1079-1081 ZPO) and provisions for the enforcement of judgements from other EU Member States in Germany (§§ 1082-1086). The German Law of Implementation of the Regulation (EC) 805/2004 has also adapted the ZPO (Book 2 and 3 and §§ 790-791) to the minimum standards laid out in the regulation.

44 "Judgment" is any judgment given by a court or tribunal of a Member State, whatever the judgment may be called, including a decree, order, decision or writ of execution, as well as the determination of costs or expenses by an officer of the court.

45 "Settlement" is any settlement which has been approved by a court or concluded before a court in the course of proceedings.

46 "Authentic instrument" is a document which has been formally drawn up or registered as an authentic instrument, and the authenticity of which: relates to the signature and the content of the instrument; and has been established by a public authority or other authority empowered for that purpose by the Member State in which it originates; or an arrangement relating to maintenance obligations concluded with administrative authorities or authenticated by them. For the free movement of authentic instruments in EU see more: Conseil Suprieur du notariat, "The exchange of authentic instruments within the European judicial area", 6 October 2008, Paris.

Enforcement titles in the Macedonian civil procedural law are stipulated by the Law on Enforcement and they are a legal category that is *numerus clausus*. According to the Law on Enforcement, enforcement titles are an enforceable court decision⁴⁷, court settlement⁴⁸, an enforceable decision and settlement given in an administrative procedure if they are designed for fulfilment of a monetary obligation, enforceable public notary title, the conclusion of the enforcement agent determining the enforcement expenses, notary's Writ of Enforcement on the Basis of a Trustworthy Document and other title considered under the law to be an enforcement title. According to the concept of active uncontested claims represented in the Regulation, only the following enforcement titles in the Macedonia civil procedural law can be certified as EEO: a judgment based on confession, a court settlement, a mediation agreement additionally concluded in front of the court, an enforceable public notary title and a debenture bond⁴⁹.

Judgment based on confession⁵⁰ (Article 317, Law on civil Procedure). The court is entitled to reach judgment based on confession if the following requirements are met: in cases when the defendant confessed the claim until conclusion of the main hearing, and the disposals⁵¹ of the parties are not in contradiction with the coercive regulations, and the provisions from international agreements are ratified in compliance with the Constitution of the Republic of Macedonia and to the moral. When those requirements are met the court will, without any further discussion, reach a judgment with which it accepts the claim.

Court settlement (Article 307-310 Law on civil procedure). According to the law on civil procedure there is not established any definition about court settlement, but according to theory 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.⁵² 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 Civil Procedure stipulates that the agreement of the parties to settle shall be entered into the minutes, and it is concluded when the parties sign the minutes after the minutes for the 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.⁵³ 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 even before the start of the litigation.⁵⁴ 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 be settled in this way that settlement will have legal force of court settlement.⁵⁵

47 According to the Law on Enforcement a court decision, shall be considered to be a judgment, decision payment order or other order pronounced by the courts, the elected courts and the arbitrages.

48 According to the Law on Enforcement court settlement shall be considered to be the settlement concluded before courts, the elected courts and the arbitrages.

49 The enforcement title, debenture bond, is regulated in the Law on debenture bond, Official Gazette of the Republic of Macedonia No. 59/12.

50 If it is proclaimed in the judgment that the defendant's obligation for payment is an amount of money it can be certified as EEO.

51 Article 3 (3), Law on civil procedure.

52 Арсен Јаневски, Татјана Зороска Камиловска, Граѓанско процесно право (Скопје: Правен факултет Јустинијан Први), p. 338.

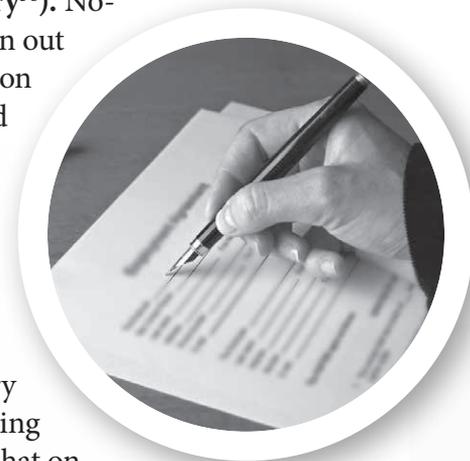
53 Sinisha Triva, Dika Mihajlo, Gragansko Parnicno procesno pravo, (Zagreb: Narodne novine, 2004), p. 570.

54 Јаневски, Зороска Камиловска, p. 339.

55 The settlement may be enforcement title only if in it is agreed defendant's obligation for payment an amount of money or for doing or not doing something, or enduring.

Mediation agreement (Article 308 (4) Law on civil procedure). A mediation agreement also has legal force of court settlement if the parties served it to the court within the obligatory legal deadline of eight days from its conclusion. The Court to which the agreement is submitted schedules a hearing which constitutes a concluded mediation agreement on its minutes.

Enforceable public notary titles (Article 43 Law on public notary⁵⁶). 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 certified by a notary public. Public notary documents may be enforcement titles in some cases regulated in the Law on public notary. However, not all public notary documents can be certified as EEO. From these public notary documents only the notary public act and a private document with the content of a public notary act that is confirmed by a public notary may be certified as EEO. The obligatory content of a public notary act is that it must contain established obligation for doing something on which the parties may agree and a statement of the obliged party that on basis of that act, an obligatory enforcement may be carried out directly in order for the creditor to realize the deed upon the maturity of the obligation.



The Debenture bond is a new legal institute in Macedonian civil procedural law. According to the Law on debenture bond, a debenture bond⁵⁷ is a document compiled by a public notary in which a debtor renders his consent that the amount entered into the document shall be compulsorily collected from all of his accounts which he keeps within a legal person performing payment transactions. If the creditor can not collect his claim in the procedure before the banks, the debenture bond becomes an enforcement title which can be enforced upon request of the creditor in accordance with the law on enforcement.

According to the concept of passive uncontested claims represented in the Regulation, only the following enforcement titles in the Macedonia civil procedural law can be certified as EEO: judgment due to non-filing a response to a complaint, default judgment, payment order and a public notary's Writ of Enforcement on the Basis of a Trustworthy Document.

Judgment due to non-filing a response to a complaint (Article 319, Law on civil procedure). According to the Macedonian Law on civil procedure, the defendant is obligated⁵⁸ to give a written response to the complaint within a time limit determined by the court, which can not be shorter than 15 nor longer than 30 days from the day of receipt of the complaint. If the defendant does not file a response to the complaint in the determined time limit, the court shall reach a judgment with which it accepts the claim. However, besides the omission of the defendant to file a response to complain within the court's deadline, the reaching of this judgment is also connected with other additional conditions⁵⁹. Firstly, the defendant must to be properly served with the complaint and the request for filing an answer to the complaint. Secondly, the grounds of the claim must be implied from the facts stated in the complaint. Thirdly, the facts which are the basis of the claim must not be contrary to the evidence that the plaintiff has submitted or to the generally known facts. Fourthly, there are no generally known circumstances from which it is evident that the defendant due to justified reasons was not able to file a response to the complaint. Lastly, the disposals of the parties must not be in

56 Law on public notary, Article 43, Official Gazette of the Republic of Macedonia No. 55/07, 86/08, 135/11.

57 It can only conclude between legal persons.

58 Article 269 (2), Law on civil procedure.

59 Article 319 (1) 1, 2, 3, 4 Law on civil procedure.

contradiction with the coercive regulations, the provisions from international agreements ratified in compliance with the Constitution of the Republic of Macedonia and the moral.

Default judgment (Article 320 Law on civil procedure). The Macedonian Law on civil procedure sanctions defaults by the defendants. If the defendant does not contest the claim in the response of the complaint, or does not appear at the preparatory hearing before it is concluded, or at the first hearing for the main hearing if the preparatory hearing was not held, or if he attends these hearings in court but does not want to enter into discussion, or if he is removed from the hearing, and if he has not contested the claim, a judgment will be reached with which the claim is accepted. This is a basic condition for reaching default judgment. The court can reach a default judgment only if other conditions are met. If it is proclaimed in the judgment that the defendant has the obligation for payment of an amount of money or for doing or not doing something, or enduring, then this judgment may be considered as an enforcement title.

Payment order (Article 417-428, Law on civil procedure). The payment order is a legal institute of civil procedural law which gives an opportunity to the creditor for rapid realization of monetary claims. When the creditor/plaintiff has a Trustworthy Document⁶⁰, which proves the monetary claim, and it is in original or in a verified copy enclosed with the complaint⁶¹, the court may issue an order to the defendant to fulfil the claim⁶². The issuing of a payment order also depends on one more condition, as to whether the plaintiff made probable the existence of legal interest. If the plaintiff did not make probable the existence of legal interest, the court will dismiss the complaint.

Public notary's Writ of Enforcement on the Basis of a Trustworthy Document.⁶³ (Law on Enforcement 16 a - 16 ж). The public notary's Writ of Enforcement on the Basis of a Trustworthy Document was for the first time in Macedonia introduced in 2009 with the Law on Amendment and Supplement on the Law on Enforcement. Besides the fact that it is treated as a new legal instrument, it was present through the history⁶⁴ of Macedonian enforcement law. The essence of this legal institute is that in the case when the creditor has a Trustworthy Document⁶⁵ which proves the claim, he has the right to submit a motion for execution on the basis of a trustworthy document to a notary public⁶⁶. In the motion the creditor must require the notary public to reach a Writ with which he

60 According to the Law on civil procedure Article 418 (3) as Trustworthy Document are especially considered, public documents, private documents where the signature of the liable person is verified by the agency responsible for verification, bills of exchange and checks with protest and with return accounts if they are *necessary* for establishing a claim, extracts from registered business books, invoices and documents which according to separate regulations have the significance of public documents.

61 Article 418 (4), The court will issue a payment order even though the plaintiff did not propose in the complaint that a payment order is issued, and all the conditions for issuing a payment order are fulfilled.

62 The court may also issue a payment order against the defendant when the claim concerns a monetary claim which is due, which does not exceed the amount of 180,000 denars even though a Trustworthy Document was not enclosed with the claim, but when in the claim the base and amount of the debt are presented and the evidence is specified, based on which the truthfulness of the assertions from the claim can be established. This payment order may be issued only against the main debtor.

63 See more: Арсен Јаневски, "Ново извршно право на РМ, Зборник на трудови Деловно право - Часопис за теорија и практика на правото," Здружение на правниците од стопанството на Македонија, Скопје, 2006, p. 231.

64 Enforcement on the Basis of a Trustworthy Document had been allowed with the Law on enforcement procedure of 1978 and 1997. These laws gave the opportunity to carry out an enforcement against a legal person for the recovery of monetary claims. The basis for enforcement was just a Trustworthy Document which proved the existence of the claim. The claim was directly charged in enforcement proceedings before the court, without conducting a procedure for issuing a payment order.

65 According to the Law on enforcement Trustworthy Documents are invoices, bills of exchange and checks with protest and with return accounts if they are a necessary form establishing a claim, public documents, extracts from registered business books, private documents verified according to the law and documents which according to separate regulations have the significance of public documents.

66 The creditor has the right to choose the public notary before he will submit the motion for execution on the basis of a trustworthy document, but he must be one of the public notaries on territory where the debtor (natural person) has his residence or the debtor (legal entity) has his seat.

will oblige the debtor to pay the monetary claim of the document within a certain deadline and at some time reach a Writ of enforcement. If the motion is valid and has basis, the notary public will reach a Writ of Enforcement on the Basis of a Trustworthy Document and will serve it to the parties. Against this Writ on the Basis of a Trustworthy Document the debtor has a right to objection within eight days from the day of its reception. If the debtor does not file an objection⁶⁷ against the Writ on the Basis of a Trustworthy Document or it is delayed or forbidden, it becomes an enforcement title.

1.2. The minimum standards and its implementation in the Macedonian civil procedural law

Due to the fact that the minimum standards are *conditio sine qua non* for issuing a Certificate for EEO, the Macedonian Law on civil procedure shall adjust to these minimum standards which censors the service and content of the document instituting the proceedings and the Cure of non-compliance with minimum standards. The adjustment also has to be made with Regulation 1393/2007, which is used parallel with the Regulation. In terms of minimum standards on procedures for uncontested claims the Macedonian civil procedural law will not suffer major changes. This is due to the fact that minimum standards on procedures for uncontested claims are left as an optional opportunity for Member States. Furthermore, even if we make comparison of the minimum standards on procedures for uncontested claims with positive solutions the in Law on Civil Procedure of the Republic of Macedonia we will not notice any major deviations. The Law on Civil Procedure of the Republic of Macedonia meets the minimum standards for service of the document instituting the proceedings (see Art. 125-144 - Manner of service) and minimum standards for the content of the document instituting the proceedings (see Art. 176 – Content of complain) and the minimum standards for review of the judgment (see Art. 392-403 - Repetition procedure).



2. The procedure of certification as EEO

a) The beginning of the procedure.⁶⁸ The certification procedure of the national enforcement titles as EEO begins upon application by the creditor in any time⁶⁹. The application for Certificate issuance for EEO may be contained in the claim or may be submitted later, after the judgment is reached. The creditor submits the application to the competent court authorities in the Member State of origin of judgment, court settlement or authentic instrument, which without any formality in an automated procedure and without the presence of the debtor they certify the enforcement titles as EEO, only if the requirements are met.

b) Procedure characteristics. The Certification procedure of the national enforcement title as EEO is an alternative, non-exclusive, non-adversarial, single-phase European procedure which is based on the principle of economy.⁷⁰ The Certificate for EEO is issued in a first instance procedure and without the debtor's ability to prevent it under *lex loci* and *lex fori*. The judicial authorities, in the

67 If the debtor filed an objection to the public notary, which is submitted on time and allowed, the public notary will send the papers to the court of first instance in whose area is his seat. The court will act according to the procedure of the Law on civil procedure regarding the objection of payment order.

68 Pursuant to the Regulation the certification may be granted to judgements, court settlements, regulation and/or authentic instruments relating to uncontested claims that are issued in a Member State.

69 As no further details are stipulated by the Regulation, this space is left for Member State law to operate.

70 Ѓорѓиева, p. 43.

compilation of the Certificate, should only pay attention to the compliance of the minimum standards in the process of reaching judgment. If the requirements for certification are met, they issue a Certificate for EEO by using a standard form, suitable for electronic procedure implementation. If the authorities refuse to issue a Certificate to the creditor, there is a legal gap in the Regulation that must be complemented by the national Civil Procedural Law.

Certification⁷¹ of national enforcement titles as EEO is the highest level of the principle of mutual trust among the Member states of the European Union in civil matters. The Certificate for EEO is based on the principle of inviolability, which means that it has imperative effect, which cannot be neutralized. The EEO certificate shall take effect only within the limits of the enforceability of the judgment. Therefore, the conditions under which the judgment can be enforced in a foreign country must not be lighter than the conditions in the Member State of origin.⁷² The Certificate for EEO is prepared and issued from a court of a Member State of origin of the judgment. The EEO certificate shall be issued only to the creditor. For prevention of unnecessary delays of the procedure the debtor has no right to appeal against the issued EEO Certificate.

c) Legal remedies in the procedure for issuing an EEO. Due to the fact that the irregular issuance of a Certificate directly affects the debtor's right for effective judicial protection of his rights, a Certificate that is wrongly granted can be rectified or withdrawn.

A Certificate can be rectified if the parties (debtor or creditor) submit an application for the rectification due to a material error that causes a discrepancy between the judgment and the certificate. A Certificate withdrawal is possible if there is an application from the parties and if the certificate was clearly wrongly granted, having regard to the requirements⁷³ laid down in the Regulation.

2.1. The need for introduction of the procedure for issuing a certificate for EEO in Macedonian Civil Procedural Law

The EEO does not exist as a legal institute of Macedonian civil procedural law at the moment. Due to this fact, the question is raised whether Macedonia should introduce this procedure before the membership of the European Union or after.

The comparative analyses⁷⁴ show that it is not necessary for Macedonian Civil procedural law to introduce the procedure before EU membership. However, this does not mean that Macedonian Civil Procedural Law should not follow the latest trends of European Civil procedural law.

If we want to give a proposal for the question of which Law should regulate the procedure for issuing a certificate for EEO in Macedonian civil procedural law, it would be the Law on Enforcement of the Republic of Macedonia. The argument in favour of this opinion is that the Law on Enforcement of the Republic of Macedonia defines the national enforcement titles and the requirements for enforcement of foreign court judgment, so it has to regulate the procedure for issuing a Certificate for EEO and the enforcement titles which can get this Certificate.

71 The Regulation does not contain any rules treating cases where the competent national authorities refuse to issue the standardized EEO Certificate.

72 European Parliament and Council of Europe, Regulation (EC) No. 805/2004 creating a European Enforcement Order for uncontested claims (Strasbourg, 2004), article 11.

73 Here we primarily think of the violations of minimum standards, the jurisdiction and the classification of the claim as uncontested.

74 See art. 619-624, Гражданско-процесуалния закон, art. 1145-1153 Kodeks postępowania cywilnego, art. 474-482 Codice di Procedura civile, (P 74) from 74.27 to 74.33 Civil Procedure Rules (CPR) art.1079-1083 Deutch Zivilprozessordnung.



A certificate for EEO in written form would be issued by the Macedonian courts of first instance⁷⁵, without questioning the debtor for the following national enforcement titles: a judgment based on confession, a court settlement, a mediation agreement additionally concluded in front of the court, an enforceable public notary title, judgment due to non-filing a response to a complaint, default judgment, payment order, public notary's Writ of Enforcement on the Basis of a Trustworthy Document and a debenture bond⁷⁶. A certificate should be issued by the court for enforcement titles that are reached by the courts, and by public notaries for other enforcement titles.

The competent authorities for rectification or withdrawal of the certificate should be the court bodies which had issued it. However, this concerns only court judgments and enforceable public notary titles, writs of Enforcement on the Basis of a Trustworthy Document and debenture bonds. It would be a better solution for public notaries to have the authority to rectify or withdraw a Certificate for EEO, because he is the one that reached or notarized the title and he should correct his inconsistencies.

Due to the fact that the Regulation does not regulate the right to appeal⁷⁷ if court authorities refuse to certify an enforcement title that meets the general and specific requirements, as EEO the Macedonian civil procedural law should complete this legal gap in order to prevent possible violations.

3. Recognition and enforcement of national enforcement titles certified as EEO

a) The changes that the Regulation introduced in the enforcement area⁷⁸. As we noted above, the regulation did not create European enforcement process. Instead, it allows the enforcement procedure to be governed by the law of the Member State of enforcement in accordance with *lex fori* and *lex nationalis* processes.⁷⁹

Besides this fact that it speeds up the free movement of enforcement orders in the EU it also abolishes the procedure for recognition and the procedure for issuing a writ for enforcement in the Member State of enforcement.⁸⁰

The Regulation for the first time in European Civil Procedural Law and procedure eliminates the *exequatur*⁸¹, as an intermediate procedure between the procedure of adjudication and the enforcement procedure. It also states that if the minimum standards are met in the cognitive proceedings in the Member State of origin of the judgment the creditor in a Member State of enforcement does not need to get a writ for enforcement for the enforcement title certified as an EEO. This avoids the possible three-phase⁸² process of the procedure of *exequatur* under Regulation 44/2001, with trans-

75 Same solution art.42 Ovršnog zakona i zakona o osiguranju, art. 619 од Гражданско-процесуалнија закон, art. 307 од Ovršnog zakona R. Hrvatska and art. 1079 на Deutch Zivilprozessordnung.

76 It can be seen that the legal nature of enforcement titles in the Macedonian civil procedural law that can be certified as EEO may be judicial and non-judicial.

77 This solution is implemented in art. 1081 Deutch Zivilprozessordnung.

78 For national differences in enforcement see more: Kennett Wendy, *The Enforcement of Judgments in Europe*. (Oxford: Wadham College, 2000), pp. 61-94 and Арсен Јаневски, Татјана Зороска Камилковска, *Извршно право*, (Скопје: Правен факултет Јустинијан Први, 2001), pp. 23-25.

79 Ѓорѓиева, p. 48.

80 Portman, p. 214.

81 Alberto Malatesta, *Towards the abolition of the exequatur in Europe: An overview of the EC regulations*, *Liuc Papers* n. 219, *Serie Impresa e Istituzioni*, 25. Agosto 2008, p. 4.

82 *Exequatur* (*exequaturverfahren*) means that foreign title must be declared as enforcement in the Member-State in which is demanded enforcement before it is to be the subject of enforcement. The procedure of *exequatur* according to Regulation 44/2001 is composed from three phases. The first phase begins with submission of *ex parte* demand from the creditor for execution, the second phase begins if a legal remedy is given against the enforcement decision and the third phase begins with submission of a legal remedy against the secondary decision. See article 32-49 of Regulation 44/2001.

ferring the control of the judgment from the Member State of enforcement to the Member State of origin. It allows the enforcement titles that had been certified as EEO to be directly enforceable under the same conditions like those for the judgments handed down in the Member State of enforcement. The Member State of enforcement cannot refuse the enforcement of the foreign enforcement title certified as EEO under the argument that enforcement would be contrary to the public policy of the state. The control of the national enforcement title is only in the Member State of origin, which is an advantage, but at the same time it is a weakness of the whole system of Regulation.⁸³

The beginning of the enforcement procedure depends on several material⁸⁴ and procedural⁸⁵ Requirements. The Regulation only states the procedural requirements according to which the creditor can start the enforcement procedure.

The creditor shall provide the competent enforcement authorities of the Member State of enforcement with a copy of the judgment and a copy of the European Enforcement Order certificate, and where it's necessary, a transcription of the European Enforcement Order certificate or a translation into the official language⁸⁶ of the Member State of enforcement or, if there are several official languages in that Member State, the official language or one of the official languages of court proceedings of the place where enforcement is sought, in conformity with the law of that Member State, or into another language that the Member State of enforcement has indicated as acceptable. Each Member State may indicate the official language or languages of the institutions of the European Community other than its own which it accepts for the completion of the certificate. The translation shall be certified by a person qualified to do so in one of the Member States. The copy of the judgment and the copy of the European Enforcement Order certificate must meet the conditions necessary to establish their authenticity, which prevents the creditor from requiring multiple enforcement of the same enforcement title.

b) Legal remedies in the enforcement procedure. The Regulation narrows to a minimum the possibilities for blocking the recognition and enforcement of foreign judgments due to non enforcement by removing or reducing the reasons for refusal of enforcement (conflict with previous order and public order) and with the inability for review⁸⁷ of the judgment in terms of its merit (content) in the Member State of enforcement. Consequently, legal remedies of the debtor in the Member State of enforcement are limited to the possibility that he can file for refusal of enforcement or to request a stay or limitation of enforcement.

Refusal of enforcement. According to the Regulation, the only de jure reason for refusal of the enforcement of judgment is if the judgment certified as an EEO is irreconcilable with an earlier judgment given in any Member State or in a third country.⁸⁸ The existence of this reason is not enough for

83 Pozzi, p. 6.

84 These suppositions are not defined by The Regulation. They are determinate by the national procedural law in the Member State of enforcement. They refer to the real state of the parties, execution remedies permissibility of execution etc.

85 European Parliament and Council of Europe, Regulation (EC) No. 805/2004 creating a European Enforcement Order for uncontested claims (Strasbourg, 2004), article 20.

86 If there are several official languages in that Member State, the official language or one of the official languages of court proceedings of the place where enforcement is sought, in conformity with the law of that Member State, or into another language that the Member State of enforcement has indicated that it can accept. Each Member State may indicate the official language or languages of the institutions of the European Community other than its own which it can accept for certificate completion. The translation shall be certified by a person qualified to do so in one of the Member States

87 See Article 21 paragraph 2 of Regulation. This solution the Regulation takes from the Brussels Convention (Article. 29 and 34) and Regulation 44/2001 (Article.45). The Ban for révision au fond which derives from French law. In this connection see decision in Munzer (Cass tr. 7.1, 1964. JCP 1964, II, 13,590). The Prohibition of revision au fond is guaranteed with the judicial control in Member State of origin and certificate of the judgment and is a traditional principle of classical international civil procedural law. Due to this fact it is not allowed reconsideration of the judgment or acknowledgment in terms of its content in the Member State of enforcement. The purpose of the provision is to prevent review of the legal and factual situation of the initial judgment in order to speed up the enforcement. In a situation where au fond review is made an appeal can be submitted for unauthorized revision au fond, and to require reconsideration of the judgment.

88 Heiderhoff, pp. 84-85.

the refusal of the enforcement, so in order to get refusal the debtor must submit an application to the competent court in the Member State of enforcement, because the court does not have the authority to proceed *ex officio*. The purpose of the legal institute refusal of the enforcement is to prevent the collision between two judgements, from a practical perspective, when they are divergent⁸⁹ i.e. when they cause legal effects that are mutually exclusive.

The irreconcilability of judgements can not be estimated or predicted in the enforcement procedure, but it is notable in the actual enforcement of judgements.

An application for refusal must be submitted by the debtor to the competent court in the Member State of enforcement, and he has the burden for proving the reasons for the enforcement refusal. The enforcement shall be refused by the competent court in the Member State of enforcement if the judgment certified as an EEO is irreconcilable with an earlier judgment given in any Member State or in a third country, provided that the earlier judgment involved the same cause of action and was between the same parties and the earlier judgment was given in the Member State of enforcement or fulfils the conditions necessary for its recognition in the Member State of enforcement and the irreconcilability was not and could not have been raised as an objection in the court proceedings in the Member State of origin.

According to the Regulation the reason for enforcement refusal is the irreconcilability between the judgments, whereas it requires only the identity of parties, not identity of the substance.⁹⁰ The rules of Regulation for enforcement refusal apply only to the matters (*res judicata*), and not to proceedings in progress, if we could talk about *litispendingation*.⁹¹

Stay of enforcement or limitation of enforcement. In the whole system of Certificate issuing for EEO, there may arise some discrepancies before or after the Certificate issuance for EEO to which the debtor may intervene with different remedies in different *ratione temporis*.

Before the certificate issuance, the defense actions of the debtor determine the Member State of origin of the judgment. Based on these rules, the debtor may file a regular remedy or extraordinary remedies when it is allowed by the *lex nationalis processus* if the judgment is no longer enforceable or its enforceability is suspended or limited or may require reconsideration due to extraordinary circumstances in the Member State of origin.

Except in proceedings the debtor's rights may also be injured in the enforcement procedure, which is certainly a new offense. Due to this fact, the question is raised whether the debtor has the right to appeal to the European Court of Human Rights as a national remedy. This issue is neglected in theory because Art. 23 of the Regulation does not define which national remedies are allowed for stay of enforcement or limit of enforcement.

If discrepancies occur in the procedure for certificate issuing for EEO the debtor may request rectification or withdrawal of the certificate. In all these cases, the debtor at the same time with these remedies can submit an alternative application for stay of enforcement or limitation of enforcement to the competent court or authority. The competent court or authority in the Member State of enforcement may limit the enforcement proceedings to protective measures or make enforcement conditional on the provision of such security as it shall determine, or under exceptional circumstances, stay of the enforcement proceedings. These remedies are determined by the *lex fori* of each Member State



89 Pozzi, p. 184.

90 Vladimir Čolović "Saradnj sudova i drugih organa u građanskim stvarima u pravu Evropske Unije," (Beograd; Institut za uporedno pravo, 2009), p. 109.

91 Heiderhoff, p. 85.

whereas there are large differences among the different national procedural laws. The permissibility of this application deviates from the fundamental principle that the debtor shall defend only with rights allowed in the Member State of origin of the enforcement order.

Stay or limitation of enforcement. In the whole system of issuing a Certificate for EEO may arise some discrepancies before or after the issuance of the Certificate for EEO to which the debtor may intervene with different remedies in different *ratione temporis*.

Before the issuance of the certificate, the defense actions of the debtor determine the Member State of origin of the judgment. Based on these rules, the debtor may file a regular remedy or extraordinary remedies when it is allowed by the *lex nationalis processus* if the judgment is no longer enforceable or its enforceability is suspended or limited or may require reconsideration due to extraordinary circumstances in the Member State of origin.

Except in proceedings the debtor's rights may be injured also in the enforcement procedure, which is certainly a new offense. Due to this fact is the question whether the debtor has the right to appeal to the European Court of Human Rights as a national remedy. This issue in theory is neglected because Art. 23 of the Regulation does not define which national remedies are allowed for stay or limit of enforcement.

If discrepancies occur in the procedure for issuing a certificate for EEO, the debtor may request rectification or withdrawal of the certificate. In all these cases, the debtor at the same time with these remedies can submit an alternative application for stay or limitation of enforcement to the competent court or authority. The competent court or authority in the Member State of enforcement may limit the enforcement proceedings to protective measures or make enforcement conditional on the provision of such security as it shall determine, or under exceptional circumstances, stay the enforcement proceedings. These remedies are determined by the *lex fori* of each Member State, where there are large differences among the different national procedural laws. The permissibility of this application deviates from the fundamental principle that the debtor shall defend only with rights allowed in the Member State of origin of the enforcement order.

3.1. Legal Regime for recognition and enforcement of judgements, court settlements and authentic instruments certified as EEO in the Republic of Macedonia

Due to the fact that the Regulation abolishes the procedure for recognition and obtaining a writ for enforcement in the Member State of enforcement, it is in question what changes this Regulation will cause in the Macedonian Enforcement Law when Macedonia will join the EU.

a) Legal Regime for recognition and enforcement of judgements, court settlements and authentic instruments certified as EEO. At the moment, the recognition of foreign enforcement titles in Macedonian Civil Procedural Law is made in separate proceedings of *exequatur* legally defined in the Law on International Private Law of the Republic of Macedonia. In order to cause a legal effect on the territory the Republic of Macedonia, the foreign enforcement order must meet the requirements for recognition stated in the Law on International Private Law.

This means that in order to cause legal effects the same as a Macedonian enforcement title the foreign court judgment must be recognized by the Macedonian court in a special *exequatur* procedure and its recognition is not *ipso iure*. The Regulation abolishes the procedure for recognition of foreign enforcement titles certified as EEO in the Member State of enforcement. This would mean that if it is necessary to recognize an enforcement title certified as EEO, the requirements for recognition of foreign court decisions contained in the Law on International Private Law of the Republic of Macedonia (Article.101-110) will be substituted with the requirements for Certificate issuing for EEO in the Member State of origin of the judgments when it comes to uncontested claims in civil

and commercial matters. Thus, introduction of the procedure for certificate issuing for the EEO in the Law on International Private Law of the Republic of Macedonia will cause changes.

Optionally, a provision could be enacted in the Law on Private International Law of the Republic of Macedonia that the requirement for the recognition and enforcement of foreign court decisions will not apply to the judgments that have been confirmed as EEO.

The requirement for the recognition of foreign court judgments contained in the Law on Private International Law of the Republic of Macedonia will continue to apply for judgment recognition for which the state of origin is not a Member State of the EU, and court judgments that are confirmed by some other European procedures which do not discharge the procedure for foreign court judgments recognition.

Enforcement regimes for enforcement titles certified as EEO. Due to the fact that the Regulation abolishes the exequatur without introducing a new European enforcement procedure, the question that arises is what changes it will cause in Macedonian enforcement procedure law when Macedonia will join the EU.

The abolition of the exequatur in the Macedonian civil procedure law would mean that a creditor that possesses an enforcement title certified as EEO in the Republic of Macedonia does not need to lead separate proceedings for obtaining a writ for enforcement.

The nonexistence of a single European enforcement procedure of Regulation means that the procedure for enforcement of EEO will be governed by the rules of the Macedonian enforcement procedural law, with a fulfillment of certain requirements of the Regulation.

A person who has a legal interest and requires an enforcement of EEO in the Republic of Macedonia to the enforcement agent must submit a copy of the enforcement title (judgment, court settlement or authentic instrument) and a copy of the Certificate for the European enforcement for uncontested claims, along with their certified translation in Macedonian language by an authorized person in any member State of the EU. The enforcement agent is obliged to carry out enforcement in non-judicial proceedings under the Macedonian Law on enforcement.

Enforcement proceedings will be governed by the rules of the Macedonian Law on enforcement. In it under Article 23 of the Regulation shall state that the debtor has a right to use legal remedies⁹² and / or submit a request for limitation⁹³ of the enforcement proceedings to protective measures or to staying⁹⁴ the enforcement proceedings under exceptional circumstances.



92 Art, 77, Law on Enforcement of the Republic of Macedonia.

93 Art, 30, Law on Enforcement of the Republic of Macedonia.

94 Art, 81, Law on Enforcement of the Republic of Macedonia.

Conclusion

The Regulation created the EEO, which is a big step towards elimination of the exequatur and introduction of the principle of free movement of enforcement titles within the EU, which is the most significant trend in European judicial cooperation. However, it has only limited application in civil and commercial matters and refers only to judgments, judicial settlements and authentic instruments, which must be enforcement titles for uncontested claims, yet it allows creditors to collect their claims in any Member State of the EU in a quick and simple procedure. The application of this regulation in Macedonian civil procedure law, when Macedonia will join the EU, in principle will not pose problems because already a big part of Macedonian enforcement titles even today can be certified as EEO. However, this instrument will be a major challenge for the Macedonian enforcement law, because its application will require amendments and supplements in the Law on enforcement within institutional and personnel staffing.

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