UDC: .347.952(497.7)
347.952:341.24
*Professional paper*

# GUARANTIEES OF THE ENFORCEMENT ACT OF THE RNM AND OTHER IMPORTANT INTERNATIONAL ACTS FOR THE PROTECTION OF THE PARTIES, PARTICIPANTS AND THE THIRD PARTIES

**Bukurije ETEMI-ADEMI[1]**

[1*]*Department of Law, Faculty of Law*
[*]*Corresponding Author e-mail: bukurije.etemi@unite.edu.mk*

**Abstract**

The primary purpose in the initiation of the enforcement is to provide legal protection to the initiator of the process, i.e., "realization of the creditors' claim". Today, the form and manner in which this demand will be determined and enforced is a much-discussed issue, but it still generates endless debates. In the RNM, on the one hand, we have a legal regulation that is based on the enforcement procedural principles, which are a guarantee for the protection of the rights of the parties, participants and third parties in enforcement! On the other hand, we have enforcement practice, which is evident from the cases of collisions mainly between parties, but also participants and third parties during the enforcement! Creating a balanced system where all subjects involved in the procedure will be satisfied with the enforcement epilogue is a bit difficult, so in this paper we will focus on the specific situations that make the enforcement process difficult! This is because the nature of enforcement is repressive; the obligation to act, not act or endure; the debtor's financial burden for fulfillment; the difficult economic situation of the debtor and unlimited other elements do not facilitate the enforcement process at all! In RNM, the bailiff is the one who bears the responsibility for the precise implementation of the enforcement principles, as a public force and at the same time independent in providing legal protection for all parties involved in the enforcement. Participating parties and third parties always have the right to prove the opposite, by submitting legal remedies in order to avoid the illegality committed during the enforcement.

*Keywords:* Enforcement Act, enforcement system, protection of parties, participants and third parties, guarantees

## 1. Introduction

The application of the ECHR, namely Article 6, which provides the right to develop fair procedures within a reasonable time, has been the driving force towards the reformation of enforcement practice. International institutions always refer to the implementation of the Recommendations for the creation of a more efficient enforcement practice (Recommendation Rec(2003)17, 2003). In the name of procedural efficiency, almost all states continuously try to reform their enforcement systems, where the trend of privatization of enforcement services has become almost inevitable for each state.

The Republic of North Macedonia is among the states which has a completely privatized enforcement system. This practice was created by the enactment of the Enforcement Act of 2005 and the Enforcement Act of 2016. The bailiff in this system has full procedural jurisdiction to enforce documents of an enforceable nature that fall within the scope of his legal authorizations. He exercises a function of a public nature. In one way or another, he is an "agent of the public force" and has the right to apply one of the main requirements of the state in relation to justice (

Boroi & Stancu, 2015, p. 142).

The legal protection offered in enforcement is indeed very specific in nature. In enforcement, the creditor is the individual who possesses an enforcement document and for the protection of his rights requires compulsory measures from the state (Rădulescu & Marinescu, 2016, p. 55). However, the implementation of the creditor request is corrected with a series of regulations that protect the debtor, but also other people involved in this process. The creditor claims the fulfillment of his request resulting from the content of the enforcement document, but the fulfillment of this request does not mean the violation of the existence of the debtor or his family members; the violation of the rules of discipline that protect the debtor and other participants in the procedure.

Starting from this position, the question arises as to how much the parties and participants are protected during enforcement. Can the parties in the enforcement procedure realize the legal guarantees provided by the Enforcement Act? What guarantees does our enforcement system offer? Are the guarantees of the current Enforcement Act sufficient to create this ideal balance of positions in the procedure? These issues will be addressed in order to highlight all procedural and practical aspects that are represented as means of protection for citizens from the moment they become a party, participant or third party in the "procedure".

## 2. International guarantees for efficient enforcement "procedures"

Enforcement of decisions is considered a fundamental concept stated in the ECHR, or at least this approach is accepted by many scholars. Kuzencov, unlike others, emphasizes that the guarantees of Article 6 of the ECHR are insufficient, especially when we take into account the court decisions (Kuzencov, E., 2019, p. 144). Uzelac, on the other hand, emphasizes that the concept of ECHR "access to justice" was expanded to include the application of judicial and non-judicial documents. Today, states voluntarily select and apply their own enforcement system which is convenient for them. In reality, there is no international act which obliges the state to select one or the other enforcement system (Чавдар & Чавдар, 2016, p. 19). Among the most important recommendations is that of the Council of Europe, according to which*: "The non-enforcement of such a judgment, or a delay in it taking effect, could render this right inoperative and illusory to the detriment of one party"* (Recommendation (2003)17, 2003). Regarding this recommendation, Uzelac is right when he emphasizes that citizens lose trust and respect in state institutions if their decisions or documents remain non-enforceable. Citizens are more concerned about justice in deeds rather than justice in books (Uzelac, 2002, p. 6).

Today, the most important international act in the field of enforcement is the Global Code of Enforcement brought by the International Union of Judicial Bailiffs. This Code guarantees the rights of the debtor and his family; the obligation of the state to guarantee enforcement in accordance with Conventions and international acts, which means the non-existence of imprisonment for civil debts, respect for the members of the debtor's family, and especially the interest of the children (Global Code of Enforcement, 2015). The legal regulations dedicated to the enforcement process and the legal protection provided by this Code is comprehensive, starting from the initiation, the development of the procedure, the decision regarding the legal remedies, up to the responsibility of the bailiff. Therefore, the work and recommendations of this Union are important in general and especially for member states, where RNM is also a member of this Union.

## 3. Current guarantees stated in the Enforcement Act (2016)

As a foundation in the construction of legal protection in the enforcement process dedicated to the debtor as a natural person and his family is article 5 of the Enforcement Act. From this article, several obligations arise that the bailiff must pay attention to when determining the enforcement. Through enforcement, the means, objects and rights necessary for the living of the debtor and his family members cannot be taken; specifically, it refers to the exemption and restrictions during implementation of enforcement.

This regulation is also applied in cases where the debtor carries out independent activities (craft skills, agriculture, art) with which he fulfills the needs of his life both for himself and for his family members, while the amount of this income does not exceed the amount of the minimum income (Чавдар & Чавдар, 2016, p. 39). The second part of Article 5 of the Enforcement Act foresees an obligation for the bailiff to keep into account that during the enforcement the law will be respected, the dignity of the participating parties and their families will not be harmed, and even to take care that the enforcement is as convenient as possible for them. (Article 5, EA, 2016). Exactly, from this provision several legal authorizations emerge that are complex to specify and difficult to implement in practice. Cavdar rightly points out that this provision, among other things, entails the submission of the opposition of the parties to the participants and third parties (Чавдар & Чавдар, 2016, p. 39).

It is of great importance to emphasize that the objection as a legal remedy, in the EA of 2016, reformulated the approach toward objection. The current formulation of "objection to illegality" is quite targeted, because according to this formulation any omission or illegal action of the bailiff represents a procedural and potential violation for submitted opposition of illegality. However, this is considered as one of the most abstract requirements for guarantees in enforcement. Therefore, in the following we will include some specific cases which came as innovations in 2016, and which contributed to the respect of the procedural rights of the parties involved in the enforcement.

Among them are: the provision of regulation related to the exclusion of the bailiff in enforcement, according to the rules of the contentious procedure (Article 44, EA); transfer of all funds to a separate account in case of submission of objection or request for postponement of enforcement (Article 36, paragraph 6, EA); compensation of damage in case of withdrawal of the request for enforcement by the creditor (Article 29, EA); the obligation to preserve as secrecy all information of a personal nature that the bailiff or the persons employed by him have learned about (Article 45, EA); the initiative for disciplinary process up to the Administrative Council of the Bailiff Chamber can also be initiated by third parties and participants in the enforcement (Article 59, paragraph 2, EA); obligation to notify the debtor at the time of delivery of the order to the bank; the obligation to notify persons who have a registered legal right of priority purchase; transparency in the publication of the Conclusion for sale in the newspaper and on the website of the Enforcement Chamber (Article 179, paragraph 2, EA); re-regulates the way of conducting sales and deadlines for sales by shortening the deadlines, for the intention of shortening the enforcement procedure (referring to Articles 185 paragraph 4; Article 190; Article 220 paragraph 1; Article 236 paragraphs 1, 2 and 3; Article 100, paragraph 3, EA 2016); immediate notification of the debtor in case of the fulfillment of the request from the registered items (Article 100, paragraph 3, EA 2016); stipulates the obligation for cooperation of all institutions, including electronic communication with some state institutions, the Central Registry, the Commercial Registry, the Center for Social Work, the Cadaster Agency, the

Clearing Houses, the Office for Management of Registers of Birth, Marriages and Deaths, the Ministry of Internal Affairs (Article 41, EA); Termination of enforcement by the bailiff if the real estate is not sold within 30-day period or termination in the second sale when the initial determined value is less than 1/3 (Article 185, EA); Avoiding the possibility of notaries being involved in the sale of real estate and even proposing the selling value (Article 174 par 4, EA 35/2005); in the enforcement on the debtor's bank account, the submission of the objection postpones the payment of funds from the special account of the bailiff (paragraph 6, article 149, EA 2016); the above-mentioned principle regarding the objection also applies to the means from the sale of movable and immovable objects, nothing can be carried in any kind of transaction without a final decision from the court; the ban on the disposal of securities is implemented, while the sale and transfer of the funds from the sale of the same will take place after the court issues a decision regarding the objection, and the same becomes a final decision (paragraph 5, article 160, EA 2016); etc. Although the Enforcement Act (2016) had a rather ambitious approach and was successful to some extent, again it went though some subsequent changes. The first changes were intended to avoid shortages and to avoid ambiguities as a result of the abrogation of some legal provisions by the Decisions of the Constitutional Court (Decision no. 143/2016 of November 29, 2017 of the Official Gazette of the Republic of North Macedonia No. 178/17; Decision of the Constitutional Court, No. 135/2016 of January 24, 2018, which was announced in the Official Gazette of the Republic of North Macedonia number 26/18).

In February 2018, many requests were submitted by groups of citizens for the redefinition and revision of the enforcement system, in the direction of relaxing citizens in relation to municipal taxes and other public services (Proposal-Act for amending and supplementing the Enforcement Act). The main idea was to strengthen the professional capacities of bailiffs, reduce the cost of enforcement, simplify enforcement, adequately organize the examination and testing of bailiffs and the way the bailiffs pass the exam, as well as continuous monitoring of the quality of work and the effects of enforcement (Veljanovska & Dudoski, 2018, p. 188).

The changes stated above were crucial in order to recover the enforcement system after the decisions of the Constitutional Court that abrogated many institutes, including the extrajudicial collection of debts. Unlike the changes of 2018, those of 2020 were more focused on protecting the position of the debtor and his family members.

The last amendments to the Enforcement Act in 2020 aimed to specify the norms regarding the limitation and exemption from enforcement, article 116 and 117 of the EA referred to persons and groups who had existential problems (Etemi-Ademi & Zendeli, 2021, p. 120). However, regarding the changes, it is difficult to note precisely how these provisions are applied in the enforcement policy, given that many of them are called legal standards and terms that are regulated by other Acts, specifically the Act on the protection of children, the Act on disability insurance, the Act on social insurance etc.

## 4. Current deficiencies in our enforcement system

Quite often, the issue of enforcement does not get the deserved attention, in finding efficient methods that best adapt to the economic and social circumstances and conditions of our country. Our enforcement practice has problems and they are really obvious. I note this considers the first step towards radical transformation of the enforcement system in 2005 until the last legal changes made to the Enforcement Act of 2016, which were aimed at easing the debtor's position.

The first problem which has been repeated over the years is the frivolous approach of state institutions and professional bodies in the preparation of laws in the sphere of enforcement. Legal elections or certain institutes which have proven to be efficient in other enforcement systems are not proven as a guarantee that the same will result efficiently in our country! There are many forms that can test concrete models, which would be a guide for a more effective option for the state. In particular, the case of Kosovo was a great example of choosing parallel enforcement by both judicial and private bailiffs. The author, Lima, emphasizes that the problems of an effective enforcement system are a global problem and not a national one, so in recent years each system has reviewed the possibilities for reforms and procedural efficiency (Lima O., 2016, p. 286). It is quite necessary to look at the practices of other countries. However, we must find the answers to their success by analyzing the efficient choices of different kinds of problems.

Enforcement of decisions is as important as judgment! It is rather true that this modality is barely used and we can see this from the data taken from the Bailiffs' Chamber, especially for the last few years, that the number of requests for enforcement is decreasing more and more (Annual Report of Bailiff's Chamber January 1 - December 31, 2019, 2019). But this does not justify the legislative bodies for a more serious approach to reforming the enforcement system. According to Stanković, the first step should be to minimize the scope for misuse, both by the bailiffs and by participating parties, so that there are no opportunities for misuse in the future (Станковиќ, 2014). Parties involved in the process must be careful in each step during the enforcement and also in the determination of enforcement of any extension for the implementation of the creditor's request. The lack of justified legal interest in procedural actions represents a probability of the existence of abuses. Previous research studies show that citizens have doubts and negative attitudes regarding the performance of bailiffs, but this negative attitude does not change much towards the courts (Etemi-Ademi & Zendeli, 2021). This opinion is mainly represented by people who have been part of the enforcement process. This means that negative thoughts and bad experiences from executive practice and the courts are dominant. On the other hand, the research studies also show that in the RNM there is a violation of deadlines for deciding on objections, taking into account that in many Basic Courts more than 70% of cases are dismissed or do not have an epilogue within the legal deadlines (Etemi-Ademi, 2022, p. 78).

Related to the procedure for submitting legal remedies, there are also many deficiencies and many loopholes which make the burden for success in enforcement even more difficult. In RNM, the first step that must be taken in this regard in improving enforcement practice is application of Article 10 of the Global Code of Bailiffs. This article emphasizes that: *"States must ensure that the professional instructed with the enforcement has the option of adopting a consensual enforcement procedure at the request of the debtor. In order to adapt the enforcement to the situation of the creditor and the debtor, states must allow the active participation of the parties to the enforcement"* (Article 10, Global Code of Enforcement, 2015). This would be the first effective choice, which would lead to the involvement of both parties and will also maintain communication between the parties; positive will and good approach is needed, taking into account the fact that the aim of enforcement is to repay the obligation to the other party and every step of the bailiff is to help the creditor, but not to violate the debtor's rights. Perhaps this would greatly soften the stereotypes created in public opinion about bailiffs regarding the general opinion about them as acting and functioning with public authorization.

Another important issue is the way of notifying the parties about the submission of the request for enforcement and the notification that enforcement has been determined against their own

property. In RNM there are almost no legal regulations regarding this issue; there are inadequate data systems for finding addresses and data of citizens; there is a very weak level of cooperation between institutions that results in delays, errors and these kinds of problems that prolong the process. The purpose of enforcement is not to "surprise the debtor", the European systems foresee long deadlines for preparing the debtor for fulfillment, deadlines that give the chance for time limits for one- or two-months period of fulfillment, without overlooking the possibility of payment in installments. In RNM, the deadline for fulfillment is within 7 days. This means we find an opposite situation, considering the economic circumstances in which most of the citizens are!

## 5. Conclusions and Recommendations

The main task of the enforcement system is increasing the efficiency and performance of the bailiffs. Transparency in the process of the implementation is of crucial importance for participating parties and also for the third parties along with the enforcement on the debtor's property. It is necessary to preserve the balance between the interests of the parties in the procedure, so as to create a constant and universal system of procedural guarantees, based on the recommendations of the Council of Europe (2013(17)). It is obligatory to notify the parties, because many problems arise due to a lack of information and notification, so they end up in debts and financial burdens. In this regard we recommend reviewing the provisions related to finding effective modalities for the notification of the parties. Another important point in this direction is to anticipate the issue of time in the fulfillment procedure. It is of crucial significance to analyze and see accurately the possibilities and financial burden of the debtor and the chances to fulfill the request. The rules governing the process for placement and deadlines for both objections and appeals as a means of second instance need to be urgently clarified. In this direction, Article 86 should be revised as a whole because the communication of the objection, the actions of the court in relation to it, as well as the time limits should be in proportion to the time needed for a decision. Revision of the provisions of Article 116, 117 along with Article 118 of the Enforcement Law, which foresee the limitation of enforcement on the items and rights owned by the RNM, remains an open issue even though this issue has been brought up before the Constitutional Court many times but without concrete results.

## References


[1]. Boroi, G., & Stancu, M. (2015). Drept procesual civil / Civil procedural law. București: Editura Hamangiu.

[2]. (2019). Annual Report of Bailiff's Chamber January 1 - December 31, 2019. Skopje: Bailiff's Chamber of the RMV. Retrieved September 10, 2021, from http://kirm.mk/wp-content/uploads/%D0%93%D0%BE%D0%B4%D0%B8%D1%88%D0%B5%D0%BD-%D0%B8%D0%B7%D0%B2%D0%B5%D1%88%D1%82%D0%B0%D1%98-2019.pdf

[3]. Enforcement Act ( no.72 / 16). (2016). Official Gazette of RNM(72).

[4]. Etemi-Ademi, B. (2022, March). Submission of proposals for objection and counter-enforcement in the Basic Courts of the Republic of North Macedonia during the period 2016-2019. ACTA UNIVERSITATIS DANUBIUS, 18(1), 66-79.

[5]. Etemi-Ademi, B., & Zendeli, E. (2021). PROTECTION OF THE RIGHTS OF PARTIES, PARTICIPANTS AND THIRD PARTIES DURING ENFORCEMENT IN REPUBLIC OF NORTH MACEDONIA. SEEU Review, 16(1), 108-123. doi:DOI: 10.2478/seeur-2021-0002.

[6]. Global Code of Enforcement. (2015). International Union of Judicial Officers. Retrieved from https://www.uihj.com/downloads/global-code-of-

enforcement/#:~:text=The%20Global%20Code%20of%20Enforcement,major%20international%20organisations%20and%20institutions.
[7]. Lima O., R. (2016). Atypical enforcement techniques on brazilian civil procedure code of 2015. Revista de Processo, Jurisdição e Efetividade da Justiça, 2(2), 261-282. doi:10.21902/2525-9814/2016.v2i2.1611.
[8]. Proposal-Act for amending and supplementing Enforcement Act. (25.09.2018). No. 44-8930\1. proposed by the government of RM.
[9]. Rădulescu, D., & Marinescu, D. (2016). APPEAL TO ENFORCEMENT. ENFORCEMENT ORDER. Jus et civitas, A Journal of Social and Legal Studies, Vol. III (LXVII)(No. 2).
[10]. Recommendation Rec(2003)17. (2003, September). Adopted by the Committee of Ministers on 9 September 2003. Retrieved December 17, 2020, from https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805df135.
[11]. Uzelac, A. (2002). The role played by bailiffs in the proper and efficient functioning of the judicial system - an overview with special consideration of the issues faced by countries in transition. Multilateral seminar on THE ROLE, ORGANISATION, STATUS AND TRAINING OF BAILIFFS. Council of Europe co-operation programmes to strengthen the Rule of Law.
[12]. Veljanovska, S., & Dudoski, S. (2018). Reforms in the institutions that are supporting the court in the realization of its right creation function. Horizons Series A., 22, 185-191. doi:DOI 10.20544/HORIZONS.A.22.1.18.P16
[13]. Kuzencov, E. (2019). The right to the execution of a judgment and the right to a fair trial: the correlation issues. Russian Juridical Journal / Rossijskij Juridiceskij Zurnal, Vol. 127 (Issue 4), 144-145.
[14]. Станковиќ, Г. (2014). Академик. Retrieved from https://akademik.mk/kirm-4/ .
[15]. Чавдар, К., & Чавдар, К. (2016). Коментар на законот за извршување со судска пракса, обрасци за практична примена и предметен регистар / Commentary on the law of enforcement with case law, forms for practical application and case register. Скопје: Академик.