

## THE ROLE OF PROCEDURAL PRINCIPLES IN ENFORCEMENT ACTIONS IN THE REPUBLIC OF NORTH MACEDONIA

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### Abstract

There are specific procedural principles imposed by the state legal system. Due to the legal regulation and ranking of the principles, it is possible to determine which elements in the enforcement process are most prioritized. Bailiffs and other procedural subjects are guided by procedural principles. In RNM, with the entry into force of the laws that transformed the enforcement system, various implications were reflected in terms of procedural principles. The legislator's intent was focused on procedural speed, efficiency, and formal procedural legality, with special emphasis on the protection of the violated right to the extent that it did not affect the debtor's economic existence. There is a consensus among all of the authors that procedural principles are the inspiration for the contents of procedural actions, and any reform or change must be approached and analyzed seriously. There have been positive developments in RNM in terms of procedural speed since 2005 up until 2023, with some small exceptions during the time period 2019-2020. There are a majority of cases lasting more than a year (39293 cases), followed by cases lasting three months, which are also considered successful. The debtor's preparation period for fulfilling the debt is longer in comparison to neighboring enforcement systems. We can also say that from 2018 onwards, we have a pretty big drop in the overall percentage of enforcement cases in RMV, which reflects the stagnation that is being suffered from the impossibility of fulfillment and from other factors, which are evident in our country. As far as the protection of the parties in the procedure is concerned, we can say that there are enough progressive situations for both the debtor and their families. There are obvious obstacles in relation to procedural expenses, which in this year's report of the Bailiffs Chamber, it was declared that it will be a priority to apply legal changes that will revise the Tariff for reward and compensation for the bailiffs' work.

*Keywords:* Procedural principles, enforcement, principle of speed, principle of legality, protection of the rights of participants in the proceedings.

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### 1. Introduction

Every procedural principle is a postulate for achieving civil legal protection (Janevski & Tatjana, 2009, p. 66). In fact, they are rules from which the procedure is expected or oriented towards a certain goal, be it efficiency, justice or even procedural economy. According to another opinion, the principles that are applied in the enforcement process are a determining criterion that is inspired by the content of the process itself, i.e., the manifestation of its nature as both legal-procedural and legal-substantive (Triva, Belajec, & Dika, 1980). By positioning the state for a specific enforcement system, space is automatically created for specific principles characteristic of a given enforcement system, whether it is judicial or privatized one.

In this regard, when analyzing these formulations, we can see that characters of both a legal-political nature and a legal-technical nature are manifested. The first element is necessarily related to the idea of the legislator initially choosing an enforcement model, and the second element is related to the concretization of the institutes that are applied in the procedure (Janevski & Tatjana, 2009). Legislative bodies have to be more cautious in drafting the legal provisions contained in the legislations of the states, because each of them gives a concrete signal for one or more procedural principles. (Victoria, Shcherbak, & Vladimirovna, 2016).

Judicial enforcement systems are characterized by the application of principles that are typical of judicial procedures, while the situation changes when we apply private enforcement, excluding the general principles of the first type and including some of the specific principles that began to be applied in our country with the Enforcement Act of 2005 (Enforcement Act, Official Gazette no. 35, 2005). The organization and role that the bailiff took on in the RNM after 2005, significantly changed the form of procedural organization. The reason behind that is the specific role and the wide scope of competencies that they have compared to the countries in the region, and beyond (Etemi-Ademi, 2023). Therefore, in this analysis, we will try to unfold the procedural principles that are contained in the enforcement process after the moment when the transformation of the system in the RNM took place. Specifically, our focus during this research will be the analysis of the legal provisions that give signals for one or another procedural principle, with special emphasis we will analyze the principle of speed in comparison with the data of the Chamber of Bailiffs of the RNM, where some significant indications are presented about the stagnation that our enforcement system had, despite the statements that we would have a model system for all countries in the region. Let us not forget that each procedural principle contains within itself a certain legal protection, respecting it and focusing on one dimension, implies the lesser importance of another principle, i.e., legal protection. According to Zendeli E. *"There are many legal rules that ensure the implementation of the importance of procedural principles, while the principles on which enforcement is carried out are: the principle of legality, equality, objectivity, urgency and procedural economy, efficiency and the principle of debtor protection"* (Zendeli, 2016). While it is impossible to include every procedural aspect related to all legal provisions, we will expand our ambitions to at least include some key principles that truly changed the course of the enforcement process in North Macedonia.

## **2. Protection of the parties**

The idea of providing legal protection during enforcement is based on certain motives and is not limited to a social, political, economic, or any other dimension (Triva, Belajec, & Dika, 1980). The idea of the authors is that behind each principle, there is a definition or expression that ultimately corresponds to the concept of "debtor protection". Today, in professional literature, the concepts of protection have been sufficiently expanded. If the enforcement process refers to the process for protecting the creditor from an unenforced claim, through the principle of protection in enforcement, it refers to the protection of the debtor, but by writing some other elements that derive from Article 5 of the (Enforcement Act ( no.72 / 16), 2016). The protection of the debtor from this provision refers first of all to the debtor who is a natural person, who has a social situation from which he cannot afford the implementation of the enforcement. Specifically, it is about the first paragraph of Article 5 where it is not allowed for the debtor to have an economic decline, and this prevents him from fulfilling the essential needs for himself and his family members, whom he is obliged to support according to the law. Here, the requirement of Article 5 is insufficient on its own, therefore, reference is made to the supplementary articles of the debtor's protective position (Article 116 exclusion of concrete income from enforcement, 117 limitation from enforcement, 94 exclusion of movable items from enforcement (this also includes items that are part of the debtor's work, profession, craft activity, handcraft and other forms of work), Article 205 referring to the sale of real estate, and Article 175 referring to the determination of which agricultural real estate cannot be the subject of enforcement (Чавдар & Чавдар, 2016).

The second element of "protection" is contained in the second paragraph of Article 5. This Article again contains legal provisions that direct the enforcement agent to be careful throughout the entire process, from the beginning of the process till its conclusion, enabling all

persons involved in the process to submit legal remedies, with which they will present a claim regarding the continuation of the enforcement and the legality of the procedure.

From the enforcement practice, the guarantees of articles 116 and 117 proved not to be very effective and in the public opinion, numerous criticisms were evident. The Administrative Council of the Chamber of Bailiffs had issued legal opinions several times (Правно мислење бр. 1086, 2014) . Regarding these legal provisions, i.e., taking the necessary means of living from a debtor's transaction as a result of volunteer work (compensation for travel and food expenses), is considered a procedural violation, namely procedural illegality. From the Annual reports of the Chamber of Bailiffs and the legal opinions that were brought by the Administrative Council, namely the Professional Council, we can conclude that the last reporting year in which these cases are explicitly explained is 2015, and since then only the number of opinions given is counted and no further explanation is given.

In 2018 and 2020, amendments and additions to the Enforcement Act were made, with the aim of concretizing the definitions, clarifying the income that could not in any way be the subject of enforcement. If the bailiff is not careful in drawing up the Conclusion regarding the items subject to enforcement, then the possibility of objection by the opposite party is created with the claim that there are illegalities in the enforcement. The bailiff must be careful during his work, and be careful to consider the debtor's proposal for the manner of fulfilling the debt, for which the enforcement is carried out (Чавдар & Чавдар, 2016). In this regard, communication between these two entities makes it easier for both parties, in one way to protect the debtor and also fulfill the debt.

### **3. Rules that build formal rigor in the enforcement process**

It is no coincidence that when we talk about procedural aspects, we speak in the plural, and this is undoubtedly the most correct approach. There are many moments in which the enforcement process as a whole is built on rigorous formal principles. The bailiff really has many actions and activities during the procedure, and each activity is undertaken as a result of a provision of mandatory nature.

The first moment of manifestation of this principle is the presentation of the enforcement document, namely, the analysis of the content of the document. In our previous discussions, we have also talked about the disadvantage of the permission for enforcement, which avoids the action of the court, but on the other hand, it is the bailiff who bears the burden of evaluating the document as an enforcement title.

The form of the request for initiation of the procedure (Article 28 and 2) is also a manifestation of the formal nature (Article 28); the provisions on the scope of enforcement (Article 4); determination of means of enforcement (Article 24), etc.

Since only three aspects of the bailiff's work result in a very large volume, each of these actions must necessarily have a certain form of reaction related to it! Any activity outside or in violation of legal authorizations represents illegality. In order to achieve the successful implementation of the process and without committing illegality in the procedure, it requires professionalism, training and hardening in professional experience! In fact, from the point of view of formal rigor, the work of the bailiff is not creative, on the contrary, it is a profession that is guided by the law, and the creative space should be almost equal to zero, because otherwise they are a source of contradiction (Јаневски А., 2006).

#### **4. Disposition and officiality in the enforcement process**

The effective protection of violated rights is in full correlation with procedural provisions (Mizinova, 2013). By procedural provisions, we mean the activities of the parties from the initiation of the process, the continuation of the procedure, e.g., the case of withdrawal of the request, until the end of the process, i.e., the use of the provision in the submission of legal remedies. In the past, the process was also initiated *ex officio*, but this possibility is now part of the history of judicial enforcement proceedings. Enforcement is initiated by the creditor (Article 2, paragraph 2, LP) and this is considered the ability of the procedural party to seek fulfillment of his request. The situation is also the opposite; Article 29 provides for the possibility of withdrawing the enforcement request. This request can be withdrawn in whole or in part, normally if the nature of the request allows such a possibility. As in the case of complete withdrawal, the bailiff brings a conclusion to stop the enforcement in whole or only for the part for which the creditor has requested. In fact, the dilemma in legal theory is what happens if the enforcement has begun, and only after the request has been fulfilled! The answer to this situation is as follows: 1. If the enforcement has been carried out, the withdrawal request is rejected; 2. If the request for partial withdrawal has not yet been fulfilled, then a conclusion is brought and a ban is made; 3. If a conclusion is brought to refuse the enforcement, which causes damage to the debtor, the possibility of filing an objection to the Basic Court is created; 4. If the creditor withdraws a claim, but thereby causes damage to the debtor or third parties, then an obligation to compensate for the damage arises (par. 4), this can be requested through a contested procedure, 5. the withdrawal of the claim does not affect the course of the limitation period (Чавдар & Чавдар, 2016).

The second important provision in enforcement is the postponement of enforcement. Such a request can be made by the creditor to the bailiff who in this case decides on it (Article 91, paragraph 1) and a request from one of the parties or participants to the President of the Basic Court for a decision on the postponement (paragraph 3, Article 91). In both cases, different provisions are foreseen regarding the time and the decision-making body. In the case of a decision by the bailiff, a postponement can be allowed twice for a duration of 30 days (paragraph 2), while in the case of a decision by the president of the court, we have a 90-day period (paragraph 3). Any action taken until the submission of the request remains in force (paragraph 5, Article 91), simply for a while no action is taken until the day the deadline provided for by law expires. If there are actions taken by the bailiff, such as a public sale, which is regulated by time limits, and between the first and second sale no more than 30 days can be allowed, then, according to one opinion, these actions will be repeated once more (Чавдар & Чавдар, 2016). In the case of the decision by the President of the Court, let us not forget to emphasize some key moments, namely: 1. The possibility of allowing second-instance legal remedies (par. 4); 2. The second-instance court acts as if it was an appeal regarding the counter-sale; The President of the Court should condition the postponement with the deposit of the guarantee (par. 6). The latter is quite controversial, because firstly, the debtor may not have the opportunity, according to the position of this legal provision, to deposit the amount of the main claim, and secondly, if it concerns very large amounts, or even real estate secured by mortgage, this provision undoubtedly loses its need to exist. Other provisions that we consider to be most important in the process are those that refer to the filing of an objection (Article 86, EA), the appeal regarding the objection (87, EA), and Counter-enforcement (Article 88, EA).

The bailiff is obliged to act according to legal provisions, every activity he performs is a result of officiality as a procedural principle. He is called upon to fulfill the legal authorizations that the EA foresees. By this we mean that the actions taken by the bailiff foreseen in article 40 of the EA, are only one dimension of procedural officiality, otherwise every legal provision that is called upon in his activity for enforcement or related to it is taken within the framework of

official duty. Here we should not forget the officiality of the court for deciding on legal remedies such as those addressed to the Court of First Instance or the Court of Appeal. Officiality in the enforcement procedure is also manifested during the interruption of the enforcement process as a whole. This possible situation is regulated by article 93 of the EA and that: There are problems related to the enforcement document, or with the certificate of enforceability (par.1, paragraph 1); the creditor requests an extension more than twice (para. 3); exclusion of the bailiff (paragraph 2). What was added as a novelty with the Act on Supplementation and Amendment of the EA (2018) were two new paragraphs referring to the facts on the part of the debtor who has fulfilled the request (paragraph 4 (Official Gazette of RNM no. 233|2018)). It is even emphasized here that if the creditor does not make a statement within eight days, the enforcement is immediately terminated by the bailiff (par. 3).

## **5. Speed in the procedure**

The liberal professions of the enforcement bodies have brought many advantages in terms of the speed of the procedure (Uzelac, 2009). This is a fact that cannot be denied by the states, especially in our country. Since the enactment of the Enforcement Law of 2005 until the enactment of the new Enforcement Law of 2016, the shortening of the procedure has been one of the strongest points. Today, the EA in Article 6 provides for an obligation for the bailiff to act immediately without any delay during the implementation of the enforcement. The definition contained in Article 6 is an expression of the legislator which does not serve only as an indicator, but represents an educational legal norm, the non-compliance of which leads the bailiff to various types of liability (Чавдар & Чавдар, 2016). In a comparative aspect between North Macedonia and the countries of the region, the deadlines within which enforcement activities must be undertaken are as follows: In the Republic of North Macedonia, the deadline for undertaking enforcement activities is eight days, in Serbia the same deadline is provided for eight days, except in cases where it does not regulate any other specific situation ((Article 15) (Zakon o izvršenju i obezbeđenju)). In Montenegro almost, all procedural aspects are the same as In Bulgaria, the possibility of issuing an enforcement order immediately is foreseen (Article 418 (Civil Procedure Code of Bulgaria)), but here the order is issued by the court, since the permitting stage belongs to the court, while in our country we have only one-stage enforcement. No more than two years later, the provisions regulating the deadlines for enforcement were amended and supplemented, providing for a one-week deadline (Държавен вестник, брой 100), leaving space for the parties to present objections they have regarding the enforcement document or creditor's claim.

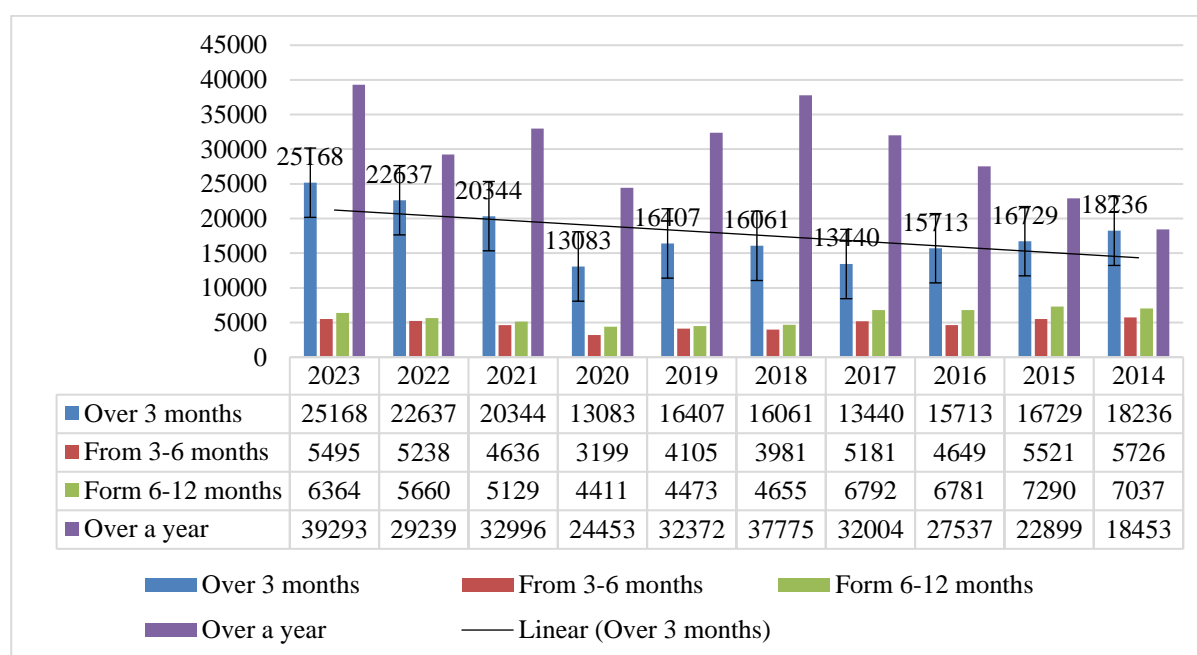
In Albania, according to the law, enforcement activity is initiated within five days (Article 510 (Kodi i Procedurës Civile të Shqipërisë)), while the order is issued depending on what type of procedure and on what item the enforcement is applied, although generally even here the courts are fully competent, with the exception of enforcement cases by agreement between the parties, which are given to enforcement offices.

In Kosovo, the term “urgency” is used, and according to the law, the enforcement agency has an obligation to act quickly, even to change the order of requests in case the interests of children, family relations, labor disputes, alimony, etc. is involved (Article 6 (Ligji për procedurë përmbarese)).

Compared to other countries, the principle of priority order differs in our country because specific procedures for family matters, labor matters, and even public claims are under the jurisdiction of special institutions and not bailiffs. It is from this that it follows that the EA of North Macedonia distinguishes between the principle of equality (fulfillment of claims of the same order) (Article 7 EA); real priority (in the case of enforcement over real estate; priority is given to procedural costs and VAT, property tax (Article 193, EA) and exclusivity, which is the

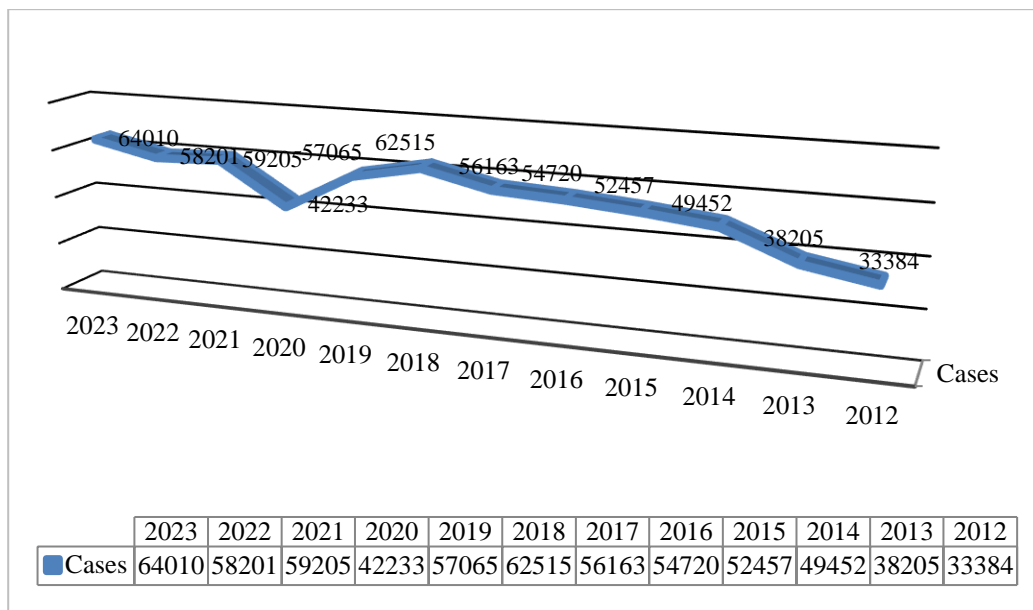
part where the specific interest is protected for claims where the creditor is the person to whom compensation for damage is due, whose health, or ability to work has been reduced (Јаневски & Зороска-Камиловска, 2011). In the latter case, the possibility of applying the measure to half of the debtor's income, whether it be salary or pension is allowed according to the concrete legal provision (including in Article 117, paragraphs 1, 2 and 3).

What was a promise of the Chamber of Bailiffs before the installation of the function of bailiff actually turned out to be true. The Chamber emphasized that: "...the procedure which previously lasted a year and a half, with the inclusion of bailiffs, this period would be no more than three months" (Комора на извршители на Република Северна Македонија, 2016). Below, we will present some data from the Chamber of Bailiffs of Macedonia regarding achievements in terms of procedural speed.



*Data presented on the Annual reports of the Chamber of Bailiffs for 2019 and 2023*

From the data, it can initially be seen that the categorization of duration has been made into four categories. According to the number of cases resolved for each category, cases with a duration of over a year are at the top; up to 3 months, from 6-12 months and at the bottom is a period of 3-6 months. The second observation is that the last two categories presented in the graph generally do not have any drastic movement over the years such as a gap or culmination. The cases revolve around the figure of 5 thousand cases. The changes that have manifested over the years in the other two categories are evident. In cases lasting up to three months, the lowest point reached is in 2020 with 13,083 cases and 2017 with 13,440 cases, while the peaks were expressed during the last three reporting years, 2021, 2022 and 2023. In the last and most pronounced category is the period "over one year", in which we have a depression in 2014 with 18,453, 2020 with 24,453 and 2022 with 29,239, while the peak is in 2021 with 32,996, followed by 2018 with 37,775 and 2023 with 39,293 cases. The latter is not a very positive indicator, because it seems that the procedures have started to last longer than in the past, but the positive aspect is that in recent years, the procedures for which the Chamber of Bailiffs claimed to be a leader in the country and region have also started to increase. Below, we will present another graph that reflects the data on cases enforced for each year from 2012 onwards, to see if there is any correlation with the graph above.



Data collected from the Annual Report of the Chamber of Bailiffs regarding completed cases for the respective years.

In general, we see that although the duration has been shortened, the volume of completed cases in recent years is increasing. This is why we have high efficiency in enforcement work. The exception is the year 2020 during the pandemic, when the activity of not only bailiffs but also all institutions became inactive. In fact, at that time, the Ordinance with legal force for the application of the Act on Enforcement in a State Emergency No. 44-5468/1, June 12, 2020, and the Ordinance on Amending and Supplementing the Ordinance (Official Gazette of the Republic of Macedonia No. 103 dated 16.04.2020) were introduced. The idea was to stop enforcement except for specific cases such as social cases, so it would enable them to have some kind of help if the incomes that they benefit is part of essential needs and means.

## 6. Conclusion

Enforcement is a very complicated process. Enforcement does not only consist of a set of actions whose purpose is to fulfill the creditor's claim. The nature of enforcement is compulsory; however, the procedural rules are those that the legislator raises as a barrier to how far that action or inaction can extend. In general, the tendencies and expectations of the enforcement process are initially to develop an efficient procedure, protect the debtor, shorten deadlines throughout the entire process, control the work of the enforcement agents by both the Chamber and other supervisory bodies, increase transparency, etc. Throughout the process, the focus is on the entity conducting the procedure, and it is expected to achieve procedural efficiency while maintaining a balance of interests, which would ultimately result in the realization of the creditor's claim without violating any of the procedural rules or principles. These rules stand as a guarantee for everyone, even for the bailiff and the court, using them as guidelines in the implementation of the duties and tasks they have within the framework of legal authorizations, namely the Enforcement Act.

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