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Submission of Proposals for Objection and Counter-Enforcement in the Basic Courts of the Republic of North Macedonia during the period 2016-2019

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Abstract: During the enforcement process, parties, participants and third parties have the right to file legal remedies in order to protect themselves from the illegalities committed during the enforcement. These illegalities refer to both the enforcement document and the activity of the bailiff. Since the privatization of the enforcement system in RNM, public opinion has expressed dissatisfaction and distrust regarding the transfer of powers to private bailiffs, leaving the courts with the power to decide only on legal remedies. The idea of this research is to analyze how the requests of citizens for objection and counter-enforcement submitted to the Basic Courts of the RNM have continued since 2016 when the new Enforcement Act was brought, until 2019. The data have been processed by statistical methods and are compared with the population number for each judicial district and the data of the Bailiffs Chamber of the RNM on the number of cases enforced for each respective year. In this context, the results show a positive relationship between the cases of counter-enforcement and the population at 35.35%, while this correlation seems to be much stronger between the objections and the population at 90.46%. It was found that citizens generally file objections, but with special emphasis was found an increase in the number of objections in the Basic Court Skopje II for 2018, followed by the Basic Court in Kumanovo for 2017. In terms of requests for counter-enforcement in the Basic Court of Prilep for 2017 also sees a high increase or impulse of demand. In the period 2016-2019, the proposals for objection and counter-enforcement result to coincide with any increase or decrease in the percentage of enforcement by bailiffs. These and other results ascertained make this study important for both theory and practice of enforcement, given the great lack of studies in the field of enforcement and especially regarding the legal remedies available to the citizens of RNM.

Keywords: Enforcement Act; legal remedies; enforcement proceedings; objection; counter-enforcement

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1. Introduction

The civil procedural rules state: "Where there is a right, there is also a legal remedy", this is a maxim according to which if a right is provided by law, it must correspond to the legal remedy in case of violation (Zeigler, 2001). The right to appeal legal acts brought before the courts and public administration bodies is a right guaranteed by Amendment 21st of the Constitution of the RNM (Устав, 1991). This right during the enforcement process is an indisputable right of the parties involved in the enforcement process. Given the enforcement practice and related debates over the last 15 years, from 2005 onwards. Dilemmas regarding legal remedies in the enforcement process have often arisen, even before the Constitutional Court of the RNM. All this debate was created as a result of the change on the enforcement system, a privatization that has proven to guarantee speed in the realization of creditors' claims in all countries (Uzelac, 2009, p. 185). With the privatization of the enforcement system, the competencies were transferred to the private bailiffs who exercise their activity based on the authorizations given to them by the Enforcement Act, while the courts would decide only for the submissions of the parties and participants.

All entities that exercise public authority, exercise their activity independently of any kind of influence, applying knowledge and professionalism, but this requires to find an adequate legal regulation to avoid situations which may jeopardise procedural efficiency (Kiršienė, 2014, p. 688). A legal remedy protects the claim of a party and seeks to avoid the negative consequences of the bailiff activity (Triva, Belajec, & Dika, 1980, p. 246). A remedy is usually used to oppose the activity of bailiffs in the enforcement procedure (Etemi-Ademi & Zendeli, 2021, p. 118). Respectively, this refers to the action or omission of the bailiff regarding eventual illegalities during the implementation of enforcement (Vėlyvis, Višinskis, & Žalėnienė, 2007). Legl remedies available to parties, participants and third parties in enforcement process currently are reduced and very little attention is being paid in the professional legal literature, but also by enforcement practice. I say this because the manner in which the Enforcement Act regulates legal remedies is an insufficient and unconcrete approach given their sensitivity and specificity. The purpose of this research is to analyze the objection as a legal remedy with special emphasis and the realization of the right to counter-enforcement by addressing the Basic Courts with jurisdiction to decide on them. Since objection is the only remedial tool that can be put forward, the idea is to analyze citizens' proposals at the national level, compare all judicial districts, and see what the trend has been

since 2016 when the new Enforcement Law was brought, until 2019. While the idea is to look and compare the requests for counter-enforcement, as a request for return of what was received during the enforcement which stays with the creditor unfairly, which this injustice couldn't be objected during the enforcement.

2. Legal Remedies According to the Enforcement System of 1997 and 2005

The first Act enacted by the RNM parliament was made in 1997, when the Enforcement Procedure Act was brought (Official Gazette no.53 / 1997). Unlike the laws which were later brought in the RNM, this law provided for the competence of the courts to conduct the enforcement procedure, while the enforcement was considered as a court procedure (Etemi-Ademi & Zendeli, 2021, p. 151). New legal solutions were built in this Act, which represented reform success in addition to the Enforcement Procedure Act of the Yugoslav Republic, while the choices made by the legislative represented innovations for the enforcement system of the Republic of Macedonia (Janevski, 2006, pp. 219-220). The structure of this enforcement system provided enormous opportunities to file legal remedies, even to the extent that it hindered the course of the enforcement procedure itself. Specifically, Article 48 of the Enforcement Procedure Act presupposes objection to the court that has brought the decision for enforcement; appeal against the decision brought according to the objection (Article 7, par. 6); the right to submit complaints for irregularities during the enforcement, where it is required to eliminate the irregularity made during the enforcement (Article 46); objection to the enforcement decision on the basis of a credible document (Article 52); instruction of the parties to dispute after deciding on the objection (Article 53); appeal against the decision of the first instance brought regarding the decision in the first instance (article 7, par. 3), etc. The problem related to the inefficiency of the enforcement procedure of this system was not only the numerous opportunities to file legal remedies, but also other problems such as inadequate status of officials, favoring debtors, problems in assessment and selling items subject to enforcement, very low technical equipement and preparations, etc. (Zendeli & Nuhija, 2018, p. 2-3). In 2000, several amendments were made to the Enforcement Procedure Act (Official Gazette no. 59/00), the purpose of which was to eliminate the numerous possibilities for termination of the procedure, thus leaving as an opportunity to object the enforcement decision on the basis of the credible document, and an appeal may be lodged against the decision of the first instance. In fact, the delay of the procedure came from the existence of the two-stage enforcement procedure

(permitting and enforcement), where the first legal remedy as an objection referred precisely to the decision to allow the enforcement. According to official data, the backlog of cases in the domestic courts was over 50% in the courts, which made the situation and efficiency of the judiciary in general very disturbing, so in 2005 the new enforcement concept was introduced (National Strategy, 2004). With the Enforcement Act of 2005, the enforcement sphere became the largest reform ever undertaken (Zendeli, 2016, p. 188). This reform included the enforcement powers of private persons with public authority, whose appointment and control would be done by the Chamber of Bailiffs and the Ministry of Justice.

The Enforcement Act was brought within the framework of several laws that affected the judiciary, the purpose of which was to protect the rights and interests of citizens (Veljanovska & Dudoski, 2018, p. 188). Regarding the transfer of competencies from the courts to private bailiffs, Janevski rightly states that: *"Although the legislator wanted to completely remove the involvement of the court in the enforcement process, the conclusion is that it did not succeeded"* (Јаневски, 2006, p. 236). In terms of legal remedies, this system offered the possibility to file an objection for irregularities and the second remedy was appeal. Fortunately, the RNM, unlike the countries in the region, has abandoned extraordinary legal remedies. The Enforcement Procedure Act (1997) in Article 8 states that neither the revision nor the repetition of the procedure is allowed against the final decision in the enforcement procedure. Even the Enforcement Act of 2005 explicitly stated that, filing extraordinary legal remedies is not allowed in enforcement. What was also not allowed under the Enforcement Act (2005), was the right to appeal against the decision brought upon the objection (Article 77, par. 7). This provision highlighted many essential dilemmas regarding the enforcement process, namely the non-realization of an essential right such as the right to appeal as a constitutional right. In 2007 this paragraph was abrogated by a decision of the Constitutional Court, reiterating the right of the citizen to file an appeal against the decision brought before the Basic Court (Decision no. 185 / 2006-0-0, 2007). The Law on Amending and Supplementing the Enforcement Act (Official Gazette no. 8/2008), Article 77a provided the right of appeal as a second instance legal remedy against the decision of the President of the Basic Court as a competent subject for deciding on it. Many dilemmas and debates were opened regarding the competence of the President of the Basic Court to decide on the objection. Regarding the effectiveness of this choice made by the legislator, Janevski and Kamilovska stated that: *"The objection is a very common tool used in the procedure, but the truth is that the legal deadlines are never respected to realize and decide on the objection,*

whereas the specialization of Presidents of the Basic Courts for deciding on the objection is a matter that should be reconsidered" (Janevski & Zoroska-Kamilovska, 2011, p. 58).

After 10 years of implementation of the Enforcement Act, over twelve important changes were made, including the decisions of the Constitutional Court, which affected the loss of effectiveness in enforcement practice. Creating an efficient enforcement system is a global problem and all countries approach reform in order to find an adequate model (Lima O., 2016, p. 268). I consider that RNM has a lot of history in terms of initiatives and haste in bringing laws and changing them, and this gives a signal to citizens for accelerated and not so well thought out decision. One of these situations was th enactment of Enforcement Act in 2016.

3. Remedies According to the Enforcement Act (2016)

With the idea of specifying the powers of the bailiff, limiting the discretionary right of the bailiff and filling the legal gaps from 2013 intensively began preparations for the adoption of a new Enforcement Act (Etemi-Ademi & Zendeli, 2021, p. 152). The Act of 2016 was a continuation of the private form of enforcement, where the courts would be the subjects that would decide on objections and complaints during the enforcement. In fact, the tools that the parties, participants and third parties can use in the enforcement process are of several types. According to a division that we consider the most appropriate is the one that separates the legal remedies arising from the guarantees of Articles 86 and 87; remedies guaranteed by other provisions of the Enforcement Act and legal remedies guaranteed by other laws outside the provisions of the Enforcement Act (Чавдар & Чавдар, 2016, p. 268).

In this research we refer in particular to the legal remedy contained in Article 86 of the Enforcement Act (2016), which provides protection for the parties, participants and third parties from illegalities during enforcement. This is a tool that citizens can use during the enforcement procedure and the object of this remedy is not the decision of the bailiff, but it's the action/inaction of the bailiff (Janevski & Zoroska-Kamilovska, 2011, p. 57). In the Enforcement Act (2005) this remedy was named as "objection for irregularities", while in the adoption of the new law regarding this change there is no comment on whether it constitutes a change in the essence of this legal remedy or not! Undoubtedly there are differences at least in terms of meaning between these two approaches. The first "irregularity" always associates with the wrongdoing of the bailiff, which is not right, while illegality

means the activity undertaken by the bailiff which does not comply with legal provisions and which includes a much broader meaningful context than the first concept. Regarding the objection the new Act corrected some issues, for example judges would have the right to decide on the objection (Article 86, par. 4) and not the President of the Basic Court; the right to appeal is enabled against the decision made on the objection (Article 87); in addition to the parties and participants, since then third parties also have the right to file this legal remedy (Article 86, par. 1); while the issue which, despite the remarks, did not improve is the further shortening of the procedural deadlines regarding the objection and appeal! It is true that most of the legal remedies that can be filed today during the enforcement process have a non-suspensive character, starting from the objection; appeal against the decision regarding the objection; appeal against the decision to postpone the enforcement, appeal against the decision of the bailiff to impose a fine, for failure to take certain actions that can be taken only by the debtor; filing lawsuits related to the sale of items during enforcement, etc. All this has been done by contributing to the procedural speed and the impossibility of abusing with procedural rights.

In the current Enforcement Act another issue which seems to be ignored at all is the unnecessary submission of the objection to the parties and participants in the enforcement (Article 86, par 3, LP); the approval of the decision on the objection, regardless of whether an answer has been given in relation to it (Article 86, par. 5), then the question arises as to how the assessment of the need for summons in relation to the objection will be made (Article 86, par. 3) ; Excessive gaps in what should be undertaken if it is found that illegal actions have been taken or have been issued without taking actions that the bailiff was obliged to take. We say this because in paragraph 8 of the Enforcement Act (2016) it is stated that the court decision can neither terminate the enforcement, nor force the bailiff to take enforcement action. On the other hand, the situation with the decision of the court in case of illegality is also unsatisfactory! According to the Enforcement Act, the court, after accepting the objection, will prove the illegality and annul the actions taken or confirm the omission of the bailiff (Article 86, paragraph 7, LP). In reality, the entire procedure related to the work of the court is unregulated, and this creates many problems in the effectiveness of protecting the rights of the parties and participants, especially in the existence of a unified court practice.

Similar problems are repeated in the case of filing a complaint against the objection, so both of these remedies for the protection of rights in the enforcement

process need to be elaborated in more details. These problems seem minor at first glance, but in fact are serious problems for the enforcement process, because it gives the impression that violations are never found, and the specification of the same has not been left as such for years!

The Enforcement Act (2016) does not provide the circumstances for which an objection may be filed. According to one opinion, this should be done by the procedural theory (Etemi-Ademi & Zendeli, 2021, p. 118), according to another opinion, the conditions and the possibility of filing an objection provided by Enforcement Act are some of the circumstances and reasons for which the objection to enforcement decision provided in the Enforcement Procedure Act (1997) contained in the Article 47 (Чавдар & Чавдар, 2016, p. 269). If we consider the second approach then part of the reasons for filing an objection are only those that refer to the legal provisions governing the validity of the enforcement document (Article 88) and other provisions. If we consider the term illegality, it turns out that the violation of any legal norm by the bailiff is the basis for filing an objection, be it the powers of the bailiff (Article 40), procedural principles, limitation and exclusion from enforcement (Articles 116 and 117) and many essential issues since acceptance of the proposal for enforcement, fulfillment of the creditors' claims, implementation of the enforcement, sale of the object of enforcement, etc.

4. Legal Protection during Counter-Enforcement

Another form of protection of the debtor and his property is the right to return the property obtained by conducting enforcement proceedings against him. This is a form of protection of citizens which comes as a result of the existence of a number of situations related to the enforcement document. The reasons for filing a counter-enforcement are the same as those that a party may present when filing an objection (as objections to the enforcement document), but the differences lie in several situations: the purpose of the counter-enforcement is to provide legal protection after the enforcement proceedings have been completed; the purpose is not to find any violation, but to request the seizure of the debtor's property by the creditor, because the legal basis on which the enforcement took place, has been declared invalid, annulled, amended, revoked or the creditor' request has been met (article 88, par. 2, Enforcement Act). The reasons why this institute is related to the enforcement process are due to the economics of the enforcement process

(Чавдар & Чавдар, 2016, p. 310). The return property, items or rights from enforcement and avoid consequences from enforcement we can use two methods, the first one is through counter-enforcement and the dispute for unjusted enrichment (Јаневски & Зороска-Камиловска, 2011, p. 77). The same goal is achieved according to both, but the difference is in the submission deadlines for these two methods. According to the EA, the proposal for counter-enforcement can be submitted within 30 days from the day when the debtor has agreed on the cause of counter-enforcement and up to one year after the completion of the enforcement (Article 88, par. 2), and before this deadline the debtor cannot request the realization of this right in a contentious procedure (par. 3). The Enforcement Act of 2005 did not provide instruction for parties to dispute after one year, and this posed a risk to citizens who are uninformed and do not know their rights. The Enforcement Procedure Act (1997) had the same approach as the current Enforcement Act (2016). The basic courts of the Republic of North Macedonia have jurisdiction to decide on these proposals, and this approach has been in place since 1997 until today. Just as the situation with objections is the same, so in counter-enforcement we have many debatable issues in terms of legal regulation. What has been obtained through enforcement is returned, but what happens to other means, e.g. interest arrears which have been paid by the debtor? The second issue is against the decision made according to the counter-enforcement, can legal remedies be submitted since it is a decision of the first instance? Regarding the first case, we must keep in mind that in submitting the proposal, the debtor must complete the documentation, provide evidence and facts with which he supports his claims, so the proposal must meet all the necessary modalities provided by Contested Procedure Act; the court assesses whether the proposal is timely, admissible or other issues related to its regularity; in case of rejection of the same party has the right to present legal remedies and this is left to be implied (Чавдар & Чавдар, 2016, p. 313). In the following we will present the data related to these two forms of debtor protection, to see how much they are used as tools in the enforcement process and after it and how they have been manifested over the years.

5. Research Methodology

Basic data are collected from the monthly reports of all Basic Courts in the RNM on objections and counter-enforcements submitted by citizens with the exception of the Basic Courts of Ohrid, Veles, Kriva Palanka, Gevgelija, Kavadarci and Berovo. These regions are not included as a result of non-publication of court work reports

in their bulletins, which otherwise is an obligation of each court. The data collected and processed include the years 2016, 2017, 2018 and 2019 and are classified for the respective judicial region. In addition to these data, we asked specialists in the relevant fields to provide us with data on the population of each municipality for 2016, 2017, 2018 and 2019 in the RNM, and then we collected the population of the municipalities which belong to the relevant courts. All data presented have been processed with different statistical methods for each test of research questions, so that we can draw conclusions and validate our hypotheses. The results achieved after processing will be reviewed alongside secondary data from the Annual Reports of the Chamber of Bailiffs, for cases enforced for each respective years and relevant judicial districts.

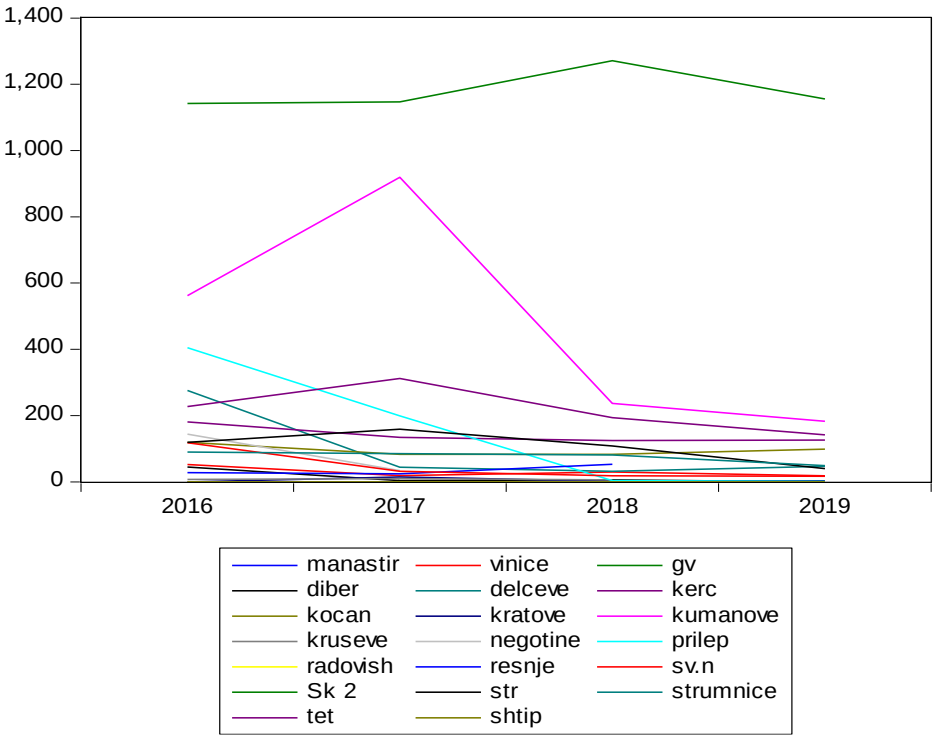
6. Research Questions

Our whole research aims to provide answers to some research questions, which constitute the core of this paper as follows: 1. At the level of judicial districts from year to year, are there differences between citizens' proposals for objection? Is there a correlation between the number of the population and the number of proposals for objection? 2. Over the years at the level of judicial districts, how are the citizens' proposals for counter-enforcement? Is there a correlation between the number of the population and the number of counter-enforcement proposals? 3. Is there any connection between citizens' proposals for objection and counter-enforcement? How do these two stands in comparison with the population number? 4. Is the increase in the number of completed enforcement cases for the respective years related to the increase or decrease of the objections and counter-enforcement proposals.

6. Research Results

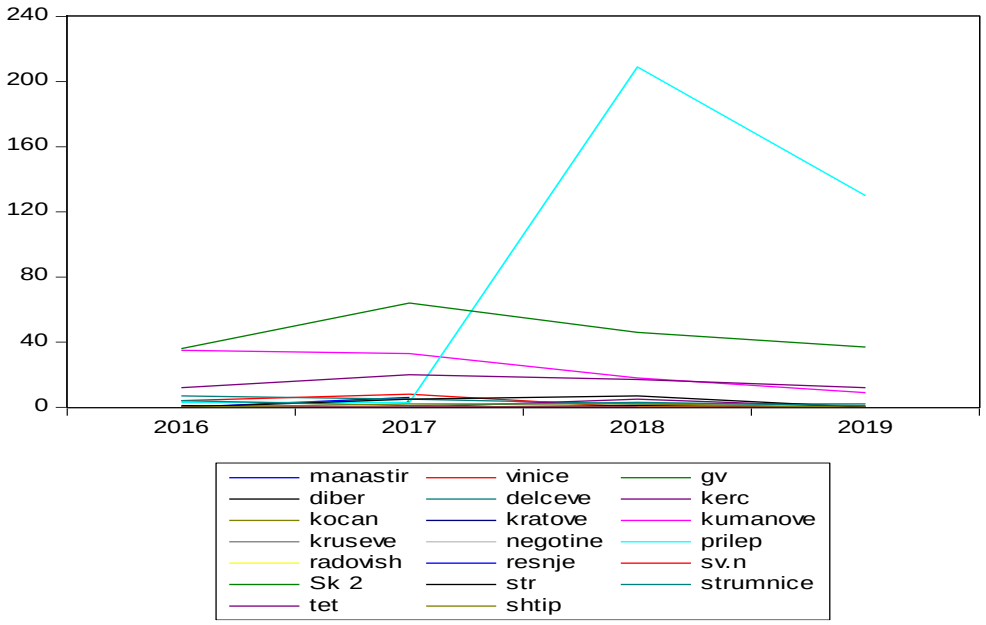
After collecting data from all courts, the first issue that has been noticed is the problem with unsolved cases for each year and each basic court. I say this especially when it comes to objections as a legal remedy, knowing that the deadlines for deciding on them are extremely short. In particular in the Basic Court in Kumanovo, for 2016 and 2017 over 70% of objection proposals remain unsolved; in Kichevo and Struga over 50% of objection proposals were left without an epilogue; in Tetovo over 30% of proposals for objection; a similar situation is

observed in Skopje, Prilep and Resen, while in other Basic Courts this phenomenon is less pronounced, but let not forget that the proposals for objection are also very small in number. After processing the data, the first analysis we did was the *F Test* which served us to see if there are changes in the overall average of the claims for objection and counter-enforcement, with F (1,140) = 16.91 and with p <0.05, we we reject H0, which means that no change was found during period 2016-2019 at the republican level. Despite the republican level, in the regional level we found many changes. If the data and the objections of the citizens are presented in the form of a graph, they would look like the following (graph no. 1).



Graph 1. Objections submitted to the Basic Courts

In particular, the objection curve for the Basic Court in Skopje stands at a much higher level than other cities, ie with much higher numbers of objections from 2016 until 2019; in Kumanovo a different situation is observed, from 2017-2018 we have a drastic decrease of citizens' objections and this situation is generally similar in some other courts until 2019, but in a much less pronounced situation e.g. in Kichevo and Gostivar. Regarding the citizens' proposals for counter-enforcement, we have following situation as it appear in graph no. 2.



Graph 2. Proposals for Counter-Enforcement during 2016-2019

From 2017 in the Basic Court in Prilep, there is a high increase of the counter enforcements, while at other courts we see a rise in proposals for counter-enforcements, such as in Kumanovo, Skopje and Kichevo.

Through *Pearson correlation* we can derive another result. In the table below (no. 1) we can see that there is a positive relationship between the number of objections and the population with 90.46% and counter-enforcements and the population with 35.35%, while the citizens' proposals for counter-enforcement and objection have no correlation, this may be the result of which is also expected to have far more objections than the request for counter-enforcement (table no. 1). In other terms, a positive linear correlation means that with the increase of the population, the objections increase, while the same does not happen with the counter-enforcements.

Table 1. Correlation between Counterenforcement and Objections

Pearson correlation	Counter-enforcements	Objections	The population
Counterenforcements	1.000000	0.287671	0.353532
Objections	0.287671	1.000000	0.904610
The population	0.353532	0.904610	1.000000

If we take into account the data from the Chamber of Bailiffs of the RNM from 2016 up to 2019, in the basic courts which have the largest changes in terms of

proposals, we can see significant changes in the enforced cases between years. Specifically, we will present the data for specific judicial regions in the following table which have correlations.

Table 2. Percentage of the enforced cases according to the Chamber of Bailiffs of RNM (Annual Report of Bailiff's Chamber, 2019)

	Basic Court Kratovo, Kriva Palanka, Kumanovo	Basic Court Skopje 2	Basic Court Gostivar and Kichevo	Basic Court Prilep and Krushevo
Cases enforced for 2019	6.67	10.30	4.81	8.96
Cases enforced for 2018	10.96	9.86	7.20	11.63
Cases enforced for 2017	14.46	14.12	9.49	22.44
Cases enforced for 2016	18.61	19.91	12.91	46.24

From the table above it can be seen that both the proposals for objection and counter-enforcement have a tendency to decrease in the Basic Court in Kichevo and Gostivar. On the other hand, we also have a decrease in the percentage of enforcements for years from 2016 (12.91%) to 2019 (4.81%). The same situation occurs in the case of the Court of Kumanovo where from 2017 the proposals for objection fall significantly, while at the same time the percentage of cases completed from 2017 (14.46%) in 2018 (10.96%) decreases. The situation with the impulse of increasing counter-enforcement proposals in 2017 is also not unexpected, considering the fact that during 2016 there were twice as many completed cases (46.24%) than in 2017 (with 22.44%). Regarding the high percentage of objections in the Basic Court in Skopje, we cannot make the connection, because as it can be seen, the other municipalities are composed of two and it is expected that there will be equal or even lower values for the Basic Court of Skopje.

7. Conclusion

The processes related to legal remedies in the North Macedonia should be precisely regulated, enabling citizens to be correctly guided by his / her possibilities and rights from the enforcement activity. This applies to both the objection, appeal and counter-enforcement. This does not mean that citizens did not apply for protection

during the enforcement, but the question is how many of them have been accepted by the court and how many have been rejected as they do not know exactly what illegality means! Citizens' proposals regarding objections and counter-enforcement are closely related to the enforced cases, which means increasing or decreasing the number of enforced cases brings with it the increase or decrease of objections as well as counter-enforcement. In terms of population and objections, a much higher positive correlation was found in the cases of the objection than in counter-enforcement, which is a result of the much smaller number of requests for counter-enforcement than for objection. Finally, we can say that in the RNM there is a violation of the deadlines for deciding on the objection, given that in many Basic Courts very large percentages, even over 70%, are left without an epilogue within the legal deadline.

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