



## Enforcement on Movable Objects and Rights Against the State and its Authorities in the Republic of North Macedonia

Drita Fazlia<sup>1</sup>, Bukurije Etemi-Ademi<sup>2</sup>

**Abstract:** The application of enforcement actions varies between countries, mostly considering the subject that applies enforcement actions. In this context, we say that there are differences between the subjects and the stages of enforcement. In the countries where the permission phase is applied, the court decides on the merits of the proposal for enforcement, analysing whether the creditor had the right to request compulsory enforcement against the debtor specified in that document. Unlike the Western Balkan countries, RNM applies one-stage enforcement, where the bailiff determines the means and implements the enforcement. Based on preliminary research in the field of enforcement and the means that can be subjected to enforcement, and those that were excluded from enforcement, article 218 is a problematic point. For years there have been discussion in the professional literature, but also in the Supreme Court and the Constitutional Court of RNM. This research deals with the approach of restricting enforcement on state-owned objects and rights, creating a line of comparison between RNM and the countries of the Western Balkans. In the legislative aspect of the situation, it turns out to be similar in many states in the region. In most countries, there is a specific subject that allows the decision of implementation or non-implementation of enforcement, with the exception of the Republic of Kosovo, as a state with fewer legal rules dedicated to the limitation of enforcement. In the RNM, the President of the Court decides whether enforcement will be carried out or not. In Serbia and

<sup>1</sup> Professor, University of Tetova, Ilindenska, Tetovo, North Macedonia, Address: Street Ilinden bb 1200, Tetovo 1220, North Macedonia, E-mail: drita.fazlia@unite.edu.mk.

<sup>2</sup> Assistant Professor, University of Tetova, Ilindenska, Tetovo, North Macedonia, Address: Street Ilinden bb 1200, Tetovo 1220, North Macedonia, Corresponding author; bukurije.etemi@unite.edu.mk.



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Montenegro, the judge of the case decides also for allowance, while in Bosnia and Herzegovina, applied restriction is at least within 0.3 percent of the total income planned in the budget of the debtors.

**Keywords:** Restrictions during enforcement; exemption from enforcement; Enforcement Act; enforcement; monetary claims

## 1. Introduction

Recently, the issue of implementing civil legal decisions has become a legal and political priority for reforms in the countries of the region after being neglected for years. The reforms made in this direction in itself have opened discussions on how to apply reforms in the functional sense! Which enforcement system will be more suitable for the state, who will be responsible for harmonisation! How the harmonization of enforcement in the European context was made, etc.

Numerous consequences were a result of delay and the inefficiency of the enforcement procedure: From individual dissatisfaction due to the impossibility of achieving ultimate realization of a certain right, to the general crisis of the legal system due to its inefficiency and lack of functioning. The inefficiency cannot be solely attributed to an inadequate normative framework, but there are other factors that have had an impact, such as: There were issues with payment transactions; Real estate records were in a state of disrepair; There were not enough judges conducting the enforcement procedure; Inadequate training of bailiffs, etc (Чавдар dhe Чавдар, 2016). We should emphasize that the application of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms resulted in an increase in pressure on the need for reforms in enforcement.

An opinion on Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms was requested from the European Court of Human Rights. The European Court on Human Rights examined the conundrum of both civil and enforcement procedures. The Court stated that: “Everyone has the right to a fair and public trial, within a reasonable time, before an independent and impartial court established by law, to have their civil rights and obligations reviewed and assessed, along with the merits of any criminal charges against them (Guide on Article 6 of the European Convention on Human Rights, 2022).

In view of the cited provision, the European Court took the position that the right to an efficient enforcement procedure is an integral part of the right to a trial within a reasonable time. So, civil and enforcement proceedings must be seen as a functional unity (van Rhee & dhe A., 2009).

In this direction, the Committee of Ministers of the Council of Europe instructed the Consultative Council of European Judges (CCEJ) in 2010 to adopt an opinion on the role of judges in relation to other functions of the state and other actors in the enforcement of judicial decisions. CCEJ prepared an opinion based on the answers to the questionnaire submitted by 34-member states. The responses of almost all member states indicate the existence of serious obstacles to the effective and appropriate enforcement of court decisions. These obstacles occur in the civil, administrative and criminal spheres. Regarding civil and administrative cases, Member States report, in particular, complex and expensive enforcement procedures (CCJE Final, 2010).

In order to achieve this, the role of the judge will be revised in relation to the enforcement of court decisions in the civil, administrative and criminal areas, as well as the decisions made by international courts, primarily by the European Court of Human Rights.

Compulsory enforcement is to be understood as a giving effect to judgments as well as other judicial or non-judicial enforceable titles. It may include an order to do something, to refrain from doing something or to pay what has been awarded (dhe Zendeli, 2021). The effective enforcement of a court decision is a fundamental element of the rule of law. It is necessary to ensure public confidence in the authority of the judiciary. Judicial independence and the right to a fair trial (Article 6 of the ECHR) are called into question if the decision is not implemented.

The enforcement should be quick and efficient. Therefore, the necessary means for the enforcement should be provided. There should be a clear legal regulation regarding the available resources, the competent authorities and the procedures for implementing their allocation. Delay of the enforcement procedure became a violation of the right to a fair trial, or rather to a trial within a reasonable time (Kuzencov, E. 2019). The European Court of Human Rights insists that the state is obliged to create a fast and efficient enforcement procedure.

In the European framework four enforcement systems are distinguished in the: judicial system; private enforcement; combined system and the administrative system. Even though there are differences between these systems, but in general European institutions maintain a neutral attitude towards any legal type of enforcement (dhe A., 2010).

The success that one enforcement system can have in one country does not necessarily mean that can have the same effect on the other states, even when it

comes to countries that have decades of common political and legal issues. We have many examples of the different enforcement model of the Western Balkan countries, where the advantages and weaknesses of the enforcement systems are still being discussed.

In the Republic of North Macedonia, the legal enforcement system is based on private enforcement, where the key role of all legal actions is based on the bailiff. In our country, the bailiff exercises public authorizations, which derive from the Enforcement Act (article 32), by fulfilling the legal preconditions, while the appointment of bailiffs is made by the Ministry of Justice itself (dhe Zendeli, 2021).

Having in mind that there are many differences in all the states in the region, and it would be impossible to include all the procedural aspects during the enforcement action. So, in this paper we discuss about enforcement systems of the countries of the Western Balkans with a special emphasis on the enforcement of movable objects and the rights of the state and its organs.

## **2. Enforcement Action in the Republic of North Macedonia**

In the general literature, enforcement actions are divided according to several criteria. Such a division is according to the nature of the property which is the object of enforcement and that: enforcement on immovable property; movable property and enforcement of claims against third parties and enforcement of other rights of the enforcement debtor (Triva, 1968). Regarding the enforcement of movable objects and rights against the state and its organs in the Republic of North Macedonia, the Law on Enforcement provides for an exception that is not foreseen in any country from the Western Balkans, nor in any member state of the European Union. Namely, in accordance with Article 210 of the Law on Exercising the RNM, it is stipulated:

(1) With the enforcement order, the bailiff appoints one of the payment transactions holders, where the creditor's and the debtor's funds are kept, the number of the creditor's and the debtor's account and their sub-accounts if there are any, the creditor's and the debtor's personal number and the amount owed; (2) With the enforcement order on monetary assets that are kept on the debtor's account with the holder of payment transactions. The holder is ordered to transfer the amount of money for which enforcement is ordered from the debtor's accounts to the account of the bailiff (according to the Article 36 paragraph 5 of this law (Enforcement Act (no.72 / 16) 2016); The enforcement orders that debit the treasury accounts, i.e. the debtor's account which is within the treasury accounts, are enforced by the payment

transaction holder in such a way that, based on the enforcement orders, he prepares orders which he submits to the Treasury at the Ministry of finances, i.e. the Treasury of the Health Insurance Fund, where the debtor's account is kept (Paragraph 3); The bailiff is obliged to deliver the enforcement order to the debtor, after the order against the assets of the debtor's account has been registered with the payment transaction holder (paragraph 5, Article 210, Enforcement Act ( no.72 / 16) 2016).

But further on in article 218, which is otherwise known as an unprecedented Article in terms of the enforcement of movable objects and rights against the state and its organs in the Republic of North Macedonia. This article stipulates that: *“On objects and rights of the Republic of Macedonia and its organs, units of local self-government and public enterprises, enforcement for the collection of monetary claims cannot be carried out, if they are necessary for the performance of their activity, i.e. tasks”*. As if the contradictory nature of the first paragraph was not enough, it is added later in this article: *“Which objects and rights are necessary for the performance of the debtor's activities and tasks will be determined by the president of the court in whose territory the enforcement action is being carried out, if during the implementation of the enforcement, the parties on that issue do not agree or otherwise this is highlighted as a need”* (Article 218, 2nd paragraph Enforcement Act ( no.72 / 16) 2016).

Regarding the legality of this article, an Opinion of the Supreme Court of the RNM was requested in 2022. In the decision was stated: *“Beginning from the content of the specified provisions of the Enforcement Act, it can be concluded that the President of the court in whose area it is implemented the enforcement, is authorized according to article 218 paragraph 1 and 2(EA) to determine which items are necessary for the performance of the activity of the entities – legal persons specified in the same provision regardless of the order for enforcement by the holder of payment transaction, the amount of money for which should be transferred from the debtor's account to the bailiff's account and the method of enforcement of the order by the payment transaction holder. Therefore, the very fact that the bailiff brought the enforcement order against the funds held on the debtor's account with the payment transaction holder in accordance with Article 210 of the Law on Enforcement, does not mean that enforcement can also be carried out against funds that are necessary for the performance of the activity of the Republic of North Macedonia and its organs, local self-government units and public enterprises and that the president of the court in whose area the enforcement is carried out is not*

authorized according to Article 218 of the Law on Enforcement to determine which funds are those funds” (Supreme Court, 2022).

Also a requests for the evaluation of the constitutionality of this provision was submitted by the association “Čovekot nad profitot” to the Constitutional Court of North Macedonia. They emphasized that: *“Individuals are placed in a unequal position. Public institution can borrow, but enforcement cannot be carried out against them, namely the association emphasizes that these subjects are privileged even though their obligations were of a commercial nature and it was not inalienable to borrow at that time and in that amount, as well as the obligations undertaken were not necessary nor related to their activity and duties as defined by article 218”* (Decision of the Constitutional Court No. 46\2017 of February 21, 2018). But regarding the claims of the association, the Constitutional Court emphasized that the court has held the same position even earlier, including the latter The Constitutional Court with this decision does not rule out the possibility of enforcement, but invokes the discretionary right for the court to decide when to implement and when not to implement and this depending on the means which are determined by Article 218 itself (Etemi-Ademi dhe Zendeli, 2021). If only the execution is postponed, then why should provide exceptional forms of enforcement against these subjects. In the following table are presented, cases were RNM is creditor and debtor.

**Table 1. The Number of Enforcement Cases over the Years in the Republic of Macedonia According to the Ministry of Justice**

Year	The total number of requests received by the bailiff	State as debtor	State as creditor	Total number of cases completed (finished)	Proceedings against RMV as debtors	Proceedings against RNM as creditor
2017	88732	3930	3593	56163	3046	642
2018	112259	5086	1483	62515	4021	472
2019	121140	4270	1811	56726	3407	424
2020	100760	3928	1866	44889	2726	533
2021	124404	5502	1829	63069	4280	948
2022	152079	7439	2545	58201	5803	1118

On the other hand, we will present the percentage of cases during the same period of time, as a better illustrator of the ongoing cases from 2017 till 2022.

**Table 2. The Number of Enforcement Cases over the Years (in Percentage) in the Republic of Macedonia according to the Ministry of Justice**

Year	The total number of requests received by the bailiff	State as debtor	State as creditor	Total number of cases completed (finished)	Proceedings against RMV as debtors	Proceedings against RNM as creditor
2017	From the total number	4.4%	4%	63.3%	5.4%	1.1%
	Cases toward RNM				77.5%	17.8%
2018	From the total number	4.5%	1.3%	55.6%	6.4%	0.7%
	Cases toward RNM				79%	31.8%
2019	From the total number	3.40%	1.5%	46.8%	6%	0.7%
	Cases toward RNM				79.7%	23.4%
2020	From the total number	3.9%	1.5%	44.9%	6.7%	1.2%
	Cases toward RNM				69.4%	28.5%
2021	From the total number	4.4%	1.5%	50.7%	6.8%	1.5%
	Cases toward RNM				77.8%	51.8%
2022	From the total number	4.9%	1.8%	38.2%	10%	2%
	Cases toward RNM				77.8%	51.8%

From table no. 1 and 2 generally we see a decrease in the percentage of completed subjects over the years. However, we also have a decrease in the submission of requests in general. The number of claims to which RNM is debtor is much greater compared to those where RNM is creditor. We can conclude that the unenforced cases are higher in 2018 and 2019, while the other years remain approximately the same. The overall percentages of cases according to RNM are very high, while only a small percentage turns out to have been completed. This scenario is not shown only for one year, but as a whole for all years that we were able to collect the data.

### 3. Enforcement Action in the Countries in the Region

If we do a comparative analysis of the enforcement laws of the countries of the Western Balkans, we can conclude that none of them stipulates that money is included in objects and rights. In this regard, the Republic of Serbia in its Act on enforcement and security (Article 300) provides: *“If the proposal for enforcement include the Republic of Serbia, an autonomous province or a unit of local self-government as debtor, in addition to the budget of the enforcement account, a direct budget user of the funds due to whose operation a claim has arisen”*. The institution is charged to give records like unique number of the user of the public funds belonging to that direct user of the budget funds (Закон о извршењу и обезбеђењу). In cases where there as debtor is an indirect user of the budget funds, in the sense of the regulations governing the enforcement of the budget, compulsory enforcement is carried out in the same way as for the users of the budget funds, the creditor is obliged to in the proposal for enforcement to specify the identification data for the debtor from (Paragraph 2 of this article). In this case all the needed information in relation to the parties has to be specified, including unique numbers and tax identification number.

The moreover this Act stipulates a number of action that in a more precise way regulates the proceeding. First of all an enforcement creditor is obliged to notify the competent Ministry of Finance in writing of the intention to submit a proposal for enforcement, no later than 30 days before submitting a proposal for enforcement. Second in the court before which the enforceable document was issued the creditor is obliged to ask the Chamber to appoint a baliff to whom a proposal for enforcement will be submitted. And thirdly for a legal remedy against the enforcement decision, the Court in whose territory the public bailiff who issued the enforcement decision is competent(Par. 3, 4, 5, 6).

In cases of enforcement on movable objects, the law stipulates that the court in whose territory the movable object is located is competent to decide on a motion for enforcement for the purpose of a monetary claim on movable objects. If the movable objects are located in the territories of different courts, then the competent court is the one where the proposal for enforcement was first submitted(Article 217). As for the exemted items that are means from which the enforcement is going to take place, in coparison RNM and Serbia are realtively same. The diference appears to be on the financial assets. In Serbia assets and financial instruments established as security in accordance with the law regulating financial security, including assets and financial



instruments on which a pledge is based in accordance with that law, cannot be the subject of enforcement.

The Republic of Montenegro in the Act for Enforcement and Security are provided those provisions: *“When Montenegro or the units of local self-government are indicated in the proposal for enforcement as the debtor, the creditor is obliged to appoint the beneficiary of the budget funds against the proposal for enforcement is submitted. Claims of Montenegro, local self-government units, funds and other legal entities established in accordance with the law, towards taxpayers based on contributions, taxes and customs duties cannot be subject to enforcement”* (Article 218, Zakon o izvršenju i obezbeđenju).

As for the competence of the court Republic of Montenegro are included to possible cases: First in cases of monetary claims the court in whose territory the immovable property is located, is competent to decide on the proposal for securing a monetary claim by establishing a mortgage on immovable property based on the agreement of the parties. Second the court in whose territory the monetary claim is located has the competence to decide on the proposal for securing a monetary claim by establishing a pledge on movable property based on the agreement of the parties (Article 262 Act on enforcement and security of Montenegro).

Regarding the enforcement of the monetary claim from the budgetary institutions, the Republic of Albania provides: *“The enforcement of monetary claims against budgetary institutions is carried out only on their respective bank account, on credits they have with third parties and when there are none on the treasury account. Mandatory enforcement against the movable and immovable property of the budgetary institution is not allowed. When the budget institution does not have funds in the bank account, there is no credit from third parties or in the treasury, the appropriate higher financial authority is requested to allocate the necessary fund and budget chapter to the subject from which the obligation to the monetary claim or special financing from the State budget will be realized”* (Article 589, Civil procedural Code Of Albania). When the means of enforcement of the state are precious metals, the enforcement is carried out with the prior consent of the Minister of Finance. The Council of Ministers have to give instructions on how to perform the monetary obligations of budgetary institutions on the treasury account, so that they can be successfully done. Surprisingly, the Republic of Albania in terms of the legal regulation of this institution, without any quandary is the most concise and clear. There are no additional restrictions that prevent enforcement as in our country.

The state that despite some efforts for national reform on the enforcement, still remains a judicial enforcement system is Republic of Bosnia and Herzegovina. The law on enforcement proceedings in Bosnia and Herzegovina in view of the exemption from enforcement stipulates: *“The enforcement of the budget of the Federation of Bosnia and Herzegovina and the Cantons is carried out in the amount provided for the specific budget position and in accordance with the Law on budget enforcement. The enforcement of the budget of the city and the municipality is carried out in the amount that is foreseen for the specific position of the budget and in accordance with the Decision on budget enforcement”* (Article 589, Zakon o izvršnom postupku federacije BiH). I would say that the abovementioned provisions, are quite shallow in the sense that do not guarantee that at any time will be permitted enforcement means. What comes out a little more specific in the case of Bosnia is the determination of the percentage from the budget of the units, which can be part of the enforcement. All levels of government in the Federation of Bosnia and Herzegovina (Federation, Canton, City and Municipality) that have enforceable court decision are obliged to provide from their budget funds in the amount of at least 0,3 percent of the total planning revenue in the budget (Article 138). Also, the subject of enforcement cannot be real estate of the Federation, the city, the municipality and the public fund. It cannot be the subject of immovable property of an institution financed in whole or in part from the budget, which is established for the performance of activities of public interest that ensures the exercise of the right to education, health care, child protection, social protection, science, culture and physical culture, if the real estate serves to perform the activities of that institution and if the purpose of performing the activity is the acquisition of material wealth (Article 79).

The last state, but not the least specific is Republic of Kosovo. Unfortunately, Kosovo does not regulate the sphere of enforcement on the property of public institutions or those of its units. The only exemption is article 7, which states: *“Items that are completely excluded are underground and natural assets, items out of circulation, weapons, equipment of the armed forces and the police, as well as financial means for such dedications”* (Act on Enforcement Procedure no 04/L-139). In Kosovo, in contrast to RNM, enforcement is carried out by the courts and by private entities, but the law itself emphasizes the exclusive powers to determine the enforcement are the court, which means that even in cases where the enforcement of public debts is expressed, the court will decide on them according to the provisions provided by law.

#### 4. Conclusion

From the statements that we previously discussed, we can say that the provision of the Act on Enforcement of the North Macedonia represents an insufficient guarantee given the weight and importance of the issues, i.e. enforcement over public means. RNM and states in the region, leaves many legal ambiguities, namely:

They represent classic discrimination in terms of direct exemption of state bodies, local self-government units and public enterprises;

There are many privileges and authorization in favour of other legal entities because no enforcement will be carried out on their funds, even though the creditors have proved their claim within the framework of the protection of their rights in a procedure in which those institutions are participants in the free market;

There is unequal legal position of legal entities on the market;

This approach limits the freedom of the market and entrepreneurship and the equality of the participants in that market, and in the last instance it becomes a cause for procedural ineffectiveness.

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