



Aspects on European Executive Titles

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Abstract: The second phase of the civil law enforcement process is of great utility for finalizing the procedure for the effective execution of the creditor's claim if the debtor does not voluntarily execute the performance ordered by the court in the ruling which it pronounces or the provided in other enforceable titles. It is also of great utility to ask the complainant, in the event of winning the trial, to take a decision that has the character of an enforceable European title, a title that can be enforced in the countries of the European Union without the application for recognition and enforcement in the executing State, which is competent to carry out the service listed in that title, shall be required. The paper aims to provide an innovative approach to enforcement in general, especially in the field of European Enforcement Titles, by applying an analytical interpretative method, through which it is possible to construct relevant explanatory formulas on the legal framework contained in the Code civil procedure and European legislation. We will focus our research on the legal framework in art. 632-643 of the Civil Procedure Code, without omitting other legal texts contained in the Code of Civil Procedure that are compatible with the subject, as amended by Law no. 138/2014. By extending the theoretical analysis on executory titles, we considered the particularities presented by the European executory titles, the development of the methodological framework, by joining the interpretative method, the comparative method of research, in order to be able to analyze both the restricted framework of the Civil Procedure Code dedicated to executory titles Article 636) as well as the framework of the European norms applicable to theme themes.

Keywords: Execution; enforceable titles; European executory titles; European legislation

Introduction

The law recognizes and guarantees to individuals subjective rights and legitimate interests. As a result, they must also make available the legal means for their realization. Without the possibility of constraint, made as a legal means by the forced pursuit of the debtor's assets, which does not voluntarily execute the right granted to

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the creditor by a judgment passed in the power of the trial, it would be a simple satisfaction of winning the trial, and the court decision would become useless.¹

The enforceable title allows for the enforcement procedure to be enforced under the legal provisions and at the same time legitimizes the enforcement procedure given that the legal provisions state that forced execution can only be performed on the basis of an enforceable title. As a result, depending on the existence of the enforceable title, the fate of the second phase of the civil process can be predicted, ie forced execution. Depending on the information contained in the enforceable title and their accuracy and clarity, the effective and speedy achievement of the rights of the creditors, rights entered in that title, depends on them.

On 30 November 2000, the Council of the European Union adopted a program on measures to implement the principle of mutual recognition of judgments in civil and commercial matters. This program provided for the first elimination of the exequatur procedure and the creation of a European Enforcement Order for uncontested claims.

The European Council considered it necessary to speed up and simplify enforcement in a Member State other than the one where the judgment was delivered by removing all interim measures that are taken before enforcement in the Member State where it is requested. Also, a judgment which has been certified as a European Enforcement Order by the court of origin should be treated for the purpose of enforcement as if it had been given in the Member State in which enforcement was sought.

The enforceable title, whether issued by the national or European competent authority, is equivalent to a guarantee of the legitimacy of the forced execution procedure, by proving that there are sufficient grounds for authorizing the public authority to apply coercive measures to fulfill the rights of the persons involved in the proceedings, if the debtor fails to fulfill his obligations freely.

Account should also be taken of the provisions of art. 1.104 C. proc. Civil Law, which regulates the conditions for the grant of the enforcement of foreign judgments and which refers to the text of article 1.096 of the Proc. civil law and laying down the conditions for the recognition of foreign judgments while at the same time expressly requiring that the judgment be enforceable according to the law of the headquarters of the court which pronounced it. In other words, the recognition and enforcement of foreign judgments are two issues that are directly linked; from correlating the provisions of articles 1.096 and 1.103 of C. proc. It must be taken into

¹ See (Zilberstein & Ciobanu, 1996; Oprina & Gârbuleț, 2013; Gârbuleț, 2014; Leș, 2009; Stoenescu, Hilsenrad, & Zilberstein, 1966; Sion, 1943; Măgureanu, 2015).

account whether the foreign judgment whose enforcement is requested to be approved satisfies the requirements to be recognized on the territory of Romania.

¹According to the provisions of art. 1.107 C. Proc. civic, the issuing of the executory titles shall be made from the procedural point of view, based on the final decision on the approval of the execution. Issuance of the enforceable title is conditional on the final ruling of the court's decision to grant enforcement. If the judgment in question is not final, it would be unsafe and the execution would be started on the basis of an unclear title. However, the issues mentioned must be taken into consideration when the creditor did not request the court to have the ruling giving it the power to execute a European Enforcement Order.

The realization of the right to judicial constraint regards not only the subjective right (or the legitimate violated interest) but also the objective right, the order of law which was disregarded with the attainment of the subjective right of the holder. (Măgureanu, 2015, p. 490)

Since the enforceable title justifies the forced execution procedure, the capacity that the enforceable title gives to this procedure, the idea that the commencement of the forced execution procedure would be unfair if it would result in a lack of rigorous verification of the factual and legal situation that generated the need for procedure. (Deleanu, Mitea, & Deleanu, 2013, p. 29)

The enforceable title amounts to a guarantee of the legitimacy of the forced execution procedure, ensuring that there are sufficient grounds for the public authority to apply coercive measures to fulfill the creditor's prerogatives. The enforceable title as a legal instrument for rebalancing the relations between the litigants highlights the legal and legitimate character of the forced execution procedure in that, as a result of its

¹ According to art. 1.096 C. proc. civil, the decisions regarding the processes other than those provided under art. 1095 may be recognized in Romania in order to have the force of *res judicata* if the following conditions are met cumulatively: a) the judgment is final according to the law of the state where it was pronounced; (b) the court which ruled it had, under the law of the State of residence, jurisdiction to hear the proceedings without, however, being based exclusively on the defendant's presence or property not directly related to the dispute in the State in which that jurisdiction is based; c) there is reciprocity regarding the effects of foreign judgments between Romania and the state of the court that delivered the judgment. (2) Where the judgment has been delivered in the absence of the party who has lost the case, it must also note that the party concerned was given in good time both the summons for the substantive debate and the court referral and that he was given the opportunity to defend himself and to appeal the decision. (3) The non-final character of the foreign judgment, resulting from the omission of the person who has not participated in the proceedings before the foreign court, may be invoked only by that person.

enforcement, it determines the creditor's claim and the settlement of the debts obligation.

As a result, the functionality of the enforceable title is twofold: the procedural instrument of the creditor, which, as a result of obtaining the enforceable title, may return to the debtor, but also to the debtor's sanctioning and educational instrument, which can no longer escape from fulfillment of the obligation to obtain and enforce the enforceable title. (Evelina, 2010, p. 22)

It is clear from the above that forced execution can only be performed on the basis of an enforceable title as a sine qua non requirement for the entire enforced enforcement procedure, which is essential for the triggering and for the effective conduct of the procedure, namely the correct and lawful completion of the forced execution procedure in an optimal and predictable term. (Măgureanu & Măgureanu, 2012, pp. 54-63)

The new Civil Procedure Code does not define the enforceable title, however, the new legal wording, at art. 632 par. (2) extends the scope of enforceable titles, stating: "the enforceable judgments of art. 633, the decisions with provisional enforcement, the final judgments, as well as any other judgments or documents which, according to the law, can be enforced".

The provisional nature of the judgments referred to in Article 448 C. proc. civic law results from the need to solve social situations which, by their nature, call for urgency such as: establishing the way of exercising parental authority, establishing the minor's dwelling, and how to exercise the right to have personal ties with the minor; the payment of wages or other entitlements arising from the legal employment relationship, as well as of the amounts due, according to the law, to the unemployed; compensation for accidents at work, any other cases in which the law provides that the judgment is enforceable, the legislature leaving open the enumeration of the states that allows the settlement by a provisional enforcement decision.

The Code of Civil Procedure sets only the general coordinates of the categories of enforceable titles. For the correct determination of the scope of enforceable titles, it is necessary to consider both the general provisions in the matter provided by the Code of Civil Procedure and the provisions of the special legislation, since the legal framework of Articles 633-640 indicates the main categories of enforceable titles.

From the scope of the material civil law we refer to the lease (which, according to articles 1798 and 1809 of the Civil Code, represents the enforcement title in the matter of the obligation to pay the rent and the return of the property); (consisting of

the enforceable title for the fulfillment of the obligation to return the property under Article 2157 of the Civil Code), the lease agreement (which according to Article 1845 of the Civil Code is the executing title for the obligation to pay the lease).

We also exemplify other enforceable titles expressly recognized by law as having enforceable power and which are the basis of enforced execution, which seeks to achieve the purpose and object of enforced enforcement, namely the fulfillment of the obligation contained in it, if it has not been fulfilled by (lawyer and his client, in accordance with the provisions of Law No. 51/1995), the concession contracts for agricultural land concluded by the State Domains Agency (according to Law No. 190/2004), acts of punishing contraventions (according to Government Ordinance No. 2/2001), enforceable titles on tax receivables (by virtue of the provisions of Government Ordinance No. 92/2003, as subsequently amended and supplemented); arbitral awards and other judgments of bodies with jurisdictional powers, documents authenticated by the notary public, which establish a certain, liquid and exigible claim, and the credit titles between which the civil procedural lawmaker expressly lists the bill of exchange, the check and the promissory note, as executory titles in so far as they meet the requirements of the special legislation.

In the case of acts belonging to this category, the legislator expressly introduced the wording of the enforceability. Civil procedural regulation, as amended by the provisions of Law no. 138/2014 establishes the condition for the enforcement of an enforcement order for the enforcement of the arbitral award and other judgments issued by bodies with jurisdiction, except for the judgments. The requirement was imposed on the Code of Civil Procedure by Law no. 138/2014 and consisted of the procedure laid down in the Civil Procedure Code of 1865, mentioning the condition of the enforceability of documents for non-judicial documents.

The Code of Civil Procedure provides for reduced regulation for European enforceable titles, thus enshrining Article 636 - the content of which remained unchanged following the entry into force of Law no. 138/2014 and which states that "European Enforcement Titles in respect of which European Union law does not require prior recognition in the Member State in which enforcement is sought shall be enforceable by law without any prior formalities." The wording chosen by the civil procedural lawmaker is not only laconic but also lacking fundamental elements that allow the identification of landmarks that define them or of content applicable to executory titles. As a result, Article 636 C. proc. Civilian does not meet the requirements of an explanatory rule but a referral because it mentions European Union law as the headquarters of the matter designed to identify acts that are

European Enforcement Titles. I consider that Article 636 may have the following content: European Enforcement Entities in respect of which European Union law does not require prior recognition in the Member State in which enforcement is to be enforced shall be enforceable by law without any prior formalities. The current law operates with the notion of a European Enforcement Order without providing guidance on how to define or identify, the only benchmark offered by the civil-law processor is to relate the notion of enforceable titles to European law. (Măgureanu & Măgureanu, 2007, pp. 37-46)

For a better understanding of the issues examined, we considered: the study of a multitude of legal acts.¹ First, Regulation no. 805/2004 which addresses directly and completely the issue of European Enforcement Titles. The Regulation considers the rationale for the creation of the European Enforcement Order and lays down standards on how to interpret the scope of the European Enforcement Order, as well as on how to proceed with the enforcement procedure.

Regulation no. 805/2004² in conjunction with the provisions set out in the Practical Guide for the Application of Regulation no. 805/2004³ complements the provisions of national legislation and defines the European Enforcement Order.

The Guide for the Implementation of the European Enforcement Order Regulation uses the term European Judicial Passport in its definition of the European Enforcement Order, allowing it to circulate freely, assimilates it with a certificate accompanying the act (judgment, transaction, authentic act) whose free movement is intended to be ensured at the level of the European Union. According to the provisions of art. 1 of the Regulation: “This Regulation seeks to create a European Enforcement Order for uncontested claims to ensure the free movement of

¹ See: EC Regulation no. 44/2001 on jurisdiction in relation to the recognition and enforcement of judgments in civil and commercial matters; EC Regulation no. 805/2004 on the creation of a European Enforcement Order for uncontested claims; EC Regulation no. 2201/2003 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility; EC Regulation no. 861/2007 establishing a European Small Claims Procedure; EC Regulation no. 1896/2006 establishing a European order for payment procedure; EC Regulation no. 4/2009 on jurisdiction, applicable law, recognition and enforcement of judgments and co-operation in matters relating to maintenance obligations.

² EC Regulation no. No 805/2004 of 21 April 2001 on the creation of a European Enforcement Order for uncontested claims issued by the European Parliament and the Council was published in the Official Journal no. L 143/2004, pp. 15-39.

³ Practical Guide to the application of the European Enforcement Order Regulation, Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims was published in Official Journal L 143, where it is stated that “this document has been drawn up by the Commission services in consultation with the Judicial Network European civil and commercial matters “.

judgments, judicial transactions and authentic instruments in all Member States by establishing minimum standards without the need to an interim procedure shall be used in the Member State of enforcement prior to recognition and enforcement”. Art. 27 of Regulation no. 805/2004, stipulates that its provisions are without prejudice to the provisions of Regulation no. 44/2001¹ on jurisdiction in relation to the recognition and enforcement of judgments in civil and commercial matters, and the Guidelines for the Implementation of the Regulation deal with the two alternative ways of enforcing a court decision, a court settlement or an authentic act abroad.

As a result, the lender can choose between:

- obtain the European exequatur title in the Member State in which the judgment, transaction or authentic instrument was delivered/ obtained, or;
- obtain a declaration of enforceability in the Member State in which enforcement is sought under the exequatur procedure as laid down in the rules of Regulation no. 44/2001. (Măgureanu & Berna, 2016)

Enforced execution of European Enforcement Titles according to the provisions of Regulation no. 805/2004, it may be required by common law whether:

- the claim that is the subject of the dispute is in the category of uncontested claims and relates to a right in respect of a sum of money that has become due or whose due date has been indicated in the decision, transaction or authentic instrument. The provisions of Regulation no. 805/2004, by the provisions of Article 3, paragraph 1, lit. a-d sets out the situations in which a claim can be considered uncontested and Article 4 (2) of the Regulation specifies the meaning of the claim term. According to Article 3, (1) (ad) “A claim shall be considered uncontested: (a) if the debtor has expressly acknowledged it by accepting it or by resorting to a transaction which has been approved by a court or which has been brought before a court or tribunal in the course of legal proceedings; (b) where the debtor has never opposed it, in accordance with the rules of procedure of the home Member State, during the judicial proceedings; (c) where the debtor has not or has not been represented at a court hearing on this claim after having initially challenged it in the course of the judicial proceedings, provided that his or her attitude is assimilated to a tacit acknowledgment of the claim or the facts invoked by the creditor under the law of

¹ EC Regulation no. Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters was published in Official Journal no. L12 of 16 January 2001, as amended and supplemented by EU Regulation no. No 566/2013 of 18 June 2013 no. L 167 of 19 June 2013.

the home Member State; (d) where the debtor has expressly recognized it in an authentic instrument. According to the provisions of Article 4, point 2 of Regulation no. 805/2004, a claim means the right to a fixed amount of money that has become due or whose due date has been indicated in the judgment, in the court settlement or in the authentic instrument.

- the purpose of obtaining a European Enforcement Order must relate to a claim of a civil or commercial nature, having regard to two elements: the subject-matter of the dispute and the nature of the relationship between the parties involved.

Apart from the above-mentioned requirements, it is necessary to consider the manner in which the legal regulations regarding: the communication and notification of the procedural documents in favor of the debtor, according to the provisions of art. 13-17 of the Regulation, so that it is not prejudiced and enjoy all the guarantees that ensure correct information on the merits of the dispute. By fulfilling the procedure for informing the debtor, the provisions of Article 6 of the European Convention on Human Rights and Fundamental Freedoms¹ will also be respected, ensuring also the right to a fair trial and a fair trial.

The procedure for the enforcement of European Enforcement Titles, governed by Article IV of Regulation No. 805/2004, starts with a set of provisions that ensure that the enforcement of the enforcement procedures will be governed by the law of the executing Member State, underlining the idea that a judgment certified as enforceable is executed under the same conditions as a judgment in the Member State of enforcement.

Article 20, paragraph 2 sets out the obligations placed on the creditor to initiate the enforcement procedure, the creditor being obliged to provide the executing authorities in the executing Member State with:

- a copy of the judgment which meets the conditions necessary to establish its authenticity;
- a copy of the European Enforcement Order certificate which satisfies the conditions necessary to establish its authenticity;
- where applicable, a transcript of the European Enforcement Order certificate or a translation thereof into the official language of the Member State of enforcement or, where the Member State concerned has several official

¹ Adopted in Rome on 4 November 1950, which entered into force on 3 September 1953, the text of the Convention was amended in accordance with the provisions of Protocol No. 14 since its entry into force on 1 June 2010.

languages, in the official language or one of the official languages of the judicial proceedings in the place where enforcement is sought in accordance with the law of that Member State or in another language that the executing Member State declares to be able to accept. Each Member State may indicate the official language (s) of the institutions of the European Community other than its own, in which it accepts that the certificate is completed. The translation is certified for compliance by a person authorized to do so in one of the Member States.

In accordance with Article 21, situations which may lead to a refusal by the court of the Member State of enforcement, at the request of the debtor if the judgment certified as a European Enforcement Order is incompatible with a judgment previously given in any Member State or in a third country, are:

- the previous judgment was given between the same parties in a litigation on the same cause;
- the previous judgment has been pronounced in the executing Member State or has met the conditions for its recognition in the Member State of enforcement,
- the irreconcilability of the judgments was not and could not have been invoked during the court proceedings in the Member State of origin.

A clearer regulation is needed in the case of legal transactions or authentic instruments, as the Regulation does not provide details on the procedure for obtaining the European Enforcement Order. The Regulation provides that an authentic instrument or legal transaction relating to a claim included in the scope of the Regulation if approved by an authority/ court of the Member State becomes European Enforcement Order on the basis of requests to the court which approved the act/ authority designated by the Member State of origin.

Conclusions

The study is a brief analysis of the issue of the European Enforcement Order in relation to the internal and European legislation. The issues relating to the enforceable titles and the particularities of the European Enforcement Titles have been addressed in an exhaustive analysis, focusing primarily on the aspects considered to be improper or insufficiently regulated as well as the legal provisions that enhance the security of legal relations and equity in executing titles.

Internal legislation regulates in detail the subject matter of enforceable titles, leaving unresolved issues such as the definition of enforceable titles or the explanation of the relevance of the enforceable titles in the forced execution procedure. Lack of regulation or lack of clarity in regulation justifies the intervention of the doctrine, creates a favorable climate for the proliferation of disputes or for the unfair settlement of the cases in which the second phase of the civic process is forced, ie forced execution.

Through Regulation no. 805/2004, European legislation clarifies the elements of the European Enforcement Titles necessary for the proper understanding of this legal institution, explaining the premises which led to the imposition, at the level of European Union law, of specific regulations in the field of enforceable titles by creating and developing a security space , freedom and justice, focused on the principle of mutual cooperation in the field of forced execution, according to the provisions of Regulation no. 805/2004 and the national law of the Code of Civil Procedure.

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