

# Enforcement of movable property

Dr. Vlado Siric, Dr. Marin Coric

*wsiric@gmail.com, marin0401@gmail.com*  
*Posusje 88240, Bosnia and Herzegovina*  
*Mostar 88000, Bosnia and Herzegovina*

---

## Abstract

This paper will try to explain in more detail the very concept and fundamental characteristics of foreclosure, that is, the procedure itself carried out over movable and immovable property together with all the specifics that arise from this relationship.

This paper is divided into three thematic units, the first of which refers to the basic terms of the enforcement procedure with which you should be familiar if we want to understand this institute in more detail, the second to the enforcement of movables itself and the third to the enforcement of real estate,

In the first thematic unit, emphasis is placed on the concept, principles, subject and participants of enforcement. Furthermore, the adoption of the enforcement decision itself and the possibility of an eventual appeal or objection, as well as the implementation and suspension of the enforcement, are described.

In the second thematic unit, the topics related to the enforcement of movable assets are emphasized together with a detailed description of the procedure itself.

In the third thematic unit, the procedure for enforcement of immovable property is described with some of the specifics that we encounter.

The paper ends with a conclusion in which the author's subjective opinion related to the subject of foreclosure on movable and immovable property is presented, what should be worked on and what could be changed.

*Keywords:* Law, Civil Law, Economy, Court

---

## Introduction

Enforcement proceedings can be defined and presented as "non-litigation civil proceedings by which a court or notary public, on the basis of an enforcement or authentic document, carries out individual and forced realization of a certain claim on individually determined property of the debtor or exceptionally against the person of the debtor".

In the same way, the enforcement procedure represents a tax-legal relationship in which "the tax authority carries out the procedure of forced collection of tax debt on the basis of enforceable and authentic documents".

The specificity of the enforcement procedure in tax law in relation to the enforcement procedure governed by the regulations of civil law is that the function of bailiff can be held by the tax authority and the competent court, depending on whether it is about movables and property rights or real estate. If the tax debt is forcibly collected from the value of movable property and property rights, the competent tax authority is responsible for enforcement, and if the object of forced tax debt collection is real estate, then the enforcement is carried out by the competent court at the proposal of the tax authority, i.e. the municipal court on whose territory the real estate is located.

During the execution itself, it is necessary to adhere to certain basic principles, namely:

- the principle of prohibition of excess,
- the principle of protecting dignity,
- the principle of special and general execution, i
- the principle of transparency of the property of the bailee, that is, the opponent of the insurance.

The principle of prohibition of excessiveness, i.e. the principle of adequacy of enforcement measures to the amount of tax debt. According to this principle, encroachment on the property of the executor is allowed only to the extent that it is necessary to achieve the goal. In the enforcement procedure, the tax authority will first confiscate funds in current, giro and other accounts held by the tax debtor, but only up to the value of the tax debt. If the tax debt cannot be collected in this way, the confiscation of movable property is allowed, and if there is no movable property, then real estate is confiscated, but only up to the value of the tax debt.

### 1. Making a decision on enforcement

The decision on enforcement must indicate the enforceable or authentic document on the basis of which the enforcement is determined, the person requesting the enforcement and the enforcement officer, the claim being realized, the means and object of the enforcement, and other information necessary for the execution of the enforcement. If the decision on enforcement determines the obligation and the collection of interest, the calculation of the interest at the expense of the person seeking enforcement will be performed by the enforcement court, except when the collection is made from funds in bank accounts. In the latter case, the bank will calculate the interest at the expense of the bailee. By ruling on enforcement based on an authentic document, the court will:

- to oblige the bailee to settle the claims together with the assessed costs within eight days, and in bill of exchange and check disputes within three days after receiving the decision,
- determine the top in order to realize these claims.

The enforcement decision is delivered to the enforcement applicant and the enforcement officer. The court will simultaneously notify the known lien creditor of the adoption of the enforcement decision. The court is not obliged to deliver to the executor a decision rejecting or rejecting the proposal for execution made before the executor was given the opportunity to comment on it.

### 2. Subject and object of enforcement

The subject of execution can be monetary claims that are in the property of the person being executed.

The object of execution can be property (movable and immovable) and property rights.

### 3. Generally about the enforcement of movable property

Movables are all those things that serve for human use, which are different from people. Thus, in the most general sense, movable property can be defined as all those things that are not considered real estate. Movables are means of transport, work machines, furniture (such as a refrigerator, stove, washing machine, etc.), furniture and other inventory when it comes to production or sales facilities, clothing, footwear, works of art, energy sources, food items, raw materials and materials, small inventory and numerous other objects that by nature are not considered real estate. Securities, precious metals, precious stones and other items of significant value are also considered chattels.

Movable property can be defined and presented as "things that by their nature can be moved from one place to another without changing their essence, although the legal division of things into movable and immovable does not quite correspond to their natural division (thus ships and aircraft are subject to a legal regime that corresponds to real estate, and some real estate under certain conditions is considered movable, separating it from immovable property)"

Also, chattels can be defined from the aspect of pledges for the purpose of fulfilling obligations in short-term financial transactions, they are used to secure obligations based on real values such as, for example:

- gold,
- valuables,

- art objects,
- securities (bonds, shares, treasury bills, etc.), i
- commercial papers (bills of lading and warehouses).

In the same way, chattels are things that can change their position in space without destroying their essence, that is, without changing their previous structure. The legal significance of the division of things into movable and immovable property is in the following statements:

- different rules on the acquisition of real rights,
- different rules on enforcement,

Furthermore, it is evident that movable property can under certain conditions become part of real estate, in which case it follows its legal destiny, the so-called "real estate according to purpose".

There are significant differences when it comes to movable property of natural persons and movable property of natural persons performing economic activity and legal persons. For this reason, it is very important to list the movables correctly and to define which movables are necessary for everyday life or the performance of economic activity in order to be able to carry out enforcement proceedings. Thus, for example, a working machine cannot be confiscated from a natural person who uses it to carry out an economic activity, while it can be confiscated from a natural person who does not need it for the performance of the activity, while on the other hand, food items can be subject to enforcement when it comes to a manufacturing company, while they cannot be subject to enforcement when it is a question of a natural person who needs them for daily nutrition.

The court on whose premises the movable property is located is responsible for deciding on the enforcement of movable property and implementing the decision. Accordingly, it can be said that enforcement of movable property is carried out in the following ways:

- seizure,
- by assessment,
- subtraction,
- shipping,
- entrusting it to the court for safekeeping,
- entrusting it to a bailiff or a third party for safekeeping,
- by sale, i
- by settling the executor from the amount obtained from the sale.

In this part, it is important to mention the foreclosure on securities and equity shares and the foreclosure on motor vehicles, which occur with their own specificities.

By the Final Decision on the seizure of ownership and creditor securities, that is, the seizure of shares in the capital, the securities are seized. Confiscated ownership and creditor securities (securities), "provided they are listed, they are sold on the stock exchange, and if they are not listed, they are sold on the free market".

Enforcement on motor vehicles can be proposed on the basis of enforcement, that is, on the basis of an authentic document and an extract from the records of the Police Administration on registered and marked vehicles. It is extremely important to note that the mentioned records are not the register of vehicle owners, but actually the register of those vehicles that can validly participate in traffic.

In the continuation of the work, a detailed description of the process of foreclosure on movable property follows, in accordance with active legal regulations and sources in Bosnia and Herzegovina.

## Conclusion

Enforcement represents the last stage of court proceedings and without it, the parties in the proceedings would be deprived of their rights determined by the court decision. It is also important to note here that even the European Court of Human Rights has recognized enforcement as an integral part of the judgment within the framework of the principle of fair trial.

The enforcement procedure has its own principles, which are that the enforcement should be carried out within a reasonable time, it represents the last stage of the court proceedings and is carried out after the court decision becomes final, it is also important to note that a retrial is not possible. One of the important principles is also the principle of proportionality, enforcement balances the rights of the person seeking enforcement and the person being enforced.

It is important to point out that for the proper implementation of enforcement, it is essential that the bailiffs themselves have the necessary qualifications and training to meet the complex tasks that arise. For this reason, there are numerous seminars for bailiffs themselves, various practicals and manuals are also written.

The goal of the seminar and practicum is to increase the very quality, efficiency, independence, transparency, and fairness of the judiciary in Bosnia and Herzegovina. The reason for all this is that there are various inconsistencies in the behavior of judges and bailiffs throughout Bosnia and Herzegovina.

At the end of the paper, I would like to point out that it is very important to help the bailiffs in the implementation of legal powers, through education and continuous work on their improvement, which is relevant to the process of enforcement of movable property in Bosnia and Herzegovina, and I would emphasize to cooperate with colleagues from the region by studying cases from their environment and thereby contribute to the efficiency, independence and transparency of the enforcement procedure in our country.

## References

- Dražić, M., Ovršni postupak, Završni rad, Sveučilište u Splitu Ekonomski fakultet, Split, 2016.
- Praktikum za sudske ovršitelje, Visoko sudsko i tužilačko vijeće Bosne i Hercegovine, Sarajevo, 2011.
- Priručnik za sudske izvršioce, Banja Luka, 2010.
- Rechberger, W. H., Oberhammer, P., Exekutionsrecht, 3. izd., Wien, 2002.
- Šinković, Z., Priručnik iz Financijskog prava za internu uporabu (teoretski i praktični dio), Sveučilište u Splitu Pravni fakultet, Split, 2014.
- Tomić, N., Provođenje ovrhe nad pokretninama, Završni rad, Sveučilište u Splitu Ekonomski fakultet, Split, 2019.
- Triva, S., Sudsko izvršno pravo, Opći dio, 2. izd., Zagreb, 1984.