

Realisation of pledge's rights in executive procedure in the Republic of Kosovo

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Abstract

The functioning of any legal system cannot be imagined without enforcement proceedings. The enforcement procedure is a part of all branches of law. According to the structure of the branches of the law in which the lawsuit is filed, there is civil law enforcement, criminal law enforcement, administrative law enforcement, misdemeanor law enforcement, etc. Filing a civil enforcement lawsuit is the last opportunity offered to the creditor in realizing of its rights. Enforcement occurs after the debtor has failed to voluntarily fulfill his obligation. After the execution is allowed, to the debtor is given an opportunity to voluntarily fulfill the obligation. After the expiry of this deadline, the procedure should immediately proceed to the execution phase, i.e. sequestration of property. Any delay, from the requirement for voluntary compliance up to the sequestration of property, will undermine the authority of the courts and private bailiffs and will result in the loss of citizens' confidence in their right for effective protection. The realization of the right of pledge in enforcement proceedings in the Republic of Kosovo is regulated by Law no. 04 / L-139 On Enforcement Procedure, Official Gazette of the Republic of Kosovo, No. 3 /31 January 2013.

Keywords: Execution procedure, creditor, debtor, real estate enforcement, real estate enforcement, valuation, sequestration, sale.

Introduction

The functioning of any legal system is unthinkable without an enforcement procedure. The enforcement procedure is part of all branches of justice. According to the structure of the branches of the justice, they are comprised of the following: the civil law enforcement, the criminal law enforcement, administrative law enforcement, minor offence law enforcement, etc. Unlike the contested procedure which is comprised of a set of abstract rules, the enforcement procedure contains rules which enable the fulfillment and securing of certain categories of claims.¹ Enforcement procedural law as part of civil procedural law includes the legal norms that regulate the structure of the procedure for forced enforcement and the procedure for securing claims, the position of the procedural entities in these proceedings, the procedural actions of the subjects and their procedural effect, as well as the procedural relationships that are created between the procedural entities during the forced enforcement of the rulings expressed in fulfilling the obligation, as well as in securing claims.² The enforcement procedure is an executive procedure or an procedure for forced enforcement of decisions made in the conjunction proceedings.In an enforcement proceeding the

¹ Vladimir Crnjanski, izvrsnost javnobelesnickog zapisa, doktorska disertacija, Belegrade,2018, p.29.

² Arsen Janevski&Tatjana Zoroska-Kamilovska, Civil Procedural Law - First Book - Contested Law, Skopje, 2009, p. 35.

relations between the parties are definitely adjusted to the the legal norm contained in the decision.³ Unlike contested procedures, the enforcement is not aimed at resolving the matter. The enforcement, as a rule, come into play after the court proceeding ultimately settled where the debtor is liable to a certain repayment .A characteristic of of the enforcement is the direct or indirect of forced actions against debtor who fails to comply with the final decision.⁴

The physiognomy of the enforcement procedure undoubtedly affects the degree of regulation of the entire legal system. The right to legal protection gains its true meaning only after the successful conclusion of the enforcement procedure⁵. Effective implementation of contracts is essential for economic development and sustainable growth. Social progress cannot be achieved without respect for the rule of law and effective protection of rights, both of which require a functioning judiciary that resolves issues within a reasonable time and is predictable and accessible to the public. Economies with an efficient judiciary, have more developed credit markets and a higher level of development. Overall, by enhancing the efficiency of the judicial system, each state can improve the business climate, stimulate innovation and attract foreign direct investment..To a creditor in enforcement proceeding it will not matter the fact that he realized his right forcibly, if this has been achieved after a lengthy process, which incurs a loss in value of the right being realized. However, ineffectiveness is singled out as one of the deficiencies of enforcement procedure in the domestic law⁶.

Concerning efficiency in enforcing contract, Kosovo is ranked 26th in the 2016 World Bank Doing Business List in terms of access to credit, while Kosovo is ranked 140th in enforcing contracts, whereas corporations in Kosovo in 2016 owed approximately € 200 million in debt to banking institutions.⁷ While referring to the comparative analysis for 2019 regarding the duration of enforcing contracts in the World Bank Doing Business list, Kosovo is ranked 53rd (330 days) in World Bank Doing Business list, Croatia-27th, Bulgaria-42nd, Bosnia and Herzegovina-93rd, Albania-120th, Montenegro-44th, North Macedonia-37th, Greece-146th, Italy-111th, USA-16th, England-32nd, Turkey-19th, Spain-23, Serbia 65th, Slovenia-110th, Norway-3rd, Netherlands-74th.⁸ In Kosovo, Albania and Serbia, lenders typically repay around 60-65% of their appraised value after forced selling their homes in a major city⁹. In south-eastern Europe and Eurasia, banks typically require 150% collateral from the value of the loan, while in many cases this percentage ranges from 200-300%. The main reasons that influence banks to seek collateral in value that is 2-3 times higher than the value of the loan in European countries are the difficulties that banks face. when acquiring possession of collateral, especially if the sale of collateral requires court approval.

³ Arsen Janevski&Tatjana Zoroska-Kamilovska, Paper quoted, p.21.

⁴ Emine Zendeli, Balkan Journal of Interdisciplinary Research IIPCCCL Publishing, Tirana-Albania Vol. 1 No. 3 January 2016, p.181.

⁵ Vladimir Crnjanski, Paper quoted, p,20.

⁶ Slobodan Stosic, Paper quoted, p,157.

⁷ Banking Periodic , Prishtina, July 2016, p.3.

⁸ Doing Business Magazine –accessible at :<https://www.doingbusiness.org/en/research>

⁹ Banking Magazine, Reforma Kolateralal / Usaid i PFS savjetnički tim,2012,fq.7,Podgorica.

So due to the prolongation from confiscation to the sale of immovable properties, banks rarely make any profit from the sale of collateral due to the expense and the fact that most of those sales occur due to the decline in market conditions. The principle of borrower protection, embedded in the legal systems of many states, still prevails and leads to the fact that banks take precautionary measures when granting loans when real estate constitutes a collateral¹⁰. In Kosovo the enforcement procedure is regulated by Law no. 04 / L-139 on Enforcement Procedure, Official Gazette of the Republic of Kosovo, No.3 / 31 January 2013, (hereinafter referred to as: LEP of Kosovo)¹¹. This Law explicitly provides for the manner of forced gaining the right of pledge that we will elaborate further in this paper.

1. Entities in the enforcement procedure

Any concrete enforcement procedure, as well as the security procedure, is both subjectively and objectively determined. "Subjective determination is determined by the entities of the enforcement procedure, while in the objective aspect the enforcement procedure is determined by the claim that is realized or secured. By subjects of the enforcement procedure we mean the bodies of the proceeding, the parties and other participants in the proceeding.

The enforcement procedure as well as the contested procedure has a dual structure. Two procedural entities with conflicting interests are involved in it. Third parties who do not have the status of a party but participate in the defense of their interests may also participate in the security and enforcement procedure¹². According to the LEP of Kosovo, the main entities of enforcement proceeding are the creditor and the debtor, while the entities conducting the enforcement proceedings are the court and the private enforcement agents.

2. Role of the creditor

The creditor is the person who initiates and provides the impetus for the execution procedure. Without a creditor, there is no execution procedure. The creditor is involved at every stage of the execution procedure as regulated by the Law on Execution Procedures (hereinafter: LEP) which outlines his rights and obligations¹³.

Among the rights and obligations of the creditor we find:

- The right to request enforcement on the basis of a credible document (for example, a final civil judgment which is enforceable)¹⁴;
- The discretion to determine the means and manner of enforcement. In practice, the real estate is generally seen as a last resort, as real estate enforcement usually takes longer and requires a difficult procedure of valuation, sale and distribution of assets¹⁵.

10 Revista Bankar, Reforma Kolateralala / Usaid i PFS savjetnički tim,2012,p.6,Podgorica.

11 Official gazette of the republic of kosovo / No. 3 / 31 January 2013.

12 Vladimir Crnjanski, paper quoted p.28.

13 See :Article 4 of Kosovo LEP.

14 Article 37 of Kosovo LEP.

15 Article 10 of Kosovo LEP.

- The duty to provide relevant information about the debtor, his location or his asset. In cases in which the creditor does not have information about the debtor, his location or his assets, the court will use all available means to identify additional information. If no information can be found, and if the creditor fails to complement existing information within a reasonable time, the procedure should be considered as terminated¹⁶.

3. Role of the debtor

The debtor is the person against whom execution is requested. Without a debtor, there is no execution procedure. The purpose of execution procedures is to force the debtor to comply with his obligation towards the creditor. The Law on Execution Procedures has been described as excessively protective of the debtor. Among the protection recognized to debtors, we find:

- Requirement that debtor be treated with dignity and that execution actions affect him in the least possible manner. (Article 9);
- Postponement of enforcement upon the debtor's request (Article 61);
- approval of objection and complaint (Article 67);
- Exclusion from enforcement (Article 111);
- Possible Change of enforcement object (Article 199) etc.

4.Role of the private enforcement agent

In Kosovo, the enforcement procedure in first instance shall be managed and decided by the private enforcement agent, and exceptionally by the individual (single) judge when this law provides that the enforcement is set and enforced by the court (first instance body). The enforcement authority shall decide on the enforcement proposal within seven (7) days of receipt of the proposal. Decisions in the enforcement procedure shall be taken by the enforcement authority in the form of judgment or enforcement writ¹⁷. Article 341 of Kosovo LEP has provided for a wide range of rights of the private enforcement agent in the procedure of assigning and implementing enforcement as following::

- issues and implements the enforcement order in line with his/her authorizations;
- receives and acts according to enforcement proposals based on claims and proposals for implementing enforcement of claims and assigns the method of enforcement if the creditor has not provided the proposal;
- to serve acts and writs;
- to identify the parties and participants in the enforcement procedure;
- to collect the data for the property situation of the debtor;
- to draw conclusions, draft transcripts, requests and other official data in accordance with authorizations as provided by this law;
- to perform registration, property evaluation, sequestration and sale of movable property, and real estate rights;

¹⁶ Article 198 of Kosovo LEP.

¹⁷ Article 3 of Kosovo LEP.

- to accept and preserve the registered and insured property of the debtor, order the transfer of ownership and perform the division of property and other monetary means realized by the property sale;
- to perform the eviction and other enforcement actions for the purpose of enforcement of enforcement in accordance with this law and bylaws;
- to mediate between debtor and creditor for purpose of reaching a settlement between them, following the request of the debtor or creditor;
- to receive and transfer the monetary means in accordance with this law;
- to maintain the records of cases in which he/she acts according to the form determined by the Minister¹⁸.

5. Role of the court

The enforcement procedure shall be initiated ex officio by the Court when so provided by law. The competent court shall have subject matter jurisdiction to order and carry out the enforcement as well as to rule on matters during the proceedings in accordance with the provisions of this law unless the Courts and other enforcement authorities have jurisdiction to order and engage in enforcement and to rule on the matters during the proceedings. The territorial jurisdiction to rule on matters concerning the application of enforcement proceedings is determined by the provisions of the Law on Enforcement Procedure, depending on the means and scope of the enforcement, and on the basis of the status of the enforcement authority¹⁹.

The court is responsible for the following actions:

1. Authorizing enforcement after verification of the request.
2. Notifying the debtor and providing him with a deadline for voluntary compliance.
3. Ordering and undertaking execution measures to collect payment on behalf of the creditor.
4. Terminating execution once all means of collection have been exhausted regardless of whether they were successful or not.
5. Deciding on objections and appeals and adjudicating disputes arising from the enforcement²⁰.

6. Enforcement Documents

The enforcement procedure is initiated on the basis of the enforcement document and the authentic document. The enforcement document is an individual legal act that proves the existence of a claim, its reachability and the legitimacy of the parties to the enforcement procedure²¹. The enforcement authority shall award, respectively perform enforcement only on the basis of enforcement document (titulus executions) and authentic document unless otherwise foreseen by this law²². According to the Law on Enforcement Procedure of Kosovo, enforcement documents are:

¹⁸ Article 341 of Kosovo LEP.

¹⁹ Article 37 of Kosovo LEP.

²⁰ Handbook for the Practical implementation Of execution Procedures In Kosovo, Prishtina, 2007, p.18

²¹ Slobodan Stosic, obezbedjenje potrazivanja zasnivanjem zaloznog prava na nepokretnosti-doktorska disertacija, Beograd, 2017, fq.162.

²² Article 21 of Kosovo LEP.

- a) enforcement decision of the court and enforcement court settlement (reconciliation);
- b) enforcement decision awarded in administrative procedure and administrative settlement (hereinafter: the settlement);
- c) notarized document enforceable according to the law on notary;
- d) agreements reached in the mediation procedure in accordance with the law on mediation after approval of the Court;
- e) the judgments, acts, and memoranda on court settlements of foreign courts, as well as the awards of foreign arbitration courts and the settlements reached before such courts in arbitration cases, which have been accepted to enforcement within the territory of the Republic of Kosovo;
- f) decision and enforcement agreement of the arbitration of the Republic of Kosovo declared enforceable by the Court;
- g) mortgage agreements certified by the competent body and registered in the public registry in accordance with law;
- h) court decision certified as European enforcement writ;
- i) other document which is qualified by the law as an enforcement document²³.

7. Authentic document

Kosovo LEP provides for certain documents, The Kosovo PPL provides for that some documents, which are not designated as enforcement documents, may be submitted for enforcement. Using an authentic document, a claim may be filed for enforcement without first going to civil contested proceeding. The debt will be valid, determined and payable. However, the debtor has the right to object and challenge and turn the enforcement proceedings into a civil contested proceeding²⁴.

According to LEP, an authentic document is as following:

- 1.1 bills of exchange and cheques with potest and return invoice, if required for establishing the claim;
- 1.2. extracts verified from business books for payment of utilities, water supply, power and waste services;
- 1.3. invoices;
- 1.4. documents with significance of public documents according to legal provisions;
2. Calculation of interest is considered a part of the authentic document.
3. Authentic document is eligible for enforcement if it shows the creditor and debtor, the object, type, amount and time of fulfillment of the monetary obligation.²⁵.

8. Starting Execution

The execution procedure is initiated when the creditor submits a proposal for execution. The creditor is usually the person whose request is accomplished in the execution procedure. The creditor is always the person to whom the debtor is obliged to pay a sum of money or to perform or refrain from performing an act, as described

²³ Article 22 of Kosovo LEP.

²⁴ Handbook for the Practical implementation Of execution Procedures In Kosovo, Prishtina,2007,p.24.

²⁵ Article 29 of Kosovo LEP.

in the document submitted as the basis for execution. A legal representative or an authorized lawyer can act on behalf of the creditor or debtor²⁶.

8.1. Content of the Proposal for Execution

Enforcement proposal should contain the request for enforcement which shows the original enforcement document, or a copy certified by law, or authentic document based on which the enforcement is requested, claimant of enforcement and debtor, address of residence place of stay or business seat of the creditor and debtor, credit claimed for settlement, and also the means through the which the enforcement should be conducted, the enforcement object if known, and other data needed for application of enforcement.²⁷

8.2. Decision to Allow Execution

If all the criteria regarding the regularity of the form and content of the proposal for execution are met, and if the term for voluntary claim fulfillment has expired, the court makes a decision to allow execution. No hearing is necessary prior to making that decision. It is a decision purely based on a formal review of the proposal for execution.

The decision on execution determines both the validity of the proposal for execution and the manner in which execution will be implemented. This means that the content of the decision will vary depending on the means and subject of execution requested by the creditor. For example, a decision for execution on the bank account of the debtor will refer to the bank accounts of the debtor and creditor and will order the bank which manages the bank account of the debtor to transfer the amount of the debt to the creditor's account. A decision for execution through the sale of immovable property will include characteristics of the immovable property and its cadastral references.²⁸

9. Procedure of enforcement on movable assets

Enforcement procedure of movable assets - the enforcement procedure on movable assets goes through three phases: Enforcement for movable items is conducted through registration, sequestration, and evaluation, selling of such items and settling the credit from the amount obtained from sale of such items²⁹.

Enforcement authority in principle, before starting the sequestration, delivers to the debtor enforcement decision and orders him to pay the amount of money together with the interests and procedural expenses, for which the enforcement is permitted. In case of impossibility to deliver the enforcement decision or writ to the debtor on sequestration, it is permitted to perform the notification by posting a notice of the date of sequestration on the table of announcements at the enforcement authority and also by leaving a copy of the enforcement decision at the premises at which

²⁶ Handbook for the Practical implementation Of execution Procedures In Kosovo, Prishtina, 2007, p. 29

²⁷ Article 38 of Kosovo LEP.

²⁸ Handbook on the Practical Implementation of Enforcement Procedures in Kosovo, Prishtina, 2007, p.35.

²⁹ Article 86 of Kosovo LEP.

sequestration shall occur. About the time and place of sequestration of movable items, the creditor will be notified by the enforcement body. Non-attendance of the parties does not obstruct the commission of sequestration. The party which was not present at the place of conducted sequestration will be notified on conducted sequestration.³⁰ Sequestration shall be conducted through the drafting of an inventory register. An inventory of movable items in the possession of debtor and the debtor's items in the possession of creditor will be performed. If third persons do not notify the enforcement authority for their rights on the items in debtor's possession, and do not prove their rights within thirty (30) days from the notification date, and latest three (3) months from the sequestration date, it is considered that such rights of third persons do not exist and that debtor is the owner of the items under his possession.³¹ In the case of sequestration of assets, enforcement authority evaluates the value of movable items. Evaluation shall be done by the enforcement authority unless the court has assigned the court evaluator or special expert, or the private enforcement agent has assigned a special expert. Party may propose that evaluation be conducted by expert even when it is not foreseen by the enforcement body. If the enforcement authority approves such proposal, the proposer shall pre-pay the expert's costs, within deadline assigned by the enforcement body. If the pre-payment is not done within deadline assigned by the enforcement body, it is considered that the proposer has withdrawn his proposal.³²

For registration and evaluation of sequestered items, the enforcement authority shall draft the record.

The record indicates separately the sequestered items and their determined value, and notes the statements of the parties and other participants in the procedure, but also of third persons for eventual existence of their rights which may obstruct the enforcement of the sequestered items.

A certain mark shall be placed on sequestered items indicating the sequestration³³.

The sale of sequestered items shall be done through the verbal public auction, or through direct settlement between the purchaser, in one side and the enforcement body, or other authorized subject in other side. The mode of sale of items shall be determined through enforcement authority conclusion, bearing in mind the goal to achieve the most suitable price for the debtor. Public auction shall be administered by the enforcement authority or other person assigned by the enforcement body.

Sale through direct settlement shall be conducted between the purchaser, in one side and the enforcement body, or the person who conducts commission actions, in the other side. The enforcement authority shall sell the sequestered items in behalf of and for the account of the debtor, while the person who deals with commission actions, acts in his behalf but for account of debtor.

Sale through auction will be assigned if it concerns about sequestered items of high value, and it may be expected that these may be sold in higher price than the evaluated value. Sale of items will be published in notification table of the enforcement authority

³⁰ Article 87 of Kosovo LEP.

³¹ Article 88 of Kosovo LEP.

³² Article 94 of Kosovo LEP.

³³ Article 96 of Kosovo LEP.

at least fifteen (15) days before the holding of session for their sale.³⁴

Sequestered items may be sold at a public sale session at a price lower than the specified price, but not at the lower price of fifty percent (50%) of the value assigned when registering and evaluating movable property of the debtor, respectively within the deadline set by the enforcement authority for their sale by direct settlement. The public sale hearing shall be held within thirty (30) days of the sequestration date. If such sequestered items are not sold in the sale session, the creditor may require transfer of items to his ownership, for partial or full coverage of credit at the assigned price of such items, within a deadline of fifteen (15) days from the date of public sale. The abovementioned provisions of this Article shall apply *mutatis mutandis* also for the sale of sequestered items through a direct settlement.³⁵ The enforcement authority shall suspend the enforcement if there are no bidders, or if there is no proposal for sale through direct settlement, within the deadline of thirty (30) days, or if the creditor does not present a proposal for transfer of items possessed by the creditor, as per paragraph 3 of the Article 100 of the Law.³⁶

At the moment when the purchaser of items takes them in possession, he becomes the owner after depositing the full price³⁷.

The creditor's payment under Article 125 of the LEP contains the following: If from the obtained money from the sale of items, only one creditor settles the claim, the enforcement authority without scheduling a session, through decision shall order the payment of the following from the amount of obtained money from the sale of items, in the following order: procedural costs, certain costs in enforcement document, interests until the day of the sale of items, and main request for settlement of which is initiated the enforcement procedure.

The money that remains after the fulfillment of the main request shall be handed over to the enforcement debtor, if here are no obstacles (*hiperocha*)³⁸.

Article 126 of the LEP is the order of priority when there are many creditors: If in the enforcement procedure, more creditors settle their requests claims, respectively if except creditor also other persons, whose rights are abolished in the moment of sale of movable items, settle their claims, then they will settle their claims in order by which they have obtain the right of pledge, or other right which is abolished at the moment of sale of sequestered items. Settlement of claims in assigned manner in paragraph 1 of this article shall be conducted only if the law, for certain claims, has not provided for the right of priority settlement.³⁹

10. Enforcement procedure on immovable assets

LPORR of Kosovo in Article 193 par.2 has provided for that the way to elapse

³⁴ Article 99 of Kosovo LEP.

³⁵ Article 15 paragraph. 1,2 , 3 and 4 of the Law No. 05/L-118 on Amending and Supplementing the Law No. 04/L-139 on enforcement Procedure.

³⁶ Article 17 of the Law No. 05/L-118 on Amending and Supplementing the Law No. 04/L-139 on Enforcement Procedure.

³⁷ Article 104 of Kosovo LEP.

³⁸ Article 125 of Kosovo LEP.

³⁹ Article 126 of Kosovo LEP.

a mortgage is to elapse it through the sale of a mortgage object, in order to meet the secured claim.⁴⁰, whereas Article 199 of the LPORR of Kosovo provides for the fulfillment of the mortgage creditor's claim through compulsory enforcement, where the terms and procedure of enforcement and payment of claims is made through the provisions of the LEP of Kosovo.⁴¹ .

10.1. Enforcement procedure on immovable assets

The LEP of Kosovo foresees 4 phases of the enforcement procedure on immovable assets:

- Registration in public immovable assets books;
- Evaluation of the value of immovable assets;
- Sale of the immovable assets; and
- Payment of enforcement creditor from the amount of money gained from the sale⁴².

10.2. Registration of decision on execution in the cadastre

Registration of the decision on execution in the cadastre – The decision on execution is registered in the land books. Registration is made in the same book in which mortgages are recorded. It has the following effects:

- Towards the debtor: the mortgage placed on the immovable property formally prohibits the debtor from disposing of his property without satisfying the debt owed to the creditor.
- Towards future creditors: the creditor in the execution procedure has acquired a mortgage on the immovable property. The creditor has priority over any other creditor acquiring a similar right at a later stage.
- Towards other third-parties: the registration informs third-parties of the right of the creditor and of the future sale of the property. If third parties have a claim against the immovable property (ownership, possession, collateral, etc.) they can then intervene in the execution procedure.⁴³

10.3. Evaluation

According to the provisions of the LEP of Kosovo, the enforcement authority shall decide through conclusion on the manner of determining the value of real estate, immediately after rendering the enforcement decision or enforcement writ. If considered necessary, prior rendering the conclusion, the enforcement authority may hold a court session or hearing of parties.

Determination of the value of real estate shall be done after the enforcement decision or enforcement writ becomes final. Determination of the value of real estate shall be done prior to the determined moment if the creditor requires so and pays the costs for determining the value of immovable asset even in the case when the enforcement procedure is suspended.

40 Article 193 par.2 of LPORR of Kosovo.

41 Article 199 of LPORR of Kosovo.

42 Article 192 of Kosovo LEP.

43 Handbook for the Practical implementation Of Execution Procedures In Kosovo, Prishtina, 2007, p, 52.

The value of immovable assets is determined on the basis of expert evaluation and other facts related to its market price on the day of evaluation. During determination of the value of immovable assets the facts that may decrease its value shall be considered, this if certain rights on real estate remain even after the sale.⁴⁴

In addition to the mater of determining the value of the immovable asset, the enforcement authority may require the competent tax authority to provide data on the value of the immovable asset.⁴⁵

In the procedure for enforcement of the part in joint ownership, the estimation shall contain the ascertained values of entire immovable asset and of the part on joint ownership, as well as of the part on joint ownership which would be obtained in the case of the sale of entire immovable asset,⁴⁶

The provisions of LEP do not apply unless the parties and other persons exercising their rights in the enforcement procedure by agreement determine the value of the immovable asset⁴⁷.

10.4. Sale

According to the LEP, after the procedure for determination of the value of real estate is completed, the enforcement authority issues the conclusion on the sale of real estate determining the value of real estate and the manner and conditions for sale, as well as the time and venue of sale, if the sale shall be performed through public auction. In the procedure of enforcement for the part in joint ownership, the sale conclusion will contain, in particular, the data for entire real estate and also for the part in joint ownership which is the object of enforcement, as well as the notice that the enforcement body, for whole object of sale, shall decide in accordance with the provisions on auction session and the sale of real estate⁴⁸.

The real estate sale conclusion shall be published at the enforcement authority billboard, or otherwise if the enforcement authority decides so. The party or anyone else with ownership interests in the property has the right to publish the sale conclusion on his costs in public information means, and to inform on conclusion the persons who mediate in sale of real estates.

Following the publication of the sale conclusion on the enforcement authority information board until the day of the sale the period of at least thirty (30) days must pass. The sale conclusion shall be delivered to the parties, to persons who have priority right to settle their credits or the right for settlement with same rank as the creditor, to persons who have recorded right or priority or legal right and to the competent body of tax administration⁴⁹. A person who has the priority right of purchase of real estate which is the object of enforcement by sale shall have the priority over the best bidder, if immediately after conclusion of the bidding it gives the statement for matching the bid⁵⁰.

⁴⁴ Article 217 of Kosovo LEP.

⁴⁵ Article 218 of Kosovo LEP.

⁴⁶ Article 219 of Kosovo LEP.

⁴⁷ Article 220 of Kosovo LEP.

⁴⁸ Article 222 of Kosovo LEP.

⁴⁹ Article 223 of Kosovo LEP.

⁵⁰ Article 223 of the Kosovo LEP.

The sale of real estate shall be performed through verbal public auction. The session for real estate sale shall be held in the court, if the enforcement authority did not determined any other sale venue. The sale session shall be exercised by the enforcement body. The parties and creditors secured by pledge, whose rights for settlement of credits are at least of the same rank with that of the proposer for enforcement, may agree, at latest until the moment of the sale of real estate in public auction, that the sale of real estate be performed within assigned term through direct settlement between the person authorized for sale of real estate and enforcement body, or in any other way. The real estate's sale terms are incorporated in sale conclusion. The buyer of real estate may not be the judge or other person who exercise official duty in the procedure of sale, their spouses and blood relatives (predecessors, descendants, siblings and their spouses), debtor and his/her spouse, the evaluator of the real estate, as well as any other person who according to Law may acquire the right of ownership on real estate which is the object of enforcement.

In the first session of the public sale, real estate cannot be sold at a price that is lower than fifty per cent (50%) of the value of real estate as appraised. The starting offers for the first session that are lower than fifty per cent (50%) of the appraised value will not be reviewed. In case the real estate is not sold in the first session of the public sale, the enforcement authority shall designate a second session of the public sale within a time frame of fifteen (15) to thirty (30) days. At this session, real estate shall not be sold at a value lower than one third (1/3) of the value of real estate as appraised. In case real estate is not sold in the second auction, the enforcement authority shall, by proposal of creditor, render a decision to hand over the real estate to the ownership of creditor, in which case the claim against the debtor is considered fully covered. In case there are no persons with the right of pre-emption or contractual right, than the person who according to this law has right of settlement with priority of his credit from selling price, shall acquire the right of pre-emption of the real estate at the price reached in the second session⁵¹. In case the parties before the commencement of enforcement procedure have reached an agreement with the enforcement authority, that the real estate should be sold for a lower price, then the real estate can be sold with that price even in the first session. This agreement shall be valid only if in the enforcement procedure, the persons with registered rights in the public record of the real estate do not participate before the registration of the right of the claimant of the enforcement.

The lowest price by which the real estate can be sold according to the provision of LEP cannot be lower than one third (1/3) of the determined value. Parties and persons secured with pledge can agree through the statements provided in the official records that the real estate can be sold at a price lower than that fifty per cent (50%) of the value of real estate as appraised. Appropriate action shall also be taken in the case when the real estate is sold through direct agreement.

Sale auction shall end five minutes after appearance of the most convenient offer. After the end of the auction the enforcement authority shall verify bidders who

⁵¹ Article 22, par.1,2, 3 and 4 of Law No. 05/L-118 on Amending and Supplementing the Law No. 04/L-139 on Enforcement Procedure.

offered their price above minimum and shall verify that the real estates is sold to the most convenient purchaser, if other conditions are met.

The enforcement authority shall issue a written conclusion on sale of real estates to the most suitable purchaser to be published in the information board of the enforcement authority and shall send extracts to the parties and persons who took part in the auction as bidders.

In case the highest bidder does not deposit the purchase price in the foreseen time determined by the enforcement body, the enforcement authority by the conclusion shall declare the sale as invalid and through a the new conclusion shall ascertain the sale of the real estate to the second bidder who within the deadline that cannot be shorter than thirty (30) days from the day of the submitting the conclusion, shall deposit the purchase price to the enforcement body. After depositing the price, the enforcement authority shall issue a written decision or order concluding that the real estate has been sold to the buyer. Through the written decision or order, the enforcement authority shall decide that the real estate is to be handed to the buyer, whereas the public record official-holder of real estate shall be ordered to register the right of the property of the buyer over the real estate that he bought. Through this written decision or order the enforcement authority shall order the cancellation of rights as provided in the written decision or order on sale of real estate⁵². After the issue of the written decision or order on the delivery of the real estate, the enforcement authority on the request of the buyer, by conclusion shall order the debtor to move out and hand the real estate to the buyer. The provisions of the LEP provide for the possibility of settlement of the credit through hand over of real estate to the creditor: "In case real estate is not sold in the second auction, the enforcement authority shall, by proposal of creditor, render a decision to hand over the real estate to the ownership of creditor, in which case the claim against the debtor is considered fully covered".

10.5. Payment

According to provisions of the LEP, the enforcement authority shall pay the creditor immediately after the price of purchasing the sold real estate is deposited⁵³. From the sale price shall be paid the enforcement proposer who was initiated the enforcement procedure, insured pledged creditors even though they did not apply for their credits and persons who have the right of reward for personal servitudes. The excess from the purchase price (hiperocha) that remains after the fulfilment of claims made by the abovementioned persons, shall be handed to the debtor, if no other legal obstacles exist. If the price of sale of real estates is not sufficient for a complete settlement of loans of the same order, their settlement shall be proportionally according to the height of such loans.

The LEP also foresees the order of fulfilment of credits by priority:" The priority to be paid from the amount earned from the sale of real estates have: -- expenses of the enforcement procedure; - requests of the insured creditors with pledged, shall be realized by the order of priority before the enforcement proposer; - the request

⁵² Article 242 of Kosovo LEP.

⁵³ Article 252 of Kosovo LEP.

of the enforcement proposer; - claims of creditors insured with pledged, which are realized by order of priority, shall be settled after the enforcement proposer; - rewards for personal servitudes, which are terminated through the sale of real estates. If the debtor is due to pay interest apart from the principal amount, the interest shall be paid before the principal debt. More persons shall settle their claims according to the order of gaining the right of pledge and the right of settling the credit of the enforcement proposer⁵⁴.

Conclusions

Kosovo legislator in the new Law on Enforcement Procedure, in addition to engaging private enforcement agents, has introduced competition in the enforcement process, and at the same time has made it possible to expedite the procedure for the sale of movable and immovable items charged with the right of pledge, but it should also be noted that the enforcement procedure is expensive and burdened with numerous formalities, with long deadlines, with many rights for the debtor in the exercise of objections and appeals, which leads indirectly to the procedure's obstruction.

Referring to the comparative analysis for 2019 regarding the duration of the enforcement of contracts, Kosovo ranks 53rd (330 days) on the World Bank Doing Business List . However, the Law No.03/L-154 on Property and Other Real Rights makes a step forward for the protection of the mortgagee by introducing extrajudicial enforcement of the business mortgage between legal-business entities and the right to sell in the event of the debtor's delay, where the pledger can sell, lend or otherwise dispose of the pledged item without the presence of the court.

The intention of the Kosovo legislator in the future, upon the amendment-supplementation of the legislation for realization of the pledge, should be oriented towards enabling the creditor the out-of-court realization of the claims gained through pledges, immediately, if the debtor fails to pay the debt upon arrival, thus making the procedure as efficient as possible and, at the same time, strike a balance and objectivity in the enforcement process.

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