

THE EFFECT OF PRESCRIPTION ON ENFORCEMENT PROCEEDINGS

Abstract

Time is a legal fact capable of exerting a significant influence upon legal relations. The influence of time (arising independently of human will and directly on the basis of law) can be either creative or destructive. Namely, the lapse of time can create a subjective right, modify or end it. One of the legal institutions in which the influence of time on subjective right comes to full expression is the prescription (statute of limitation) regulated by the provisions of the Law on Obligation Relations in Serbian law. It stipulates that the right to performance of an obligation is subject to prescription; this right ceases to exist by the expiration of statutory limitation period (prescription) in which the creditor could request performance. The debtor may perform his obligation voluntarily or forcefully, in the enforcement proceedings initiated on the proposal of the creditor and, only exceptionally, *ex officio* in cases prescribed by law. In this paper, the author analyses the influence of periods of prescription on enforcement proceedings and the possibility to suspend such proceedings due to limitation period (prescription). Two hypothetical situations are analysed. One is the situation of the suspension of enforcement proceedings due to the fact that the period of prescription has expired before the commencement of enforcement. We see this situation as undisputed. The second situation is the suspension of enforcement proceedings because the limitation period occurred during such proceedings. It seems to us that this situation can provoke some doubts; therefore, we raise the question whether prescription is even possible in enforcement proceedings.

Keywords: *performance, limitation period, prescription, enforcement, interruption and suspension of enforcement proceedings.*

1. Introduction

The lapse of time is a significant fact that produces numerous repercussions in law and on legal relations. The most radical ones among them are certainly extinguishment (termination) of a subjective right and weakening of its power,

transforming it into a natural obligation (*obligatio naturalis*). In the former case we speak about a loss of one's right, whereas in the latter one about a prescription.

Prescription is an old legal institute, which affects, like the lapse of time, many areas of law - criminal, civil, and administrative law. Prescription, however, has a particularly significant role in civil law, in its part dealing with everyday activities of individuals undertaken for satisfying their own material and spiritual needs. It is about contractual relationships - daily relationships where it is necessary to create conditions for their unobstructed establishment, development, and extinguishment. Non-performance of or delayed performance of obligations, as well as the creditor's lack of interest for exercising his rights, results in a discord between the factually existing legal situation, on one hand, and a desired one, on the other hand. Such a discord is not desirable from a legal security stand. Therefore, the law took care to eliminate the aforementioned discrepancy and to provide a legal basis to the factual state for its further existence. Prescription is only one of legal institutes that should serve the following aim: the elimination of legal insecurity and uncertainty that always accompany the discord between factual and legal.

It has been said that prescription weakens the legal power of a subjective right, but do not extinguish it. The subjective right, i.e. a claim, can further exist but as a natural obligation, which may also affect the possibility of its forced realisation, *inter alia*, in enforcement proceedings. The expiration of the prescription period where a creditor could demand performance is no impediment to initiating the enforcement proceedings; however, it may become an impediment to the realisation of its aim - a forced fulfilment of the claim that the debtor has not voluntarily fulfilled. Hereinafter, the effect of prescription to the entire course of enforcement proceedings will be analysed, from its initiation to its end by suspension or conclusion, in order to prove or deny the set thesis. In order to meet such a set aim in the middle part of the paper, it is necessary, first, to provide a few clarifications of the concept of prescription and the conditions for the occurrence of its action.

2. Concept and Justification of Prescription

The institute of prescription in Serbian law is regulated by the Law on Obligation Relations¹ Since its enactment in 1978, a legislative intervention has been carried out in this matter only once - in 1993, when the general prescription period was extended from five to ten years.² In the remaining part, the norms of prescription

¹ The Law on Obligation Relations, Official Gazette of the Socialist Federative Republic of Yugoslavia, no. 29/78, 39/85, 45/89, and 57/89, Official Gazette of the Federal Republic of Yugoslavia, no. 31/93. Hereinafter: The LOR.

² Article 34 of the Law on Amendments of the Law on Obligation Relations (Official Gazette of the Federal Republic of Yugoslavia, no. 31/93).

have been valid for more than thirty years, and during that period they have generally withstood both the practical and theoretical tests.

Prescription represents a loss of the right to an enforcement of the obligation after the expiration of a specified period of time and under the legally stipulated conditions. The underlying idea of prescription is to leave a specific adequate period of time to the creditor wherein he may request from the debtor to perform his obligation. If this time period passes yielding no results, because the creditor has not requested performance and has not been prevented by any specific objective and pardoning circumstances to do so, he loses the possibility to enforce his right in the court. The existing discord between the legal and factual situations is eliminated by giving the advantage to the factual, legally discorded situation over the legal one. The creditor "loses" the right, the debtor is relieved from the obligation.³ The statute of limitation, thus, appears as a means of protection of the debtor and a kind of punishment for the reckless creditor. Such hard consequences for the creditor are mainly justified in legal theory with reasons for legal peace, legal security and certainty (clarity) in legal relationships.⁴

The non-performance of the right over a longer period of time - in the awareness of the community where the right should have been exercised - creates righteous impression that the creditor neither has had the right (or has never acquired it or it ceased to exist) or has had no interest to exercise it. In the former case, prescription protects the debtor from paying what is not owed, i.e. already performed.

The loss of a right that is of no interest for its holder and serves him no aim, is also justified. Such unjustified passivity of the creditor and his neglecting of his own rights justify the stand both of society and the law that it is justified to deprive him legal protection, since a late exercise of the right would bring about unnecessary

³ Prescription defined as the loss of request for a forced realisation of the claim is an expression of a "destructive" influence of the passage of time to legal relationships. Contrary to it, there is an adverse possession, where time has the power to create the right, to act creatively. The adverse possession is a way of acquiring some real rights, above all - the right to property. Older legal theory treated both institutes in a unique manner and designated them with a common name „statute of limitation/prescription in a broader sense." More recently, the stand that prescription and the adverse possession are two separate and autonomous institutes has prevailed. In Serbian law they are regulated separately. The statute of limitation is regulated with the Law on Obligation Relations (art. 360 – 393), while the provisions on adverse possession are regulated with the Law on the Fundamentals of Proprietary Relations (art. 28 – 30, Official Gazette of the Federal Republic of Yugoslavia, no. 6/1980, 36/1980, 29/1996, Official Gazette of the Republic of Serbia, no. 115/2005).

⁴ More in: Simonović, Ivana, *Nove evropske tendencije u pravu o zastarelosti i određivanju rokova zastarelosti*, Pristup pravosuđu – instrumenti za implementaciju evropskih standarda u pravni sistem Republike Srbije, knjiga II, Niš, Centar za publikacije Pravnog fakulteta u Nišu, 2007, p. 132 and the literature referred to therein.

anxiety and insecurity in legal relationships always resulting in long disputes. Prescription should protect those who are required to meet the obligations occurred long time ago, and the fulfilment of which cannot be proved easily, since there is no evidence about it (e.g. receipts), or the witnesses are no longer alive or cannot be found. It is in the public interest to unburden the courts from litigations on legal relationships that cannot be easily clarified or cannot be clarified at all, since their outcome depends on a sequence of accidents.⁵

The Law on Obligation Relations provides for that a right to performance of an obligation is subject to prescription after the expiry of period of time set by the law. Unenforceability due to the prescription shall follow the expiration of the period specified by the law during which the creditor was entitled to request fulfilment of the obligation (art. 360 para 1 and 2 LOR).

There are two relevant elements of the prescription: non-performance of the right, which should be characterised with neglect, the creditor's indolence to his own right;⁶ and the lapse of time, a period during which the right was not exercised and is called the prescription period. Prescription periods are strict time limits, specified by the law. The parties in an obligation relation are not allowed to specify any longer or shorter periods of prescription than the one set forth by the law; or that the prescription period will not run for a specified period of time (art. 364 of the LOR.) Such agreements are null and void, therefore, the period stipulated by the law for that certain right will be applied instead of the agreed longer or shorter time limit.⁷

Some specific circumstances laid down by the law, may either interrupt the prescription period or prevent its commencement; and, if this period has already started to run, it is stopped. In the former case, an interruption of the prescription period occurs, and in the latter one - its suspension.

⁵ Law takes into account also a no fault, objective impossibility to exercise the right that cannot be attributed as a fault to the creditor. As long as these exist, prescription period does not run - there is an interruption or a suspension of time - and prescription cannot come into effect.

⁶ Stanković, O. in: Stanković, O., Vodinelić, V., *Uvod u građansko pravo (Introduction to Civil Law)*, Nomos, Beograd, 2004, p. 209. The nature of subjective rights allows disposition in their performance which, by the end of prescription period, will not be sanctioned. After that, full legal certainty in a debtor-creditor relationship is in the public interest, which is obtained through the occurrence of prescription.

⁷ More on prescription periods and contemporary European solutions in: Simonović, Ivana, *Nove evropske tendencije ...*, *op. cit.*, note 4, p. 134-139.

The interruption of the prescription period may exclusively be caused by legally relevant actions of the participants in an obligation relation.⁸ For our theme, an interruption by the creditor's action is significant.⁹

The creditor may interrupt running of prescription period by instituting judicial proceedings, as well as by any other motion undertaken against the debtor before the court or other authority aimed at establishing, securing or fulfilment of his right (art. 389 para 1 of the LOR).

According to the Law on Obligation Relations, it is insufficient if the creditor merely gives the debtor notice in written or oral form claiming the performance. Because of the significant consequences caused by such an interruption, it is necessary to ensure a reliable evidence about the creditor's intention to assert his right and thus eliminate every doubt in regard to the legal significance of his actions. Such interruption causes: e.g. filing a lawsuit against the debtor to perform the owed obligation; reporting owed obligation in a bankruptcy procedure; and filing a motion for the enforcement of the final court decision.

The interruption causes very radical consequences. Undertaking one of the stated actions erases the already passed time and a completely new prescription period starts running.

3. The Effect of Prescription

When a prescription period expires, the debtor is entitled to refuse performance permanently. This right is exercised by invoking *objection of prescription* - a substantive legal objection aimed at a permanent denial of the creditor's claim for fulfilment.¹⁰ Therefore, it is a peremptory objection, which must be explicitly raised by the debtor, because the court does not consider any prescription period *ex officio*.¹¹

⁸ The suspension of running of prescription period is caused by circumstances that have arisen independently from the creditor's and debtor's wills, due to reasons prescribed by the law (art. 318 - 383 of the LOR and art. 385 and 386 of the LOR).

⁹ The debtor interrupts the period of prescription by acknowledging the debt (art. 387 of the LOR). Save for an explicit acknowledgement, any other debtor's manner, on the basis of which his intention to meet the obligation is undoubtedly established, such as paying the interest or instalment, providing security, is eligible.

¹⁰ The effect of prescription occurs only if the debtor wishes so; therefore, the debtor's will that the prescription comes into force may be designated as the third element of prescription. The passage of time itself and the non-exercising of rights cannot result in prescription (more exactly, cannot cause the consequences of a prescription) unless the subject's will in favour of whom the limitation period runs is not joined.

¹¹ From the standpoint of procedural law, the objection of prescription is a means of substantive law defence of the defendant (debtor) to deny the grounds of claim, because the prescription period has expired, and his attempt to ensure that the claim is rejected by the court. This

The prevailing legal standpoint that the possibility to assert the right in judicial proceedings is lost (after the expiry of the period of prescription) provided that the debtor rises an objection of prescription¹² also entails from the relevant provisions of the Law on Obligation Relations (art. 360). Subjective right (claim) that has reached its period of prescription still exists but cannot be performed against the debtor's will (in this sense, creditor's right is considered to be a natural obligation or a non-actionable claim). If the debtor meets the obligation despite the expiry of period of prescription, the performance is valid and final, the return of the given cannot be requested, even if the debtor has had no knowledge that the period of prescription has already expired. This is the consequence of the fact that the debtor only performed what was owed and the creditor was not unjustifiably enriched thereof.

4. Asserting the Right in Enforcement Proceedings

The aim of an enforcement procedure is a full performance of the creditor's claim. In accordance with the property sanctions principle, the enforcement is carried out on property, not on the debtor's personality.¹³ Besides this principle, the contemporary legal systems are also characterised by judicial protection and enforcement of the right as a dominant method of legal protection, so the creditor is not authorised to settle the debt arbitrarily, through self-help, but must address the court, using a motion for enforcement. After the dispute between the parties had been decided upon by a court decision with the effect of *res judicata*, the legal protection was finally and fully accomplished in enforcement proceedings by forcing the defendant (the debtor) to act in accordance with the order stated in the judgement.¹⁴

objection is classified in the group of peremptory objections, for, when used successful, a permanent denial of the claim is obtained.

¹² There are opinions that objection of prescription, among all other objections, is the most similar to a potestative right. If the debtor uses objection in a litigation, the creditor's claim becomes "judicially non-enforceable", "non-actionable". Although, from the substantive law stand, the creditor's right still exists, the court cannot order the debtor to fulfil it. Therefore, the creditor's legal situation is changed, and this is where the similarity with potestative rights comes from. More in: Larenz, K., *Allgemeiner Teil des Deutschen Bürgerlichen Recht*, München, 1967, p. 267.

¹³ In its historical development, enforcement procedure has passed through the evolution from personal enforcement, where the debtor - his own personality and personality rights - was the subject of enforcement, to a property enforcement, where it is, by default or exclusively, enforced on the debtor's property. (Poznić, B., Rakić Vodinelić, V., *Građansko procesno pravo*, Savremena administracija, Beograd, 1998, p. 428).

¹⁴ Unless differently stipulated by the law, judicial decisions, executive decisions of administrative authorities and magistrates as well as administrative settlement that read on monetary obligation, but also other documents having the capacity of executive and credible

Undertaking enforcement, as the final act in legal protection, is undoubtedly a sensitive act in legal order; therefore, it is entrusted to a court-of-law and is performed in judicial enforcement proceedings.¹⁵ Since 2011, with the enactment of the Law on Enforcement and Assurance of an Obligation,¹⁶ the competence for enforcement proceedings is gradually transferred to enforcement officers (public enforcement officers, as they are named in the Law on Enforcement and Assurance of an Obligation 2015¹⁷), for the purpose of unburdening courts from dealings that, *stricto sensu*, do not represent a court trial. Enforcement (execution) is entrusted to a newly formed authority - a public enforcement officer¹⁸ - who carries it out as his own professional activity. Competence for making decisions on motions for enforcement¹⁹ has remained with the court, though, which examines the fulfilment of legally prescribed requirements for enforcement proceedings.²⁰

The right to legal protection, established by enforceable or credible documents, does not have to be enforced in judicial proceedings, even if the defendant (debtor) does not act voluntarily as per the order. Save for in exceptional cases, the protection of civil subjective rights is subjected to the same principle as their performance - the disposition principle which means that it is left to the free choice of the holder of the right. Likewise, the instigation of enforcement proceedings is also left to the creditor's free decision: he can initiate it, but do not have to. But, if he opts for enforcement as the final act of acquiring legal protection belonging to him, save for the fulfilment of procedural requirements, he should also take into account the statute of limitations/prescription. Although it is a fact of substantive law, the period of prescription may also be important at the plane of enforcement procedure, because the defendant (debtor) may also raise an objection in enforcement proceedings as an impediment to his duty to perform. In enforcement proceedings, creditor's motion for

documents, are also executed in enforcement proceedings (see art. 41 and 52 of the Law on Enforcement and Assurance of an Obligation, Official Gazette of the Republic of Serbia, no. 106/2015 and 106/2016. Hereinafter: The LEA).

¹⁵ Starović, B., Keča, R., *Građansko procesno pravo*, Univerzitet u Novom Sadu, 1998, p. 606.

¹⁶ Official Gazette of the Republic of Serbia, no. 31/2011 and 99/2011.

¹⁷ Official Gazette of the Republic of Serbia, no. 106/2015 and 106/2016.

¹⁸ See art. 4 para 2 of the LEA.

¹⁹ With the exception of a motion for enforcement on the basis of a credible document for settling a monetary claim occurred from communal and related activities, which is decided about by a public enforcement officer who also implements the enforcement thereof (see art. 3 para 3 of the LEA).

²⁰ In the minority of cases, the court is also exclusively authorised to enforce: joint sale of real estate and movable property, decisions which order the defendant to do or refrain from doing something, and the enforcement of enforceable documents in connection with family relations and reinstatement of an employee (see art. 4 para 1 of the LEA).

enforcement is directly attacked with an objection of prescription, by pointing to a new fact in relation to those established with the enforceable document.²¹

The analysis of the influence of prescription upon the initiation and course of enforcement proceedings, which is the subject of our attention below, is framed with several theses; based on the provisions of the Law on Obligation Relations and the Law on Enforcement and Assurance of an Obligation.

5. The Framework and Theses for Establishing the Influence of Prescription on Enforcement Proceedings

1) The creditor is entitled to enforcement of his right established with an enforceable document.

Enforceable documents are: enforceable court decision, court settlement, final decision rendered in administrative or misdemeanour proceedings, administrative settlement and other enforceable documents.²²

A decision on enforcement for settling a monetary claim may also be rendered on the basis of a credible document. These are legally determined documents that are accepted as credible documents and they are equalised in some of their effects with enforceable documents referred to in art. 41 of the LEA. One of these effects is the possibility of claiming an enforcement on their bases.²³ However, if any doubt is expressed in regard to their veracity - by challenging the facts related to the claim for which the enforced settlement is requested - art. 81 of the LEA is to be applied, which prescribes the right of the defendant to initiate litigation proceedings for determining that enforcement is precluded. The defendant who challenges the credibility of the credible document in his appeal on the decision on enforcement, actually, indicates that between him and the claimant (creditor) there is a dispute about the facts, which may only be decided upon in litigation proceedings not in enforcement ones. The court who decided upon the debtor's appeal on decision on enforcement must reject the appeal based on facts that are disputable to the parties, because it is not competent to decide on such a factual dispute, and refer the debtor to instigating litigation proceedings for determining that enforcement is precluded (art. 81 para 1 of the

²¹ It is an opposition objection, the aim of which is to prevent enforcement implementation; because the claim, due to prescription, has become a natural obligation and unactionable claim. About this one and all other types of objections in enforcement proceedings, see Starović, B., Keča, R., *Građansko procesno pravo*, Univerzitet u Novom Sadu, 1998, p. 633 - 634.

²² The types of enforceable documents are determined in art. 41 of the Law on Enforcement and Assurance of an Obligation.

²³ The types of credible documents are determined in art. 52 of the LEA.

LEG).²⁴ But, if the debtor proves his statements about the facts which are obstacles to the enforcement with final court decision, the appellate court will adopt his appeal and discontinue the enforcement proceedings.

2) With the expiration of the prescription period, the right to performance does not cease, it has neither lost its legal basis or it is non-owed, although it becomes natural obligation. It follows that the creditor's claim for enforcement is valid, and such - valid - is also the execution. The performance after the expiry of the prescription period is not a fulfilment of what is not owed and the debtor is not entitled to claim restitution, even if being ignorant of what the obligation to be performed was like. The provisions on an unjustified enrichment cannot be applied as the two key assumptions are missing: unjustified impoverishment of the debtor and (causally connected thereof) and unjustified enrichment of the creditor.²⁵

3) The effects of the expiration of the period of prescription are dependent on debtor raising an objection of prescription (art. 360 para 3 of the LOR).

4) Court or any other authority are not allowed to consider prescription *ex officio*, should the debtor fail to invoke it. By the Law on Obligation Relations (art. 360 para 3), the ban on an official action and a self-initiative check of the facts of prescription is also referred to public enforcement officers. Even if the decision on enforcement is contested due to the prescription (art. 74 para 1 point 10 of the LEA), the ban is valid, because the appeal is decided upon by a second-instance court (art. 78 of the LEA).

5) A right to performance of an obligation established by judgement or decision of another authority expire after a ten-year period, and the periodical claims resulting from such decisions or settlements, and becoming due in the future, expire within the time limit otherwise provided for the performance of such claims (art. 379 of the LOR).

a) The prescription period is interrupted by raising a lawsuit *or by any other motion of a creditor undertaken against the debtor at court* or other authority, for the purpose to establish, secure or *enforce creditor's right*. 388 of the LOR). The running

²⁴ The lawsuit does not postpone the enforcement, but the litigation procedure instigated thereof is urgent and takes precedence in decision making (art. 81 para 2 and 3 of the LEA). The enforcement continues, but these two procedures are not completely deprived of mutual influence. The enforcement will be discontinued if the litigation procedure is completed with the effect of *res judicata* earlier by establishing that the enforcement is precluded (art. 81 para 5 of the LEA). If the enforcement is already completed, the debtor, as the complainant in the litigation proceedings, may modify the appeal into a motion to the court to compel the creditor, as the defendant, to return everything he received in the enforcement proceedings (being unjustifiably enriched thereby) and reimburse the costs of the enforcement proceedings (art. 81 para 6 of the LEA).

²⁵ See art. 367 and art. 213 of the Law on Obligation Relations.

of the period of prescription is, therefore, interrupted once the motion for enforcement is filed.

b) After the interruption, the prescription period starts running anew, and the time passed until the interruption is erased and not calculated in the statutory specified limitation period (Art 392 of the LOR). If the right to performance has been determined by a final court decision (or of other authority), a new ten-year prescription period starts running, and this from the date the procedure (which caused the interruption) was finalised or ended in another way. The same goes also when the interruption occurred by lodging a motion for enforcement or getting an assurance of an obligation (art. 379 in conjunction with art. 392 para 1, 3, and 5 of the LOR). Thus, until the final completion of the procedure (to establish, secure or enforce creditor's right) the creditor's claim is immune to the lapse of time and cannot be bared because the prescription period does not run. Consequently, an enforcement procedure may not be stopped due to the prescription because the claim, simply, cannot become time-bared after the initiation of such proceedings.

b) It is a completely different situation if the period of prescription expired after the court decision became *res judicata* or before that, during the litigation proceedings, but in such a stage in which the objection of prescription could not have been raised before the court (e.g. in a second-instance procedure following an extraordinary remedy). This is a specific cause for the rebuttal of decision on enforcement by appeal,²⁶ where the debtor points to a very important fact that prevents the enforcement - that the period of prescription is expired. By appealing on these grounds, the debtor, in fact, uses the substantive law objection of prescription and thereby meets the requirement referred to in the Law of Obligation Relations about the occurrence of the effect of prescription.²⁷

An appeal, as well as a plea are raised within an eight-day time limit from the date the decision on enforcement has been delivered, and they postpone enforcement only in cases laid down by the Law (art. 25 of the LEA). Whereas an appeal is filed at the very beginning of the enforcement proceedings - within an eight-day time limit from the date the decision on enforcement has been delivered - it follows that it is alleged that the period of prescription has expired earlier: after the enforcement document had become final and before the motion for enforcement was filed or during the procedure the claim was being decided about, but in such a stage when the fact on the prescription could not have been raised any longer (in a second-instance procedure following an extraordinary remedy).

²⁶ The appellate reasons are provided for in art. 74 of the LEG, 1 point 10 and art. "The debtor may use an appeal to rebut the decision of enforcement [,,] If the right that was awarded in the enforcement document has reached its statute of limitations."

²⁷ See art. 360 para 3 of the LOR.

If a debtor proves the prescription by a final decision or with a public or legally certified document, the second-instance court is obliged to adopt such an appeal and discontinue the enforcement procedure.

6. Enforcement of Obligations not Entirely Satisfied in the Former Enforcement Proceedings

The creditor is entitled to initiate a new procedure with a new motion for the enforcement of obligation that has been only partially settled in the former enforcement proceedings. The proceedings for such motion for enforcement is the same as for the former one. Since this is a new motion, the court will decide about it in compliance with the provision of art. 64 of the LEA: it will render a decision of enforcement (writ of execution) within an eight-day time limit if it is reasonably requested or it will dismiss or reject the motion as unfounded. The court expedites the decision on enforcement within a three-day time limit from the day of enactment thereof (art. 64 para 3 of the LEA). If the court is not authorised for the implementation of enforcement,²⁸ the procedure will be implemented by the public enforcement officer (who has been proposed by the creditor) even if the period of prescription expired meanwhile (between the former and this procedure) because he is not entitled to take care of prescription *ex officio*. (The prescription could occur if ten years passed between the final completion of the former procedure - with a conclusion determining that the creditor was partially satisfied - and the filing of the new motion for enforcement.) The only way to indicate to the fact of prescription is the debtor's appeal, for the reasons provided for in art. 74 para 1 point 10 of the LEA: as the creditor's right awarded in the enforcement document has reached its statute of limitations. The omission to appeal out of this reason adversely affects the debtor, therefore, he will be obliged to perform an obligation even though the period of prescription has been expired.

7. Concluding remarks from the Set Theses

²⁸ The court is exclusively authorised to execute: joint sale of real estate and movable property, decisions which order the defendant to do or refrain from doing something (art. 359-367 of the LEA) and the enforcement of enforceable documents in connection with family relations and reinstatement of an employee (see art. 4 para 1 of the LEA). The public enforcement officers have exclusive jurisdiction over the enforcement of other enforceable documents, writs of enforcement based on a credible document (if claim is monetary, resulting from communal utilities services and related activities, the public enforcement officer is also authorised for deciding upon the motion for enforcement, not for its enforcement only), writs on adopting the motion for counter-enforcement, and writs on enforcement of the court-imposed penalties (art. 4 para 2 of the LEA).

On the basis of the aforementioned, the set theses and statutory provisions, it follows that:

1) A creditor whose right has been established with a final court judgement or another authority decision should initiate enforcement proceedings within a ten-year time limit, also for such claims for which a shorter limitation period is laid down by the Law (art. 379 para 1 of the LOR). For the purpose of enforcing periodical but not mature claims, resulting from such decisions and becoming due in the future, an enforcement procedure should be initiated within a time limit in the course of which such claims reach their statutes of limitation (art. 379 para 2 of the LOR).²⁹

2) With the expiration of a ten-year limitation period, the creditor may still request enforcement of obligation, and the authority deciding upon the motion for enforcement is obliged to make a decision on enforcement and implement it regardless of the fact that the period of prescription has expired, because the prescription is not considered *ex officio*.

3) The only way to prevent the enforcement of an out-of-date claim is the appeal of the debtor against the decision on enforcement awarded on the grounds referred to in art. 74 para 1 point 10 of the LEA: "If the right that was awarded in the enforcement document has reached its statute of limitations." Therefore, it is about a situation where the creditor missed that special (ten-year) time limit wherein any rights determined with a judgement or other authority decision or settlement (on the grounds of which he filed the motion for enforcement) reach the period of prescription, (art. 379 para 1 of the LOR).

If the debtor does not file an appeal against the decision on enforcement on this ground, or his appeal is dismissed or rejected, the enforcement procedure is conducted despite the prescription (out of already stated reason - as the prescription is not considered *ex officio*).

4) By initiating an enforcement procedure, the course of the period of prescription is interrupted, as the creditor has undertaken an action before court or any other authority requesting thereby the enforcement of his right awarded with an enforcement document (art. 388 of the LOR). The period of prescription starts running anew (the effect of interruption is that the time expired prior to interruption shall not be accounted for into the prescription period, art. 392 para 1 of the LOR) after the

²⁹ These are: a general ten-year time limit (art. 371 of the LOR), a three-year time limit (for periodical claims referred to in art. 372 and art. 373 of the LOR, mutual claims of legal entities arising from the contracts on trade of goods and services referred to in art. 374 of the LOR, claiming rent referred to in art. 375 of the LOR, claiming damages for tort claims referred to in art. 376 para 1 of the LOR) and a one-year period (for compensation claims for the supplied electricity and heating energy, gas, water, television and radio subscription charges, cable TV/internet providers, telephone services charges, subscriptions to periodicals, referred to in art. 378 of the LOR).

completion of the enforcement procedure (art. 392 para 5 of the LOR). The enforcement procedure is discontinued for the reasons stated in art. 129 of the LEA, or it is closed following a complete or partial settlement of the creditor (art. 130 of the LEA).³⁰

Consequently, a right awarded in an enforcement document, for which an enforcement is requested within a ten-year time limit referred to in art. 379 para 1 of the LOR, cannot become outdated in the course of enforcement proceedings, because the course of the prescription period has been interrupted by the initiation of such proceedings. As long as it is not completed in one of statutory prescribed modes of completion (discontinuation or closure), the enforcement proceedings represent an impediment for the period of prescription to start running anew.

5) The creditor is entitled to initiate a new procedure with a new motion for the enforcement of obligation that has been only partially settled in the former enforcement proceedings. The enforcement will be implemented by the court or public enforcement officer even if the period of prescription expired meanwhile (between the former and this procedure) because they are not entitled to take care of prescription *ex officio*.

6) The prescription could occur if ten years passed between the final completion of the former procedure - with a conclusion determining that the creditor was partially satisfied - and the filing of the new motion for enforcement.

7) The only way for the debtor to prevent the enforcement of an out-of-date claim is to indicate to the fact of prescription in the appeal, for the reasons provided for in art. 74 para 1 point 10 of the LEA: as the creditor's right awarded in the enforcement document has reached its statute of limitations. The omission to appeal out of this reason adversely affects the debtor, therefore, he will be obliged to perform the rest of the obligation that hasn't been satisfied in the previous enforcement proceedings even though the period of prescription has been expired meanwhile.

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Larenz, K., *Allgemeiner Teil des Deutschen Bürgerlichen Recht*, München, 1967.

³⁰ The enforcement proceedings are closed upon a (partial or complete) satisfaction of the creditor by adopting the conclusion that the last enforcement action has been undertaken (art. 130 para 1 of the LEA). The creditor whose right is only partially executed may file a motion to the public enforcement officer to continue the enforcement proceedings within a thirty-day time limit from the date the enforcement proceedings are deemed to be closed (art. 130 para 3 of the LEA).

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