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COERCIVE MEASURES APPLIED TO INDIVIDUALS

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I. COERCIVE MEASURES AIMED AT PROTECTING CORRECT PROCEEDINGS

1. Penalties against proceedings based on bad faith, abuse of law and fraud

1.1. Croatian system of civil procedure recognizes the procedural principle known as “prohibition of abuse of procedural rights” (*zabrana zlouporabe procesnih ovlaštenja*). It is regulated in Art. 13 of Croatian Code of Civil Procedure¹, in the provision that obliges the court to “conduct the proceedings without undue delay, within reasonable time, without unnecessary expenses”, and – further on – *to prevent any abuse of rights in the proceedings*.

The law neither provides a precise definition of the “abuse of procedural rights”, nor specifies any concrete examples. However, it does implicitly distinguish more and less serious forms of procedural abuses, as the penalties stipulated by law apply only to “serious procedural abuse” (*teža zlouporaba prava*).

Apart from the general provisions on prohibition of procedural abuse, some specific provisions refer to special forms of abuse, such as vexatious and manifestly ill-founded challenge of judges, disrespectful and insulting statements in party submissions² or abusive requests for delegation of jurisdiction to another court.

However, the general formula on prohibition of procedural abuses is open-ended, and does not exclude other forms of procedural abuse.

1.2. The general provision on prohibition of procedural abuse focuses on the powers of the judge to impose fines for abusive behaviour in the proceedings. Such fines may range from 500 to 10.000 kunas (65 to 1300 EUR) for natural, and 2500 to 50.000 (320 to 6500 EUR) for legal persons (para. 2). These fines may be imposed on the party, its representative, and on the third intervening parties. Within these limits, the amount of fine is within the discretion of the judge, who has determine the appropriate amount (subject to review of the higher court upon appeal).

¹ Code of Civil Procedure, hereafter: CCP, Off. Gaz. SFRY (SL) 4/1977, 36/1977, 36/1980, 6/1980, 69/1982, 43/1982, 58/1984, 74/1987, 57/1989, 20/1990, 27/1990, 35/1991; Off. Gaz. Croatia (NN) 53/1991, 91/1992, 112/1999, 129/2000, 88/2001, 117/2003, 88/2005, 2/2007, 96/2008, 84/2008, 123/2008, 57/2011, 25/2013, 89/2014.

² See Art. 110 CCP. The fines for statements that insult other participants in the proceedings or the court are 500 to 5.000 kunas for natural, and 2.000 to 20.000 kunas for legal persons.

However, with the exception of certain procedural pleas (challenges and vexatious requests for delegation)³, the court is generally not authorized to disregard the abusive pleas. In particular, it has no power to dismiss the action or declare the appeal inadmissible. Though the law theoretically opens such a possibility, in practice there were no cases in which the parties would be fined simply because their statements of claims were manifestly ill-founded and abusive, or due to vexatious and obviously unfounded nature of their applications for review of the higher tribunals (appeals, secondary appeals etc.).

The amounts collected on the account of fines are paid to the general state budget. Since 2003, when these fines were stipulated, the payment of fines was continually ineffective, partly because it imposed extra effort on judges who were generally not too interested for monitoring of the fine collection. Therefore, in 2013, the law expanded the provisions on fines, giving the authority to collect fines for procedural abuse to the Financial Agency, which will enforce it, using *inter alia* the mechanisms for coercive collection of taxes by financial authorities.

1.3. Costs of proceedings are generally awarded to the party who prevailed in the proceedings. All costs, including lawyers' fees, are being shifted to the losing party. This principle is in doctrine called the *causa* principle.⁴

The *causa* principle is, however, moderated by the *culpa* principle, according to which, irrespectively of the outcome of the case, parties have to directly compensate their opponents for the costs caused by their fault (and even without any fault, in case of unforeseen circumstances that happened to the party, causing extra expenses).

In principle, the *culpa* principle does not (only) relate to the actions in bad faith, but includes eg. any instances of delay and costs caused by unexcused absence from hearings or other events which, by reasons attributable to one of the parties, caused adjournments and new expenses.

A rare exception that concerns payment of costs caused by action in bad faith relates to the challenge of judges. It is provided that a court should fine the party if it is established that its request for challenge of judge is manifestly ill-founded and submitted only for the purposes of delaying or obstructing the proceedings. If this happens, the court will, upon request of the other party, rule on the compensation of costs caused by the vexatious challenge, awarding the compensation to the other party. The courts' decision is directly enforceable, and may be appealed only when launching appeal on the merits.

However, any costs that are caused to the court or legal system in general (eg on the account of the need to engage the resources and time of the judges to deal with vexatious petitions) are generally not recoverable (except indirectly, via fines that are paid into the state budget, which also generally finances the activity of the courts).

³ In such cases, the law provides that the request will be ruled upon by the first instance judge, whose decision cannot be appealed. Though this was a way in which the CCP amendments of 2003 tried to deal with procedural abuse, it is not expressly stipulated that the authority to directly dismiss the request is related to abusive behaviour.

⁴ See Triva/Dika, Građansko parnično procesno pravo, p. 468-469.

2. Measures aimed at achieving cooperation with the law (excluding proof)

2.1. In spite of the general view in the doctrine that citizens have a duty to cooperate with the courts and law enforcement agencies, such a duty is not expressly incorporated in the Croatian Constitution. Moreover, the duty of cooperation is generally stipulated in the negative way, eg. through the norms that prohibit undue influence on the process of decision-making and exercise coercion vis-à-vis judges. Further on, it is generally provided that everyone is obliged to respect final and binding judicial decisions and obey them.⁵

On the other hand, the general obligation of loyal collaboration with the courts (in particular in civil proceedings) is not expressly provided in the Code of Civil Procedure (save in its negative form, as the prohibition of procedural abuse – see *supra*). There is no ‘contempt of court’ concept in the proceedings, and some scholars regard it to be a deficiency that fosters delaying and vexatious tactics in civil proceedings generally.⁶

However, after the court decision is issued, and after it becomes enforceable, the Law on Enforcement stipulates various measures that should secure, if needed, coercive implementation of final and binding judgments.

2.2. Apart from criminal provisions that penalize undue influence on the work of the judges and courts, there are in principle no other direct coercive measures provided by the Code of Civil Procedure. However, the fines that can be imposed for the procedural abuse are governed by a general formula, so that they also cover some situations of non-compliance with the general duty to respect the court and other procedural participants.

In addition to fines for procedural abuses in such situations⁷, the law also provides additional measures for keeping order and punishing the persons who act disrespectfully, in particular at oral hearings. In such a case, the court may issue a formal admonition addressed to the party or its representative, and it can also order that the party be removed from the courtroom. In such a case, the hearing may be conducted without the disrespectful party or its representative. If a lawyer was fined or removed due to abuse of proceedings, the court has to inform the Bar Association, which may eventually institute disciplinary proceedings against its disrespectful member.⁸

Another area in which compliance with law can be reached in the context of civil litigation (and also outside of it) by coercive means is related to provisional and protective measures. Namely, the same authorities to impose penalties as the ones that exist in the context of enforcement proceedings also apply in the process of issuing provisional and protective measures (see more *infra* at II.). The main purpose of provisional and protective measures is to secure future enforcement of the claim that is subject to present or future litigation, and as such they can also be taken as means to ensure cooperation and secure future compliance with the results of the legal proceedings.

⁵ See Art. 6, para 2 and 3 of the Law on Courts.

⁶ Dika, *Zlouporabe u građanskom sudskom postupku*, p. 43, at 4.3.

⁷ The fines that may be imposed are separately regulated and may be – per incident – between 500 and 10.000 kunas.

⁸ See Art. 318 CCP.

2.3. The fines and imprisonment in the process of enforcement of civil judgments may be issued in the first place against enforcement debtors. However, penalties may also be used for general purpose of safeguarding the effectiveness of proceedings, and be issued against all persons to whom the court may order to do something (eg. issuing asset declaration), refrain from specific action (eg. hiding property) or abstain from certain behaviour (eg. obstructing officials in their enforcement actions, causing irreparable damage, committing acts of violence or concealing/destroying objects of enforcement).

These penalties may be imposed both against natural and legal persons. If the enforcement debtor (or other person who is obliged to comply with the order of the court) is a legal person (eg. a company), the penalties may also be imposed upon its executive officials.

All penalties used in the context of civil enforcement proceedings are independent from eventual criminal liability (eg. for perjury, forgery etc.) of the persons who were subject to such penalties.⁹

Specifically in the enforcement proceedings, one provision relates to proportionality – it is provided that the court will, when selecting penalty, choose the one that is more favourable for the person that is subject to it, provided that it is sufficient to realize the purpose of the penalty.¹⁰

3. Coercive measures specifically linked to methods of investigation

3.1. Coercive measures may also be used in order to secure collecting of evidence, in particular in respect of personal sources of information – witnesses and experts.

In respect of witnesses, any person called to testify before a court has to appear at the hearing and testify, unless the law provides a ground for exclusion of the duty to testify (professional and other privileges, classified data etc.).¹¹

The violation of the witnesses' duties may be sanctioned. If a witness does not appear in court, the judge may order that witness be coercively brought to the court next time with the assistance of the police. In this case, the witness also has to bear the costs of the police engagement. In addition to the coercive transport to the court, the witness may also be fined.

If witness refuses to answer questions, the court will issue an admonition and remind the witness on his duty to testify. If he refuses again without giving valid reasons for such refusal, the court may fine him. If fine turns to be ineffective, the court may order that witness be imprisoned. The prison will last as long as the witness accepts to testify, or until his testimony becomes obsolete, but in no case longer than one month.

Upon party request, the court may also order that witness compensate a party or parties for the expenses caused by his unexcused absence or refusal to testify.

⁹ Art. 16, para 11.

¹⁰ Art. 16, para 13.

¹¹ See CCP, Art. 235.

3.2. Unlike with the witnesses, the parties to the civil proceedings cannot be subject to penalties for refusal to testify. In the doctrine, this is supported by the Latin maxim *nemo contra se edere debetur* or *nemo tenetur edere contra se* that no one may be forced to testify against himself (prohibition of self-incrimination).¹²

An exception is the action for declaration of assets based on the legal duty to declare proceeds or profits in partnerships and similar situations (trustee relationship). In such a case, the claimant may request the court to order the defendant to declare assets or submit calculations from joint projects (German *Manifestationsklage*), as a precondition for later specification of claim. If the court rules in favour of the claimant, the defendant may be forced to submit his asset or account declaration within the framework of the enforcement proceedings.¹³ A similar claim may be made in the enforcement proceedings, where the enforcement debtor may be ordered (under threat of penalty) to submit the declaration of assets that may be subject to coercive enforcement.¹⁴

However, with the exception of these (otherwise in practice not too successful) regimes for the declaration of property, it is regarded that counterparties cannot be forced to make statements. In theory, the court could, however, draw negative inferences from the refusal of a party to give her statement, or evaluate the lack of statement according to the burden of proof rules.

The absolute prohibition of coercion against parties for the purposes of obtaining information needed to decide on the merits has recently been questioned, at least in the doctrine of neighbouring Slovenia.¹⁵ The thrust of the new suggestions is, however, put on strengthening the obligation to disclose documents, and not on coercive measures for ensuring party testimony (which is, according to the legal position of this means of evidence, the least reliable and the least valued).

3.3. In contrast to general obligation of witnesses to testify, the experts generally do not have any obligation to accept their mandate. However, once experts accept the appointment, they are under obligation to appear in court and present their findings and opinions.¹⁶ They may be relieved from that duty only for justified reasons, inter alia also due to reasons that exculpate witnesses.

If no excusable reasons for violations of expert's duties to testify exist, the court may fine the expert who, duly summoned, fail to appear at the court hearing or refuse to issue an expert report. A new provision, inserted by amendments in 2008, authorizes the court to fine the expert also in the case of failure to submit the expert report within the deadline specified by the court. The fines range from

¹² Triva, Belajec, Dika 1986, p. 425.

¹³ CCP, Art. 186.b.

¹⁴ Law on Enforcement, Art. 17.

¹⁵ For such a view see Aleš Galič, Disclosure of Documents in Civil Procedure: The privilege Against Self-incrimination or a Quest for Procedural Fairness and Substantive Justice, presentation held at Public and Private Justice seminar in Dubrovnik, May 2013 (to be published).

¹⁶ Art. 253 para 1 CCP.

500 to 10.000 kunas, and may be partially or wholly revoked if the expert later shows valid reasons for failure.¹⁷

Experts, like witnesses, may be ordered to compensate to parties the costs caused by their violation of expert's duties.

In contrast with witnesses, the experts can be sanctioned neither by coercive police escort to the hearing, nor by conversion of fines into imprisonment.

3.4. In civil litigation proceedings, the parties may also request presentation of documents held by the counterparty. Upon request of any party, the court will invite the other party to submit the documents that are allegedly in her possession, and determine appropriate timeframe for such disclosure of documents. If it is disputed whether the counterparty holds the document or not, the court may order taking of evidence to clarify that issue.¹⁸

The duty to produce documents in party's possession relates in principle to all sorts of documents. The party can be relieved from that duty under the same conditions that can exculpate witnesses from their duty to testify (professional and confessional privileges, prohibition of self-incrimination and incrimination of close relatives etc.). The duty to produce is absolute in three situations: if the counterparty was herself relying on the same document; if under special legislation it has a duty to present it; or, if the document is, according to its content, considered common for both parties.¹⁹

However, the court is generally not empowered to forcibly enforce the duty to present the documents and, consequently, it may not issue any coercive measures against the party that refuses or fails to submit the documents that are allegedly in her possession. Instead, the law expressly authorizes the court to draw negative inferences from the failure of the counterparty to produce documents that she holds.²⁰

3.5. Production of documents may also be requested from third parties as well. However, the duty of third parties to obey the order of the court and submit the document is unconditional only in case that there is an independent legal obligation of the third party to submit the document arising from special legislation, or when the document is, according to its content, common for both parties.

In other cases, the third persons may refuse to present the document under the same conditions provided as excuses for refusal of witness testimony. In other words, professional privileges (lawyer-client; doctor-patient relationship), confessional privileges, as well as possibility of self-incrimination or incrimination of close relatives, and the potential to cause damage, are all valid excuses for refusal to submit the document upon the invitation of the court.²¹

The documents may be also requested from public authorities, ex officio or upon request of the party that is unable to procure the document from the public

¹⁷ Art. 255 CCP.

¹⁸ Art. 233 CCP.

¹⁹ Art. 233 para 2 CCP.

²⁰ Art. 233 para 5 CCP.

²¹ Prior to 2003, there was no obligation to produce the document by the third parties whatsoever (save for the two described cases of unconditional duty to present). See Triva/Dika, GPPP, p. 517 (§ 113/8).

authority by herself.²² In such cases, the court may use its authority to request the document from the public authorities. There is a general duty of all state bodies to provide assistance to the courts when they exercise their judicial function.²³

3.6. In the process of production of evidence, as already stated, the court is entitled to use the coercive means, but within legal limits.

Witnesses can be fined by a fine between 500 and 10.000 kunas. This amount relates to individual fine for refusal to discharge witness duties' (appearance in court and providing testimony). The witness may be fined several times. The fines are collected ex officio and the collected amounts are being paid (just like with all other fines) into the state budget.

If a witness continues to refuse to discharge his duties, in particular if he continues to refuse to provide his testimony without a valid ground, the judge may decide to imprison the witness. As already stated above (see *supra* 3.1.) the maximum duration of imprisonment is one month.

4. Coercive measures specifically linked to fulfilling criminal proceedings

4.1. The obligation to report criminal activities generally exists only in respect of serious criminal offenses, where it amounts to a criminal offense itself. It should be also stated that, for criminalization of non-reporting, further additional conditions should be fulfilled, that may sometimes be difficult to prove.

The provisions of criminal law distinguish the duty of reporting preparation of crime (in respect of crimes not-yet-committed), and the duty to report the already committed crimes.

In respect of knowledge of the preparation of criminal offenses, the obligation to report exist if the offense is punishable by five or more years imprisonment, but only under the condition that the crime in preparation was subsequently attempted or committed, and if the knowledge of preparation existed at a time when it could have been prevented. The obligation to report does not exist in relation to spouses, life partnerships, and close relatives (but it still exists in respect of reporting of crime against children).²⁴

As to the legal obligation to report already committed crimes, it exists only in respect of the crimes punishable by ten or more years imprisonment, and only if the person who fails to report it despite his knowledge that informing about the crime would have significantly assisted in establishing the crime and finding the offender.²⁵

The obligation to report the crime is intensified in respect of those who are regarded to be "official" or "responsible" persons. For them, as holders of official or professional duties, if they fail to report crime when discharging their duties or functions, any failure to report criminal activities is regarded in principle to be a criminal offense in itself. They are under a duty to report all crimes that are

²² Art. 232 para 3 CCP.

²³ See Art. 12 para 2 of the Law on Courts (2013). Interestingly, the same obligation exists in respect to all 'legal persons' – a relic from the times of Socialism.

²⁴ Art. 301 of the Penal Code (Off. Gaz. 125/2011, 144/2012), hereafter: PC.

²⁵ Art. 302 PC.

prosecuted ex officio (but not those that may be prosecuted only by private charges, like slander). However, the excuses for non-reporting related to personal relationships or kinship apply to them as well.²⁶

For reporting of criminal activities outside of the provided cases, the obligation to report is only a moral obligation (and it is as such often invoked in police campaigns stimulating the citizens to report offenders of crime).²⁷

4.2. Under definitions of legal terms in the criminal legislation, the expressions “official” or “responsible person” are rather broadly defined. The notion of “official person” comprises any duty-holder in state or local administration, judges, lay assessors and other holders of judicial duties, notaries and even the arbitrators in private arbitrations. The notion of “responsible person” involves any executive officers of the companies, corporations and other legal persons, including those who discharge these functions informally and factually.²⁸ Thereby, not only civil servants, but also any duty holders in public and private bodies have – at least on paper – the broad and comprehensive duty to report crimes committed within the ambit of their official or professional activities.

For certain professions, like medical doctors, a separate obligation to report may be instituted by special legislation. So, for instance, a doctor who suspects during medical examination that death or physical injury occurred violently, is under obligation to report that to the police or public prosecution.²⁹ The duty to report also relates to suspicion of serious threat for the health of infants or disabled persons caused by lack of care or physical or mental abuse. The failure to observe these duties is a misdemeanour punishable by a fine of 5.000 to 10.000 kunas. Special obligation to report any physical or mental abuse or other violation of rights of children to social care authorities exists under the family legislation.³⁰ Social care authorities have also obligation to submit criminal charges against parents who do not fulfil their maintenance duty.³¹

4.3. Violation of the duty of secrecy is in certain cases also penalized as a criminal offence. Several articles of the Penal Code relate to unauthorized collection or discovery of secret data.

These provisions include:

- violation of secrecy of letters and other postal communications, including electronic mail and other means of communications³²;
- violation of professional duty to keep secrecy of personal data obtained in the discharge of the profession of lawyer, notary public, medical doctor, psychologist, priest or social care worker³³;
- disclosure of business secrets³⁴;

²⁶ See Art 302 para 2 PC.

²⁷ See eg official pages of the Ministry of Interior, <http://www.mup.hr/53.aspx>, where it is stated that obligation to report crime is „a legal obligation for all state bodies, and moral obligation to citizens“.

²⁸ See Art. 87 para 3 and 6.

²⁹ See Art. 22 of the Law on Medical Profession (

³⁰ Family Act (Off. Gaz. 75/2014, hereinafter: FA), Art. 132 para 1.

³¹ Art. 319 para 3 FA.

³² Art. 142 PC.

³³ Art. 145 PC.

- violation of duty to keep secrecy of official data (“official secret”)³⁵;
- violation of obligation to keep secrecy of civil, criminal or other proceedings³⁶;
- violation of duty to keep secrecy of voting at elections³⁷;
- violation of state secrets (duty to keep as confidential classified data)³⁸; and
- espionage³⁹;

For all of the above cases, there are some exceptions that attempt to strike a balance between the opposing goals (protection of privacy, privileged relationships and state/official/business interests on the one hand, and the right to information and good administration of justice on the other hand).

For instance, classified data is not regarded as protected if it was designed classified to conceal crime or illegal activities⁴⁰. Lawyers or notaries are not punishable for violation of the duty of professional secrecy if the disclosure was in public interest or in the interest of another person that is outweighing the interests of keeping secrecy.⁴¹ Business or official secrets may be disclosed if that is predominantly in the public interest.⁴²

4.4. Interference with criminal proceedings that affects the possibility of accurate fact-finding is also criminalized. The penal sanctions equally relate to all other legal proceedings – civil, administrative, arbitration and even disciplinary proceedings. The forms of interference that amount to criminal offence are unlawful pressure, threats, but also promise of gifts or other forms of corruption offered to witnesses, potential witnesses and experts.⁴³ A separate form of criminal offence is destruction or concealing of evidence, in particular documents that may be used as evidence, or production of forged documents with the purpose to use them in legal proceedings.⁴⁴

Indeed, the most common form of interference with the accuracy of fact-finding in the legal proceedings relates to false witness testimony. It is generally punishable as criminal offence (the sanctions are from six months to five years), irrespective whether the testimony had an impact on the outcome of the proceedings. However, the parties will be held criminally liable for false testimony only if their testimony was the basis for the decision as to the merits. An exception relates to the accused in the criminal proceedings, who cannot be held liable for false testimony in any case.⁴⁵

³⁴ Art. 262 PC.

³⁵ Art. 300 PC.

³⁶ Art. 307 PC.

³⁷ Art. 336 PC.

³⁸ Art. 347 PC.

³⁹ Art. 347 PC.

⁴⁰ See Art. 87 para 12 PC.

⁴¹ See Art. 145 para 2 PC.

⁴² Art. 262 para 3 PC.

⁴³ Art. 306 para 1 PC.

⁴⁴ Art. 306 para 2 PC.

⁴⁵ See art. 305 PC.

II. PERSONAL COERCIVE MEASURES TO ACHIEVE COMPLIANCE WITH JUDICIAL DECISIONS

1. *Personal measures to ensure payment is made*

1.1. The respect of final and binding judgments that are enforceable is a general obligation stipulated by law.⁴⁶ A specific duty of the enforcement debtor to cooperate in the process of enforcement that is initiated against him is, however, not provided in the enforcement legislation. Instead, this legislation specifies a system of means and measures of forcible enforcement in the case of non-fulfilment of obligations arising from enforceable judgments and other deeds that have equal force and may be directly enforced (eg enforceable deeds produced by the public notaries etc.).

The means of enforcement of monetary claims (money debt, obligation to pay) are sharply separated from the means of enforcement of non-monetary debt. When monetary debt is concerned, the means of enforcement only relate to the property of the debtor that can be seized and, if necessary, sold to satisfy the creditor's claim.

No sanctions against the person (life, liberty) of the debtor can be imposed as means of enforcement of monetary debt. This means that, in principle, no fines or prison sentences may be imposed as means which would persuade the debtor to pay his monetary debt. The Croatian system of civil procedure does not recognize the *contempt of court* concept in enforcement proceedings, just as it does not recognize it in the litigation proceedings (see *supra*). Insofar, the debtor cannot be penalized for his failure to satisfy his monetary debt in spite of his obvious ability to do it (eg by direct payment or by cashing in parts of his property).⁴⁷

On the other hand, penalties such as fines and imprisonment may be imposed as means for persuading the enforcement debtor to declare his assets, if his assets are unknown or concealed. Also, if in the process of enforcement of monetary debt the debtor obstructs the proceedings (eg by refusing access to immovables), fines and imprisonment may be utilized to ensure compliance and smooth course of the enforcement proceedings.⁴⁸

1.2. Until relatively recently, Croatian law did not have efficient means for enforcing monetary obligations if enforcement depended on collaboration of third persons, in particular the banks and the other monetary institutions. However, since 2010, a comprehensive legislative reshuffle of the enforcement rules relating to enforcement on monetary funds of the debtors was introduced, so that some authors even spoke of the "new age of enforcement".⁴⁹

By legislative reform of enforcement in 2010, all provisions that relate to the enforcement by seizure of the accounts of the debtor were deleted from the Law on Enforcement and were transferred to a completely new legislative act – the Law on Effective Enforcement on Monetary Funds⁵⁰. The reason for enactment

⁴⁶ See *supra*, I. at 2.1. (note 5).

⁴⁷ See Dika, *Građansko ovršno pravo*, p. 139 and 142.

⁴⁸ See on penalties more *infra* at 2.1.

⁴⁹ "Novo doba ovrhe", see, Drakulić.

⁵⁰ *Zakon o provedbi ovrhe na novčanim sredstvima*, Off. Gaz. 91/2010, 112/12.

of a separate act was in introduction of the rules on the central body that is responsible for the enforcement on bank accounts (and all other monetary accounts of debtors). This body is the Financial Agency (FINA), a financial institution in the ownership of the state (effectively under the control of the Ministry of Finance), which has been designated as solely competent for the enforcement of monetary claims on the bank accounts of the citizens and legal persons.

The FINA is operating a database that contains data on all bank accounts of businesses and private persons in Croatia, called the Uniform Account Register (JRR). It contains also the data on the state accounts, accounts of local administration, but also the term deposits and housing saving accounts of all entities in the country. The database does not contain current level of funds on the accounts, but does contain information whether the account is blocked or not. The data on transaction accounts of the businesses are considered to be public, while the data on the accounts of the citizens are sheltered by the laws on protection of private data.

All enforcement proceedings for enforcement on the debtors' bank accounts are commenced by an application to FINA, based on an enforceable deed that forms basis for payment. It can be either an enforceable court judgment, or enforceable order of another authority (eg tax authorities or a notary public) or a document issued by the debtor himself (eg enforceable promissory notes – *zadužnice*). The enforceable deeds are registered in the Register of the Sequence of Basis for Payment, and communicated to the banks in the country for payment, without any participation and consent of the debtor. The enforcement will be effected according to the order of accounts registered in the JRR, until the full satisfaction of the claim. If the amount on the accounts is not sufficient, the accounts will be blocked, and only used for the satisfaction of the registered basis for payment.

In this way, the need for cooperation of the banks and financial institution is enforced through the FINA as intermediary, and the effectiveness of enforcement on bank accounts has been dramatically improved.

The duty of disclosure of data regarding the debtor was by recent legislative amendments also extended to some other public authorities, such as the Croatian Institute for Pension Insurance (for data on causes for insurance and pensions and other income from various sources); Ministry of Interior (for data on registered vehicles of the alleged debtors); Central Depository Agency (for data on de-materialized shares and securities); port authorities (for data on ownerships of ships and other vessels); cadastre authorities (for data on possessions of immovable) and the employers (for data on payment of salaries to employees).⁵¹ The only precondition for obtaining the data is that the person who requests them alleges that he intends to institute enforcement proceedings, and the payment of the respective fees (if any).

Still, the effectiveness of enforcement on accounts has had its price – according to the 2014 data, there are currently over 315.000 Croatian citizens (or 7,5 percent of total country population) that have bank accounts blocked due to their inability to satisfy their debt. Over 70 percent of the blocked debtors are

⁵¹ See Art. 18 EA.

unemployed, with poor chances to discharge their monetary debt, so that the 'effective enforcement' has become another token of continuing economic crisis.⁵² Currently, about 10 percent of the 7 million bank accounts in Croatia are blocked. Also, the costs of enforcement are relatively high, due to a part played by notaries', lawyers' and FINA's fees, and it only contributes to the illiquidity of the population.

2. Personal measures to ensure non-monetary fulfilment

2.1. For satisfaction of non-monetary obligations (as opposed to money debt), the enforcement legislation provides, in addition to other measures in the enforcement proceedings, also the possibility of use of penalties as means of enforcement. The penalties provided are fines and imprisonment.

Fines can range from 1.000 to 30.000 kunas for natural and 10.000 to 100.000 kunas for legal persons. Imprisonment may last from 15 days to three months. However, the penalties may be repeated in the same proceedings, but the maximum imprisonment per enforcement proceedings is six months.⁵³ The fines are being paid into the accounts of the general state budget.

The imprisonment may be used only as substitutive penalty. Namely, if persons ordered to undertake a specific performance do not obey the court order, the court should first impose the fine. Only if the fine or fines are not paid voluntarily within the set timeframe, the fines will be substituted by imprisonment, using the same rules that exist in criminal or misdemeanour proceedings for conversion of unpaid monetary penalties into prison time.

The same authorities to impose penalties also applies in the process of issuing provisional and protective measures.

In addition to penalties such as fines, which are generally available to suppress obstruction of the enforcement proceedings by the debtor and third persons, specifically for the fulfilment of the non-monetary obligations, the creditor is authorized to request the court to order in the enforcement proceedings the penalty payments in case of failure to undertake specific performance in the subsequent deadline determined by the court of enforcement.⁵⁴ This practice, which is analogous to *astreinte* orders in the comparative civil procedure⁵⁵, consists in order to pay certain amount of money for every day (or other unit of time) of delaying specific performance, starting with the expiry of the subsequent deadline determined by the court. The penalty payment is awarded in favour of the enforcement creditor.

In the past, the penalty payments were first introduced in the Law on Obligations in 1978. In 1996, these provisions were essentially converted into the Law on

⁵² Comp. data presented by the Association of Blocked Citizens – <http://blokirani.org>. On July, 31, 2014, the exact number of blocked citizens according to the data presented by FINA was 317.163, and 62,47 percent of that debt was the debt owed to banks and other financial institutions (see Survey of Blocked Citizens, FINA's document issued on October 1, 2014 (<http://www.fina.hr/Default.aspx?art=11243>). About half of the accounts were blocked due to inability to pay the debt in the amount of less than 10.000 kunas (1.300 EUR).

⁵³ See Art. 16 of the Law on Enforcement.

⁵⁴ See Art. 247 EA – on penalty payments (*sudski penali*).

⁵⁵ Dika, Građansko ovršno pravo, p. 654-680.

Enforcement. In particular, the penalty payments were supposed to be used in the context of protection against violations of personal rights, although this was disputed in doctrine and judicature.⁵⁶

Penalty payments may be requested in the enforcement proceedings only as a replacement for the regular request for enforcement of non-monetary debt. When creditor launches such a request, his right to penalty payments ceases, though the penalty payments that were imposed until submission of the enforcement request may be obtained and can be subject to forcible enforcement as well.⁵⁷

The amount of the penalty payment (unlike the amount of the court fines) is not determined either with respect to its maximum or minimum limits. The penalty payments as indirect means of enforcement depend on the sound court's discretion and assessment of the impact that they would have on the willingness of the debtor to undertake certain action or refrain from certain undesired behaviour.⁵⁸

2.2. The stages of enforcement when the object is a movable asset are: seizure and value assessment, handing over and storage of movable assets with the court, the creditor or the third person, sale of movable assets and satisfaction of the creditor's claim.⁵⁹ After 2005, taking movables from the possession of the debtor is mandatory, as it was established that sale of property that remained in the debtor's possession is regularly ineffective.⁶⁰ The rules on the seizure of movable assets for the purpose of satisfaction of monetary claims are applied analogously for the satisfaction of non-monetary claims for handing over the movable assets.⁶¹

According to current legal regime, the enforcement shall be conducted by the court bailiff. However, the location and identification of movables, provision of storage space and security of transport means – all these actions are within the responsibility of the enforcement creditor. If he fails to provide them, the enforcement will be discontinued.⁶²

The enforcement creditor shall also show his initiative if seizure and handing over of the movables cannot be successfully completed due to the opposition of the debtor or the third persons. In such a case, the enforcement will be discontinued unless the enforcement creditor requests that another seizure attempt be effected in the presence of two witnesses or a notary public. In such a case, he should also ensure everything that is needed for forcible entry into premises of the debtor (eg a locksmith). If the enforcement creditor does not provide what is needed for successful seizure, the enforcement proceedings will be discontinued.

The court bailiff is authorized to remove from premises every person that obstructs the enforcement. For that purpose, he also has the power to request the police assistance. The police has to follow the instructions of the court

⁵⁶ Dika, *Sudski penali*, p. 6-8.

⁵⁷ See Art. 247 para 4-5.

⁵⁸ See Dika, *Građansko ovršno pravo*, p. 671-672.

⁵⁹ See Art. 136 para 1 EA.

⁶⁰ See Dika, *Građansko ovršno pravo*, p. 498.

⁶¹ Art. 223 EA.

⁶² See Art. 141 EA.

bailiff, who can also request the police to use force against persons who obstruct the process.⁶³

In addition to police assistance in forcible enforcement, the court may also impose penalties against persons who obstruct the enforcement. Consequently, fines and imprisonment (see *supra*, at 2.1.) may also be imposed on the third persons.

However, if the enforcement in spite of all efforts remains ineffective due to inability to locate the objects (movable assets), upon creditor's proposal the debtor may be requested to submit a declaration of his assets and their whereabouts. For the purposes of securing the declaration, coercive means as fines and imprisonment may be imposed if declaration refuses to give such declaration or unduly avoids the hearings for obtaining the declaration.⁶⁴

2.3. In the process of enforcement for vacating the immovables that are object of enforcement and their handing over to the enforcement creditor, the court may use similar coercive measures as in the process of handing over the movable property.

In particular, the court may impose the same coercive measures for the persons who obstruct the enforcement process (fine and imprisonment).⁶⁵

Upon request of the court, police and the services of social care are bound to assist in the course of the enforcement proceedings. The enforcement creditor should secure means for transport and storage of the debtors things found in the house or apartment that is object of the enforcement. Upon the request of the creditor, the movable property of the debtor found the premises that are being vacated might be seized and used for the payment of the costs of proceedings.⁶⁶

2.4. For enforcement of claims that relate to compliance consisting of certain behaviour, the Enforcement Act distinguishes between specific performances that, by their nature, can be undertaken not only by the enforcement debtor, but also by third persons, and the obligations that can be discharged solely by the enforcement debtor.

If compliance may be obtained by engagement of third persons, the creditor may request the court to order the debtor to deposit amount needed to cover expenses of such engagement. The debtor will also be liable for the payment of the all such expenses after the compliance was secured by the engagement of the third persons.

However, if the debtor is the only one who can undertake the action that is the object of enforcement, the court shall fix an appropriate deadline for fulfillment of the obligation, and at the same time threaten by imposition of fine if the obligation is not discharged in due time.

If the obligation is not performed within the fixed deadline, the court will, upon creditor's proposal, order the debtor to pay a fine (payable to state budget). It will also fix a new deadline, and threaten by imposition of new fine, which has to

⁶³ Art. 48 EA. See also Art. 162 para 2 (for seizure of motor vehicles).

⁶⁴ Art. 16 in connection with Art. 17 EA.

⁶⁵ See Art. 256 para 3 EA.

⁶⁶ Art. 259 EA.

be in the amount that is bigger than the previous fine. This can be repeated an indefinite number of times, until the compliance is achieved.⁶⁷ As replacement for non-payment of fines, the court can impose imprisonment – from 15 days to three months – but the total amount of prison time cannot be over six months in one enforcement proceedings.

2.5. Particular coercive measures that are provided for the negative obligations (obligations to refrain from doing or to suffer the actions of others – *non facere* and *pati*) are the following: threatening by and unconditional fixing of monetary fines and prison sentences; obtaining security for damages caused by non-fulfilment of the obligation; and, restitution of the state of affairs that used to exist before the violation.⁶⁸

The fines and imprisonment rules are governed by general rules that relate to these coercive means. They are the main method of enforcement; as a supplemental means, the court may, upon creditor's initiative, order the debtor to give security for eventual damages that might be caused by further refusal of the debtor to comply with his obligations.

If the debtor has changed the state of affairs, and that caused adverse consequences to the creditor, the court may empower the creditor to restore the status quo at the expenses of the debtor. The eventual right of the creditor to request the compensation of the caused damages remains thereby intact.

2.6. There are very few specific rules that relate to the enforcement in the context of intellectual and industrial property. Inter alia, the law provides that author's rights cannot be the object of enforcement; however, enforcement can be ordered in respect to the profits earned by the use of the author's rights.⁶⁹ If enforcement deals with patents or trademarks, the court will ex officio inform the State Intellectual Property Office that will enter the data on enforcement into the respective patent register.⁷⁰

2.7. In the context of enforcement of family obligations, coercive measures are further diversified. In order to enforce decisions on visiting rights or parenting plan, the court may use fines up to 30.000 kunas; one day to six months imprisonment; and also forcible takeover and transfer of children. The latter is undertaken in the co-operation of the court, social care centres and police officers for youth.⁷¹ Among the measures available in the family proceedings, the court can also prohibit leaving of the country with the child (with the information to border police). It may also order the depositing of the child's passport in the court, for securing that the child will not be abducted, or that the return of the child to the other parent will not be obstructed.⁷²

⁶⁷ See Dika, *Građansko ovršno pravo*, p. 702.

⁶⁸ See Arts. 263 to 265 of the EA.

⁶⁹ Art. 43 of the Law on Author's and Other Similar Rights, Off. Gaz. 167/03, 79/07, 80/11, 125/11, 141/13.

⁷⁰ Art. 62.a. of the Patent Law, Off. Gaz. 173/03, 87/05, 76/07, 30/09, 128/10, 49/11, 76/13; Art. 40 of the Trademark Law, Off. Gaz. 173/03, 54/05, 76/07, 30/09, 49/11.

⁷¹ Art. 514 and 516 of the Family Law (Off. Gaz. 75/2014).

⁷² See Art. 419.

3. Specific measures to pass criminal rulings

3.1. The criminal law recognizes a whole range of personal and other measures which may imply higher or lesser level of coercion. Their naming and systematization may vary, and in the various reforms of the criminal proceedings they were defined and conceived differently. In the current Penal Code, there are following measures.

Sanctions (penalties) are fines, prison and long-term imprisonment. The fines or short prison sentences may be replaced with the obligation of community work (*pro bono* labour for public good).

If a person was convicted for crime with suspended sentences, he can be ordered to undertake in a fixed time-period one or several special obligations as a part of his trial release. Special obligations include:

- obligation to repair the caused damage;
- obligation to pay certain amount of money for public purposes;
- obligation to continue education or training, according to the instructions of probation officers;
- obligation to submit to the control of expenditures by the probation authorities;
- obligation to submit to medical treatment, or continue such treatment;
- obligation to participate in drug or alcohol rehabilitation programs;
- obligation to submit to the psycho-social treatment;
- prohibition to visit certain places, objects or events;
- prohibition from approaching the victim or certain other persons;
- obligation to refrain from living in family home for certain time (for the acts of family violence);
- prohibition of contacting or dwelling with certain persons or groups of persons, and obligation to refrain from employing, teaching or lodging such persons;
- prohibition of stalking or mobbing of the victim or certain other person;
- prohibition from leaving home during specified period of day;
- prohibition from carrying, possessing and storing arms and other objects;
- fulfilment of maintenance obligations;
- regular reporting to the probation officers, social care centres, the court, police authorities or other competent body.

This list is non-exhaustive, as the court may also impose other obligations that are appropriate considering the type and nature of the committed criminal offence.⁷³ If a convicted person was conditionally released from prison (suspended prison sentences), the prison sentence will revive if the convicted persistently failed to discharge the imposed special obligations.

⁷³ Art. 62 PC.

In addition, the court may also order that convicted persons, when released, be subject to protective surveillance program. During the protective surveillance program, the convicted person has to report regularly to probation officers, receive them in his home and present them with all necessary documents and information. Further on, the person under protective surveillance should ask the court for permission for any travel abroad, and report to probation authorities about any change of address or occupation.

Croatian penal legislation also classifies certain measures as precautionary measures. They are partly overlapping with the special obligations, as they include the mandatory medical, psycho-social or substance abuse treatment. However, among these measures are also the prohibition to drive motor vehicles, mandatory psychiatric treatment, prohibition to discharge specific duty or professions, and prohibition to access the internet.⁷⁴

3.2. Apart from the described, there are also various coercive measures prescribed by the legislation on petty offences.⁷⁵ However, these measures mostly correspond to those described *supra* as measures available in criminal proceedings. As a specific form of measure in respect of traffic violations, negative misdemeanour points collected when specific traffic offences are committed may be mentioned. The accumulation of negative misdemeanour points may eventually lead to prohibition of driving motor vehicles for a certain period of time, and/or revocation of driving license.⁷⁶

3.3. The crimes committed by legal persons have been sanctioned in Croatia since the enactment of the Law on Responsibility of Legal Persons for Criminal Offences.⁷⁷ The sanctions that can be imposed for the criminal offences of legal persons are fines (from 5.000 to 15 million kunas), and the forcible liquidation of the legal person.⁷⁸ The liquidation of the legal person may be ordered if the legal entity was established with the purpose of committing criminal offences, or if it was used mainly for that purpose.⁷⁹

4. Debtor's prison

4. In principle, no one should in Croatia be sentenced to prison only for inability to pay his or her legal obligations. Croatia is a member of the European Convention on Human Rights, and has ratified Protocol 4 of the ECHR that prohibits the imprisonment of people simply for inability to fulfil a contract. The situations in which the fines may be converted into imprisonment were already described in this paper. They relate, however, mainly to specific actions aimed at obstruction of enforcement proceedings, and not to the indigent debtors who are unable to pay their monetary duties. Even in cases in which debtor has the ability to pay his debt, the enforcement authorities are not authorized to sentence the debtor to prison sentence solely for the purpose of forcing him to pay his debt. Instead, in such situations, the competent public authorities will,

⁷⁴ Comp. Art. 65 PC.

⁷⁵ See Law on Misdemeanours, Off. Gaz. 107/07, 39/13, 157/13.

⁷⁶ See Art. 286 of the Law on Traffic Safety, Off. Gaz. 67/08, 48/10, 74/11, 80/13, 158/13, 92/14.

⁷⁷ Off. Gaz. 151/03, 110/07, 45/11, 143/12.

⁷⁸ Art. 8 LRLPCO.

⁷⁹ Art. 12 LRLPCO.

upon proposal of the creditor, undertake enforcement measures prescribed by law and utilize other means contained in enforcement legislation to secure compliance with the final and enforceable court judgments and other enforceable titles. Indirectly, however, imprisonment may be used for the purpose of obtaining asset declaration and for the suppression of concrete acts that obstruct the enforcement efforts of the creditor and the enforcement authorities (see *supra*).

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