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**Zakon o izmenama i dopunama Zakona o izvršenju i
obezbeđenju**

**Act on amendments of and supplements to the Act
on execution and ensuring settlement**

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Na Petnaestoj sednici vanrednog zasedanja u Jedanaestom sazivu, 26. jula 2019. godine, Narodna skupština Republike Srbije, donela je Zakon o izmenama i dopuna Zakona o izvršenju i obezbeđenju ("Sl. glasnik RS", br. 54/2019, u daljem tekstu: „Zakon“). Zakon stupa na snagu 8 (osmog) dana od dana objavljivanja u Službenog glasniku, a primenjuje se od 01.01.2020. godine.

Donošenje Zakona ima za cilj rešavanje problema u praksi koja je izazvala primena prethodnog zakona, za koje je zakonodavac našao da se nisu mogli prevazići tumačenjem normi, već samo izmenama zakona.

U tom smislu, Zakonom se posebna pažnja posveđuje zaštiti osnovnih potreba za život izvršnog dužnika. Tako Zakon sa jedne strane predivđa da se jedina nepokretnost fizičkog lica ne može prodati radi namirenja potraživanja iz komunalnih i srodnih usluga, ukoliko je potraživanje manje od 5.000,00 eura u dinarskoj protivrednosti po srednjem kursu Narodne banke Srbije na dan podnošenja predloga za izvršenje, dok su sa druge strane značajno uvećani pragovi zarada, plata kao i penzija, odnosno iznosi koji su zaštićeni od mogućnosti izvršenja.

At the Fifteenth extraordinary session in the Eleventh convocation, on July 26th, 2019, the National Parliament of the Republic of Serbia rendered the Act on amendments of and supplements to the Act on execution and ensuring settlement ("RS Official Journal", No. 54/2019, hereinafter referred to as: „the Act“). The Act shall become effective as of the 8th (eighth) day following its publication in the Official Journal, and shall be applicable as of January 1st, 2020.

The aim of rendering of the Act is solving of the problems in practice caused by application of the previous act, for which problems the legislator has found that could not be overcome by interpretation of the norms, but only by amendments of the act.

In that sense, the Act pays special attention to protection of the basic life requirements of the enforcement debtor. Therefore, the Act, on one hand provides that the single real estate item of a natural person shall not be sold for the purpose of settlement of the utility services or similar claims, if the amount of the claim is below EUR 5.000,00 in RSD equivalent at the medium exchange rate of the National Bank of Serbia prevailing on the date of filing of the proposal for execution, while, on the other hand the thresholds of the earnings, salaries and pensions are significantly higher, in terms of the amounts protected from the possibility of execution.

U istom cilju, „pojačava se“ načelo srazmernosti i propisuje se obaveza javnog izvršitelja da prilikom izbora između više sredstava i predmeta izvršenja, izvršenje sprovodi na onim sredstvima i na onom predmetu koji su za izvršnog dužnika najmanje nepovoljni. Takođe, Zakon daje mogućnost javnom izvršitelju da po službenoj dužnosti ili predlogu stranke ograniči izvršenja na samo neka sredstva i predmete koji su dovoljni da se izvršni poverilac namiri. U skladu sa načelom ekonomičnosti, Zakon predviđa da izvršni poverilac koji je podnošenjem više predloga za izvršenje protiv istog izvršnog dužnika zahtevao odvojeno namirenje više potraživanja, a koja su se mogla namiriti u istom izvršnom postupku, ima pravo samo na naknadu onih troškova koje bi imao da je radi namirenja tih potraživanja podneo samo jedan predlog za izvršenje

Dalje, Zakon, u članu 19, predviđa da nemaju pravno dejstvo akti pravnog ili faktičkog raspolaganja predmetom izvršenja ili obezbeđenja od dana donošenja rešenja o izvršenju na osnovu izvršne ili verodostojne isprave ili rešenja o obezbeđenju. Za razliku od dosadašnjeg rešenja, Zakon sada daje pravo i izvršnom poveriocu koji poseduju menicu da zahteva od državnih organa, imalaca javnih ovlašćenja, drugih pravnih lica i preduzetnika da mu besplatno dostave sve podatke koje su dužni da dostave i sudu i javnom izvršitelju, izuzev podataka iz poreske prijave za poslednje tri godine.

U „korist“ izvršnih poverilaca, Zakon uvodi još dva sredstva izvršenja, i to:

- zajednička prodaja nepokretnosti i pokretnih stvari i
- unovčenje drugih imovinskih prava izvršnog dužnika.

Međutim, kada je reč o izvršenju na osnovu založne izjave ili ugovora o hipoteci kao i izvoda iz registra zaloge ili finansijskog lizinga Zakon predviđa da se izvršenje može sprovesti samo na predmetu založnog prava.

For the same purpose, the principle of proportion is “intensified” and the public executor is obliged to, when making the choice between the items of execution, chose the item which is the least unfavorable for the enforcement debtor. Also, the Act allows the public executor to, ex officio, or upon the client’s proposal, limits the execution to only certain funds and items which are sufficient for settlement of the enforcement creditor’s claims. In compliance with the principle of cost reduction, the Act specifies that the enforcement creditor, who has requested separate settlement by submission of several proposals for execution against the enforcement debtor, while the settlement could have been exercised within one procedure of execution, shall be entitled only to compensation of the costs he would have had if he had filed only one proposal for execution.

Further, the Act, in Article 19, provides that legally ineffective are the documents on legal or factual disposal of the subject of execution or settlement as of the date of rendering of the resolution on execution on the ground of an executive or valid document or resolution on ensuring settlement. Unlike the former solution, the Act now entitles the enforcement creditor, who is in possession of the bill of exchange, to request the governmental authorities, holders of public powers, other legal entities and entrepreneurs, to provide him, free of charge, with all data they are obliged to deliver to the Court and to the public executor, except the data contained in the tax returns for the last three years.

The Act introduces another two means of execution “in favor” of the enforcement creditors, as follows:

- joint sale of the real estate and movable property and
- conversion into money of other proprietary rights of the enforcement debtor.

However, when talking about the execution on the ground of the pledge statement or agreement on mortgage, or transcript from the pledge register, or financial leasing, the Act provides that execution may be exercised only on the subject of the lien.

Kada je reč o predmetima i sredstvima izvršenja, Zakon konačno otklanja nedoumice u vezi sa izvršenjem na potraživanju izvršnog dužnika, i to tako što predviđa da ako se potraživanje izvršnog dužnika prema njegovom dužniku zasniva na izvršnoj ili verodostojnoj ispravi, izvršni poverilac može na osnovu zaključka javnog izvršitelja o prenosu potraživanja i izvršne ili verodostojne isprave podneti predlog za izvršenje protiv dužnika izvršnog dužnika a ako se potraživanje izvršnog dužnika prema njegovom dužniku ne zasniva ni na izvršnoj ni na verodostojnoj ispravi, izvršni poverilac na osnovu zaključka javnog izvršitelja o prenosu potraživanja može ostvarivati svoja prava u parničnom postupku.

Zakonom se uvodi tzv „Skraćeni izvršni postupak“ koji se može sprovesti ako su izvršni poverilac i izvršni dužnik subjekti za rešavanje čijih sporova je u skladu sa zakonom stvarno nadležan privredni sud i to samo na osnovu četiri verodostojne isprave: menice i čeka domaćeg ili stranog lica, sa protestom ako je potreban za zasnivanje potraživanja, bezuslove bankarske garancije i akreditiva, kao i overene izjave izvršnog dužnika kojom ovlašćuje banku da sa njegovog računa prenese novčana sredstva na račun izvršnog poverioca.

U skladu sa ciljevima vlade Republike Srbije, Zakon uvodi mogućnost podnošenja predloga o izvršenju elektronskim putem i uvodi mogućnost elektronskog javnog nadmetanja.

Radi rasterećenja rada sudova propisan je prelazak svih predmeta koji se vode u sudovima u nadležnost javnih izvršitelja po principu koji obezbeđuje pravičnu i jednaku opterećenost, a u istom cilju predviđena je obustava predmeta gde se izvršenje sprovodi na računima izvršnog dužnika koji je na dan stupanja na snagu zakona u blokadi duže od tri godine obustavlja ako izvršni poverilac u roku od osam dana od dana stupanja na snagu zakona ne predloži promenu sredstva i predmeta izvršenja.

Zakon uvodi u druge brojne novine, tako što propisuje odluku ustavnog suda kao izvršnu ispravu, menja obaveznu sadržinu predloga za izvršenje u pogledu identifikacionih podataka stranka, propisuje da se izvršenje na celokupnoj imovini može predložiti i u predlogu za izvršenje podnetom na osnovu verodostojne isprave, predviđa mogućnost advokata izvršnog poverioca da troškove postupka naplati na svoj račun i mnoge druge.

When talking about the subjects and means of execution, the Act has finally removed the dilemmas in connection with execution on the receivables of the enforcement debtor, by specifying that in the event the claim of the enforcement debtor from his debtor is based upon the executive or valid document, the enforcement creditor may, on the ground of the public executor's conclusion on assignment of the claim and the executive or valid document, file the proposal for execution against the debtor of the enforcement debtor, and if the enforcement debtor's claim from his debtor is not based on the executive, or valid document, the enforcement creditor may exercise his rights, on the ground of the public executor's conclusion, in the litigation proceedings.

The Act introduces the so-called "Summary enforcement procedure" which might be carried out if the enforcement creditor and enforcement debtor are the parties the disputes of which, subject to the laws, are within jurisdiction of the commercial Court, only on the ground of four valid documents: bill of exchange or check of the local or foreign party, with protest, if required for establishing the claim, unconditional bank guarantee and the letter of credit, and the verified statement of the enforcement debtor under which he authorizes the bank to transfer the pecuniary funds from his account to the account of the enforcement creditor.

In accordance with the aims of the Republic of Serbia Government, the Act introduces the possibility of filing an e-proposal on execution and the possibility of the e-public tender.

In order to take the burden off the Court, the Act provides for transfer of all cases in progress before the Courts to the competence of the public executors under the principle ensuring the fair and equal burdening, and for that purpose, the Act also provides for abrogation of all cases in which the execution is carried on the accounts of the enforcement debtor, who, on the effective date of the Act has been in blockade for the period longer than three years, unless the enforcement creditor, within eight days from the effective date of the Act proposes change of the means and subject of execution.

The Act has introduced numerous other changes, by specifying the Constitutional Court award as the executive document, changing the obligatory contents of the proposal for execution in terms of the identifying data of the parties, providing that execution on the whole property may be proposed also in the proposal for execution filed on the basis of the valid document, providing for the possibility that the attorney of the enforcement creditor be paid for the costs of the procedure on his own bank account, and many other changes.



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