




News in Enforcement Procedure in the FB&H

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Authors: Miloš Mitić, Senior Partner

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Background and Policy Direction

The amendments to the Enforcement Procedure Law of the Federation of Bosnia and Herzegovina (“FB&H”), which entered into force in March 2025, represent one of the most far reaching reforms of enforcement legislation in recent years.

Rather than merely adjusting procedural details, the legislator has opted for a policy shift that places stronger emphasis on proportionality, debtor protection, and legal certainty, while still preserving effective enforcement mechanisms for creditors.

Protection of the Debtor's Home and ECHR Standards

The most notable change from a practical perspective is the restriction of enforcement against real estate that constitutes the debtor's only home. As a rule, such property may no longer be subject to enforcement.

However, this protection is not absolute. Exceptions apply where:

- the debtor has explicitly consented to enforcement on that property, or
- the claim is secured by a mortgage or other voluntarily established security interest on the property.

Courts are now required to examine whether the real estate serves as the debtor's primary residence and to assess its scope and size in light of the debtor's personal and family circumstances. The law refrains from setting rigid numerical standards, leaving this assessment to the courts on a case-by-case basis.

This solution directly transposes the established case law of the European Court of Human Rights under Article 8 of the European Convention on Human Rights. In cases such as *McCann v. the United Kingdom* (2008), *Zehentner v. Austria* (2009) and *Rousk v. Sweden* (2013), the Court stressed that loss of one's home through enforcement measures must be proportionate and subject to effective judicial scrutiny. While the ECHR has not prescribed fixed criteria (such as square meters), it has consistently required an individualized assessment on a case-by-case basis, a balancing of competing interests of debtor and creditor, and effective access to legal remedy before any loss of a person's home.

The new FB&H Enforcement Procedure Law explicitly reflect these standards by requiring a balancing of interests rather than automatic enforcement.

Proportionality and Value Based Limitations

In addition to protecting the debtor's only home, the amendments introduce a value-based proportionality test that applies to enforcement against all real estate. Enforcement against real estate is excluded where the claim amounts to less than one third of the market value of the property.

Value-based limitations do not apply where the debtor has expressly consented to enforcement or where the claim is secured by a mortgage or other voluntarily established security interest.

Co Ownership and Sale of Real Estate

The amendments also clarify enforcement against co owned property. As a general rule, enforcement is now limited to the debtor's ideal share in the property. An ideal (aliquot) share in co-ownership is an abstract, proportional ownership interest in the whole property, expressed as a fraction, without any physical division or exclusive right to a specific part.

The entire property may be offered for sale only if all co-owners who are not debtors give their explicit written consent, which must be obtained before the court renders the enforcement decision. If such consent is not provided, enforcement must proceed exclusively against the debtor's share. This significantly strengthens the position of third parties and reduces the risk of collateral disputes involving non debtor co owners.



Procedural Discipline and Efficiency

From a procedural standpoint, the amendments introduce stricter time limits and discipline. Creditors must timely propose alternative enforcement measures if an attempt fails, and postponement of enforcement is now generally limited to a single request per procedure. Rules on unsuccessful auctions and minimum sale prices have also been refined to increase transparency and predictability.

Property

Revised Rules on the Sale of Real Estate

Another significant change relates to the procedure for the sale of debtor's real estate, reducing the number of auction hearings from three to two. Under the previous rules, the court could conduct up to three hearings, with progressively lower minimum price thresholds, ultimately allowing the property to be sold without limitation as to the lowest price.

New rules align with the jurisprudence of the ECHR and the Constitutional Court of B&H by introducing stricter safeguards aimed at protecting the debtor's interests.

The Enforcement Procedure Law now provides that a property cannot be sold at a price that would not cover at least part of the creditor's claim, unless the debtor gives explicit consent. The court determines the value of the property, usually based on an expert valuation. At the first auction, the property cannot be sold for less than 70% of that value. At the second auction, the minimum price is 50%. If the property is not sold at the second auction, the court may, upon the creditor's motion, transfer ownership to the creditor in proportion to its claim relative to the value of the property.

Comparison with the Republika Srpska

Bosnia and Herzegovina consists of two administrative units, the FB&H and the Republika Srpska (“RS”), as well as one administrative district - Brčko District, each with its own enforcement legislation.

Compared to the Enforcement Procedure Law of the RS, the FB&H amendments mark a clearer and more explicit alignment with ECHR jurisprudence, particularly regarding protection of the debtor’s home and proportionality. While the two systems remain broadly comparable, the FB&H now offers more explicit safeguards for individual debtors, whereas the RS retains greater flexibility in real estate enforcement for creditors.

Overall, the 2025 amendments signal a decisive move towards a more balanced, human rights oriented enforcement regime in FB&H, while maintaining enforceability of legitimate and secured claims.

Author



Milos Mitic

Senior Partner

E: milos.mitic@jpm.law

JPM | PARTNERS

8a Vladimira Popovića,

Delta House

11070 Belgrade, Serbia

T: +381/11/207-6850

E: office@jpm.law

www.jpm.law