



**Parliament of Montenegro
Parliamentary Institute
Research Centre**

Short information:

**Exemption of certain immovable property from enforcement –
legal solutions in Federation of Bosnia and Herzegovina, Croatia,
Slovenia and Serbia**

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FOREWORD

Judicial enforcement procedure represents a set of rules according to which the court acts when dealing with the enforcement of court decisions and other enforceable decisions. The enforcement procedure, as a rule, is initiated through a petition. Exceptionally, an enforcement procedure may be initiated *ex officio* when prescribed so by law. The main parties in the procedure are the judgement creditor (the owner of an unsatisfied court decision) and judgement debtor (a party against which an unsatisfied court decision is awarded).

The Montenegrin Law on Enforcement and Security¹ governs the procedure of enforced settlement of claims on the basis of domestic or foreign enforceable or authentic document (enforcement procedure), as well as securing of claims (securing of claims procedure). This law defines the enforcement of a decision adopted in an administrative procedure on fulfilling a monetary obligation, if enforcement is levied on real estates, shares and holdings of business organization members. In addition, it states that the Court is competent to decide in the enforcement procedure and enforce the court decisions on handing over or taking away a child, reinstating an employee to work, as well as decisions pursuant to which the judgment debtor is obliged to perform an act that no other person can perform instead of him/her in accordance with law or legal transaction.

When it comes to enforcement against immovable property, Law on enforcement and security stipulates that enforcement against immovable property shall be levied by registration of the writ of enforcement in the immovable property cadaster, determining the value of immovable property, sale of immovable property, and satisfaction of judgment creditors from sale proceeds.

In Montenegro, exemption of certain immovable property from enforcement is envisaged by Article 165 of the Law on enforcement and security, which states that agricultural land of agricultural farmers having area up to 10 Ares (respectively 1000 m²) cannot be a subject of enforcement. However, this provision shall not apply to enforcement for realizing monetary claims secured by a contract-based security interest on immovable property (mortgage).

¹ Law on enforcement and security („Official Gazette of Montenegro“, No. 36/11, 28/14)

1. MAIN FINDINGS

When comparing the legislation of Federation of Bosnia and Herzegovina, Croatia, Slovenia and Serbia which regulate enforcement against immovable property, a similarity between legal solutions is evident, with certain differences in terms of the criteria that must be fulfilled for exemption from enforcement.

All the analyzed legislation define the enforcement procedure on immovable property in an equal manner, as a process that consists of four phases: registration of the writ of enforcement in the land registry, respectively in the immovable property cadaster, determining the value of immovable property, sale of immovable property, and satisfaction of judgement creditors from sale proceeds.

However, when it comes to the criteria for exemption from enforcement, there are two variations in the analyzed legal solutions. Despite the fact that agricultural land of agricultural farmers is the exception provided for by all the legal solutions, its area is defined differently, therefore, in the Federation BIH and Serbia, as well as in Montenegro, such agricultural land has a strictly defined area. Croatian and Slovenian legislation use more flexible definitions which may be interpreted differently, depending on individual cases.

Therefore in Serbia, as well as in Montenegro, agricultural land of agricultural farmers having area up to 10 Ares (respectively 1000 m²) is exempted from enforcement, while in Federation BIH, the requirement is five times higher, i.e. agricultural land of farmers having area up to 5000 m² is exempted from enforcement.

As it was previously mentioned, Slovenia and Croatia regulate this issue differently. In these countries, agricultural land and farm buildings of an agricultural farmer to the extent required for his support and the support of his nuclear family members and other persons whom he is obliged to support under the law may not be subject to enforcement. In Croatia, the possibility of exemption from enforcement against immovable property is provided for by a separate law. This definition is more flexible since the aforementioned area must be determined in each specific case, as opposed to the strictly defined limitation currently in force in Montenegro, Serbia and Federation BIH.

In addition, all the analyzed legislation states that these exceptions shall not apply to enforcement for realizing monetary claims secured by a contract-based security interest on immovable property (mortgage).

The complete document in Montenegrin language can be found at:
<http://www.skupstina.me/images/dokumenti/biblioteka-i-istrazivanje/2017/1.pdf>