

## ERRATA CORRIGE

- Ad 1) U broju 3/21 ZRPFS tehničkom je omaškom propušteno pored užih sažetaka tiskati i šire sažetke rada autorice Irene Merc. Šire sažetke na slovenskom i engleskom otisnuli smo u ovom broju (4/21).**

## SUMMARY

### SUITABILITY OF THE ENFORCEMENT ORDER FOR ENFORCEMENT DOING

The suitability of an enforcement title for enforcement is a substantive prerequisite for the Slovenian court's permission of execution. The claim to be recovered from a debtor must be in an enforcement title already sufficiently determined or at least determinable, otherwise enforcement cannot be allowed. Determinability of a debt means that all data based on which a claim can be determined must already derive from the very operative part of the court's decision or from another enforceable title. The court in the enforcement procedure may not itself determine the meaning and the claim arising from the title. With non-monetary claims they should be clearly defined and that they leave no doubt as to what has to be done to meet the obligation. When a creditor proposes enforcement on the ground of a recognised and enforceable foreign title, the enforcement court is again bound by the principle of formal legality and can permit the enforcement only if the claim arising from the title is sufficiently defined.

The adequacy of the enforcement title is dealt with by the Slovenian enforcement courts mainly when the enforcement title has decided on a non-monetary obligation that the debtor must fulfil (for example in decisions issued in disputes due to disturbance of possession or in decisions issued in labour disputes). With monetary obligations, the Slovenian court assesses the suitability of the enforceable title, especially in relation to directly enforceable notarial deeds. The receivable must be listed in a structured manner, by individual titles: principal, contractually agreed interest, default interest, and so-called bank charges. If the debtor states his claim on individual items, namely on a certain cut-off date (the day of withdrawal from the credit agreement), the court can check the compliance of the enforcement proposal with the enforcement title and test the suitability of the enforcement title for enforcement. The debtor's claim must be defined, regardless of the enforcement title submitted. The same applies where the debtor proposes enforcement based on a foreign enforcement title. A foreign enforceable title can originate either from an EU Member State or from a non-EU country. However, for all foreign enforcement titles, enforcement can be allowed only when the debtor's obligation is precisely defined. Using mandatory forms provided by European regulations (according to which there is no longer an *exequatur*) should prevent a foreign body or a foreign court from confirming an indefinite or defective enforcement title, as the forms must contain nominal data of the claim, its maturity, principal, interest and costs.

For all foreign enforcement titles submitted in the Slovenian enforcement procedure, it is considered that substantive issues must be assessed under foreign law. These are issues of maturity of the claim, interest, statute of limitations, etc. All issues related to the claim arising from the

enforcement title itself must be assessed under foreign law. The Slovenian enforcement court is bound by the principle of formal legality and therefore the law applied by a foreign court or body when issuing a foreign enforcement title must be applied. Therefore, the Slovenian enforcement court is also bound to a foreign enforcement title regarding the amount and percentage of interest. However, when the obligation in a foreign enforcement title (e.g. a Croatian judgement) is determined in a foreign currency (e.g. Croatian kuna) and the creditor wishes to repay his claim in the Republic of Slovenia, he must define the debtor's obligation in the foreign currency in his motion for enforcement (i.e. in Croatian kuna). In accordance with the principle of formal legality, the enforcement court must remain faithful to the enforcement title and must allow enforcement of the claim as follows from the enforcement title.

**Key words:** *enforcement procedure in the Republic of Slovenia, suitability of the enforcement title, principle of formal legality, determinability of the claim, determinable claim, foreign enforcement title*

## PRIMERENOST IZVRŠILNEGA NASLOVA ZA IZVRŠBO

Primerenost izvršilnega naslova za izvršbo je materialna predpostavka za dovolitev izvršbe. Obveznost, ki jo upnik izterjuje, mora biti določena ali določljiva, sicer izvršbe ni mogoče dovoliti. Določljivost obveznosti pomeni, da morajo vsi podatki, na podlagi katerih je obveznost mogoče določiti, že izhajati iz samega izreka sodne odločbe oziroma iz drugega izvršilnega naslova. Izvršilno sodišče ne sme samo pomensko določati obveznosti iz izvršilnega naslova. Predvsem pri nedenarnih obveznostih je pomembno, da so le-te jasno določene ter da ne puščajo dvomov o tem, kaj je treba storiti, da bo obveznost izpolnjena. Kadar upnik predlaga izvršbo na podlagi tujega izvršilnega naslova, je izvršilno sodišče v skladu z načelom formalne legalitete vezano na tuj izvršilni naslov, vendar pa mora enako kot pri domačih izvršilnih naslovih presojati, ali je tuj izvršilni naslov primeren za izvršbo.

Z vprašanjem primerenosti izvršilnega naslova se slovenska izvršilna sodišča ukvarjajo predvsem takrat, kadar je v izvršilnem naslovu bilo odločeno o nedenarni obveznosti, ki jo mora dolžnik izpolniti (na primer pri sklepkih izdanih v sporih zaradi motenja posesti ali pri odločbah izdanih v delovnopравниh sporih). Pri denarnih obveznostih pa slovensko sodišče presoja primerenost izvršilnega naslova predvsem v zvezi z neposredno izvršljivimi notarskimi zapisi. Terjatev mora biti strukturirano navedena, po posameznih naslovih: glavnica, pogodbeno dogovorjene obresti, zamudne obresti, ter t. i. bančni stroški. Če upnik navede svojo terjatev po posameznih postavkah, in sicer na določen presečni dan (na dan odstopa od kreditne pogodbe), bo sodišče lahko preverilo skladnost izvršilnega predloga z izvršilnim naslovom ter preizkusilo primerenost izvršilnega naslova za izvršbo. Obveznost dolžnika mora biti ne glede na predložen izvršilni naslov jasno določena. Enako velja tudi v primeru, kadar upnik predlaga izvršbo na podlagi tujega izvršilnega naslova. Tuj izvršilni naslov lahko izvira bodisi iz države članice EU ali iz države, ki ni članica EU. Za vse tuje izvršilne naslove pa velja, da je izvršbo mogoče dovoliti le, kadar je obveznost dolžnika natančno določena. Uporaba obveznih obrazcev, ki jih določajo evropske uredbe (po katerih več ni eksekvatur), bi naj preprečevala, da tuj organ oziroma tuje sodišče potrdi nedoločen oziroma pomanjkljiv izvršilni naslov, saj je v obrazce treba zapisati nominalne podatke o terjatvi, njeni zapadlosti, glavnici, obrestih in stroških.

Za vse v slovenskem izvršilnem postopku predložene tuje izvršilne naslove velja, da je treba vprašanja materialnopravne narave presoјati po tujem pravu. Gre za vprašanja zapadlosti terjatve, obresti, zastaranja terjatve itd. Vsa vprašanja, ki so vezana na samo terjatev, ki izvira iz izvršilnega naslova, je treba presoјati po tujem pravu. Slovensko izvršilno sodišče je namreč vezano na načelo formalne legalitete in zato je treba uporabiti pravo, ki ga je pri izdaji tujega izvršilnega naslova uporabilo tuje sodišče oziroma organ. Zato je slovensko izvršilno sodišče tudi glede višine in teka obresti vezano na tuj izvršilni naslov. Kadar je obveznost v tujem izvršilnem naslovu (npr. hrvaški sodbi) določena v tuji valuti (npr. hrvaških kunah) in želi upnik priti do poplačila svoje terjatve v Republiki Sloveniji, bo moral obveznost dolžnika v predlogu za izvršbo opredeliti v tuji valuti (torej v hrvaških kunah). Izvršilno sodišče mora namreč v skladu z načelom formalne legalitete ostati zvesto izvršilnemu naslovu in mora dovoliti izvršbo za terjatev, kot izhaja iz izvršilnega naslova.

**Ključne besede:** *izvršilni postopek v Republiki Sloveniji, primernost izvršilnega naslova, načelo formalne legalitete, določnost zahtevka, določljiva obveznost, tuj izvršilni naslov*

**Ad 2) U Zborniku 3/2021 tekst *Intellectual property disputes and international arbitration* napisao je Yunus Emre Ay a ne Ay Yunus Emre.**