

Formal and Material Enforceability of Enforcement Titles and Limits of Review of Enforcement Titles by the Court in Execution Proceedings

Abstract

The thesis focuses on enforcement proceedings under Act No. 120/2001 Coll., the Enforcement Code, as amended. It focuses on the procedural conditions of the enforcement proceedings, the course of the enforcement proceedings from the commencement of the enforcement proceedings to the stage of issuing a mandate to the executor to conduct the enforcement proceedings, or to the issuance of an instruction by the enforcement court to the executor to reject the enforcement petition. Furthermore, it deals with the execution at the stage of deciding on the debtor's motion to stop the execution and the possibility of stopping the execution even without a motion.

It deals in detail with the various types of enforcement titles under which enforcement may be conducted. It focuses on the theoretical interpretation of the institutes of formal and substantive enforceability of an enforcement order. The core of the thesis is an examination of the legal basis, literature and extensive related judicature to determine whether the enforcement court is entitled to deal with the formal and substantive enforceability of the individual types of enforcement titles at the above mentioned stages of enforcement and, if necessary, to what extent. The work contains a description of the development of judicature, in particular on the question of the possibility of reviewing the formal and substantive enforceability of each type of enforcement title, with a focus on enforcement titles in the form of court judgments, arbitral awards and notarial records with leave to enforce.

The author concludes that the boundary between an judicial, arbitration or administrative proceedings on the one hand and enforcement proceedings on the other, has become less strict over the last 8-10 years as a result of the development of judicature. While the enforcement court may no longer review the substance of enforcement titles issued by a court, arbitrator or administrative authority, it is entitled to conduct a test of the reasonableness of the enforced performance, in particular in relation to the principles of democratic rule of law and manifest injustice, and in the event of a conflict, it may exceptionally instruct the executor to (partially) reject the enforcement petition or may (partially) suspend the enforcement without formally removing the enforcement title. In the case of a writ of execution in the form of a notarial deed with authorisation for execution, the possibility of a full substantive review in the execution

proceedings is still maintained. The author has not left aside foreign enforcement titles and the conditions under which enforcement may be conducted under them, including the question of international jurisdiction. In particular, he deals in detail with cross-border enforcement proceedings within the European Union.

Keywords: execution, enforceability, review