

Civil Procedure Law II

Guide to Greek Enforcement Order

a) Enforcement order

The basic prerequisite for any compulsory enforcement is an enforceable title. Enforceable titles are, in particular, court judgments. These must contain an enforceable claim (enforceable are therefore in particular performance judgments, not declaratory judgments) and the claim to be enforced must be precisely defined in the title.

The judgment must also be legally binding, i.e. no longer contestable with ordinary legal remedies (judgments that are not legally binding can, however, be declared provisionally enforceable by special order, see above).

Other enforceable titles are: the above-mentioned payment order in dunning proceedings, notarial deeds, court settlements, etc.

b) Course of proceedings

The two central phases of enforcement proceedings are

- the **initiation procedure**, which is regulated in the same way for each type of enforcement
- the **main procedure**, which differs depending on the type of claim to be enforced and the assets to be enforced and has special features in each case; essentially, a distinction is made between the enforcement of monetary and non-monetary claims

The enforcement procedure in Greece is characterized in particular by the fact that orders for service and enforcement are issued directly by the lawyer to the bailiff. The strong role of the parties in the discovery procedure therefore continues in the enforcement procedure.

aa) Initiation procedure

The following steps are required to initiate enforcement proceedings:

The creditor must first apply for an enforceable copy of the enforcement order from the competent authority (e.g. from the relevant court in the case of a judgment or from the notary in the case of notarial deeds). The enforceable copy is a copy of the title with an enforcement clause, which contains the official request to all bailiffs and other enforcement officers to enforce the title on behalf of the Greek people. The creditor must pay a stamp duty for the issuance of this enforceable copy, which amounts to between 2 and 3 percent of the value of the claim (the exact amount depends on the specific type of enforcement claim; a few types of claims are exempt from this stamp duty).

The enforceable copy must also be combined with a final demand for performance and both must be served on the debtor. This officially initiates the enforcement proceedings.

After the unsuccessful expiry of a period of 3 working days from this service, the actual enforcement, the main proceedings, can begin. This is done by the enforcement creditor officially instructing the bailiff with the enforcement.

bb) Main proceedings

(1) Claims not aimed at monetary payment

Since this category includes very different types of claims with their respective enforcement peculiarities, only a few central types of claims and their respective enforcement will be mentioned here:

- **Claim for the return of movable property**

It is intended that this is taken away from the debtor by the bailiff and handed over to the creditor. If the item is not found at the place of enforcement, the debtor is obliged to make an affidavit in which he confirms that he is neither in possession of the item nor does he know where it is currently located.

- **Claim for the return of real estate**

The procedure is similar to a claim for the return of movable property.

- **Obligation to perform a certain justifiable act** (act which by its nature can also be performed by third parties, not only by the debtor himself)

If the debtor does not perform the act, the creditor is entitled to have the act performed by any third party at the debtor's expense (so-called substitute performance).

- **Obligation to perform a specific non-fungible act** (act which by its nature can only be performed by the debtor personally and not by third parties)

The court that has ordered the performance of the specific non-fungible act may, in the event that the debtor fails to comply, impose (1) a fine of up to €50,000 in favor of the creditor and (2) imprisonment of up to one year against the debtor.

(2) Claims for monetary payment

A monetary claim can be satisfied by the forced realization of the debtor's assets.

The most important phases are

- **Attachment**
- **Realization and public auction**
- **Distribution of the proceeds**
- **Possible participation of other creditors**

Attachment of assets

Almost any type of asset can be attached.

The most important categories of attachable assets are

- **Movable property in the debtor's possession**

Movable property is seized for attachment by the bailiff and held in custody until auction. However, as in the German Code of Civil Procedure (ZPO), there are prohibitions on the attachment of items that are a) necessary for the livelihood of the debtor and his family and/or b) necessary for the debtor's work in order to earn a living.

- **Debtor's real estate**

The seizure procedure for real estate is carried out in such a way that the debtor is served with a formal seizure order by the bailiff. This is then entered in the local cadastre or land register. The property in question is then seized until it is auctioned off.

- **Bank accounts**

Bank accounts are seized in such a way that the bank (as third-party debtor) is served with the enforcement order first and the debtor and account holder no later than 8 weekdays later (corresponds to the German attachment and transfer order).

Immediately after service, the bank is obliged to block any existing accounts (the creditor does not need to know the exact bank details before enforcement) of the debtor and to submit a declaration of any existing debtor accounts and their balances to the local court at the bank's registered office within 8 weekdays. The creditor can inspect these declarations and, if there are attachable assets, demand the amount owed from the bank.

Some banks also require court confirmation of the seizure of the bank account, including an order for payment, before the amount can be paid out. This can be applied for by way of interim legal protection.

- **Payment claims against other third parties**

The attachment procedure is similar for claims to which the debtor is entitled against other third parties (e.g. wage claims, fees owed, rent claims, etc.), namely by serving the enforcement order on the third party and on the debtor. Certain claims that are necessary for the maintenance of the judgment debtor (e.g. wages, pension, etc.) are excluded, provided that this exception does not in turn jeopardize the judgment creditor's own maintenance (e.g. in the case of maintenance claims for children).

- **Objects in the possession of a third party**

Movable objects owned by the debtor but in the possession of a third party (who is willing to surrender them) can also be attached.

- **Other assets**

Other assets that cannot be attached by one of the above methods (e.g. intellectual property rights, patents, etc.) can be attached by a special court order specifying the appropriate means for carrying out the attachment and realization.

In addition to seizure, there are also the less common options of **forced administration of a company or a debtor's property**, as well as **imprisonment**, for the enforcement of monetary claims.

However, imprisonment is only permitted in exceptional cases and only for certain types of claims, in particular claims arising from unlawful acts, and is subject to strict limits: it may not exceed one year; moreover, it may not be used to enforce claims of less than €30,000 or to enforce court costs alone.

The person concerned can lodge an objection to the arrest. He or she will then be brought before the President of the Regional Court in the district where the arrest was made, who will decide on the appeal.

Public auction

The seized assets are primarily realized by public auction. The public auction procedure is accompanied and conducted by a notary who acts as the auctioneer. The auction is usually held between 7 and 8 months after the seizure.

Since 2018, all forced auctions have been conducted exclusively as electronic online auctions, without the physical presence of the participants.

At the end of the auction, the responsible notary draws up a report in which the successful highest bidder is named (so-called knockdown notice).

Ownership is then transferred to the successful bidder as soon as the property is either handed over to him (in the case of movable property) or the successful bid is entered in the relevant public register (in the case of real estate/ships/aircraft).

The successful bidder has the right to acquire the property free of encumbrances and can apply for the discharge of all encumbrances in rem.

In the case of encumbrances under the law of obligations (such as existing rental agreements for real estate), there is a simplified right of termination in some cases.

Distribution of the proceeds

The proceeds are distributed to all creditors who have participated in the liquidation proceedings.

If the proceeds after deduction of the costs and expenses for the enforcement proceedings are less than the total claims of the creditors involved, the proceeds are distributed on a pro rata basis. However, certain creditors have priority over the proportional distribution.

Specifically, the proceeds are distributed as follows:

- First, the costs of the enforcement proceedings are deducted
- Then the remaining proceeds are distributed among the creditors
- Different categories of creditors are distinguished in the distribution, which are ranked in relation to each other and are to be satisfied with different percentages from the proceeds:
 - **Category 1:** Particularly privileged creditors (this group receives **65%** of the proceeds)
Secured claims (mortgage, lien)
→ A mortgage priority notice is not sufficient; this only falls under this particularly privileged category if it is converted into a mortgage in good time before the proceeds are distributed
 - **Category 2:** “Normal” privileged creditors (**25%** of the proceeds)
Wage and maintenance claim, claims of the state and other public bodies, etc.
 - **Category 3:** Other creditors (**10%** of the proceeds)

Participation of other creditors in the liquidation procedure for monetary claims

Other creditors with claims due can join the forced liquidation procedure by registering their claim. The written application must be submitted to (1) the competent notary who conducts the public auction (2) the debtor and (3) the creditor conducting the forced sale (main creditor).

The claims must be registered in writing no later than 15 days after the auction is held.

Creditors who have registered their claims are entitled to participate in the distribution of the proceeds and may also intervene in any judicial appeal proceedings or even take over the enforcement proceedings if the main creditor gives up enforcement.

c) Legal remedies

The Greek Code of Civil Procedure has its own system for reviewing and contesting the legality of enforcement.

Legal remedies of the debtor

The debtor has the right to appeal against enforcement by means of an objection to enforcement. The objections that can be asserted with such an objection are Inadequacies of the enforcement order, irregularities in the enforcement proceedings and (new) objections to the enforcement claim (e.g. fulfillment of the claim).

It should be noted that in the context of an objection to enforcement, it is inadmissible to raise objections that could already have been raised in the preceding court proceedings; these are barred in order to protect the legal force of the judgment already issued (same idea in German ZPO: Preclusion provisions in enforcement counterclaims, Section 767 (2) ZPO).

In addition, the objection is subject to strict time and procedural limits, which are aimed at a rapid settlement of all relevant disputes and thus an acceleration of the enforcement proceedings.

A successful objection to enforcement leads to the termination of the entire enforcement proceedings and gives the debtor the right to demand that the assets affected by the enforcement be returned to him.

Since filing an objection does not suspend the enforceability of the title, an application for a temporary suspension of enforcement may also be filed (possible again since 2021, after this right had been severely restricted for several years by a previous law).

Third-party remedies

Third parties who are affected by the enforcement proceedings (e.g. in such a way that the creditor seizes a movable item from the debtor which is owned by a third party) also have the right to challenge the enforcement with a corresponding legal remedy (see third-party action in Germany).

d) Excursus: Enforcement of foreign (non-EU) titles in Greece

The enforcement of court decisions (judgment, order, payment order, enforcement order, cost assessment order) from other European member states (such as Germany) can be carried out in accordance with the Brussels I Regulation. This enables the creditor to enforce a title in another European country without having to carry out time-consuming and costly recognition or enforceability proceedings.

To this end, the certificate in accordance with Article 53 of the Brussels I Regulation (form) must be applied for the foreign enforcement order. The “court of origin” is responsible for issuing the certificate, i.e. the court that issued the judgment, the recognition of which is

claimed or the enforcement of which is requested. The enforcement order and the certificate must then be provided with an apostille and translated into Greek. The actual enforcement in Greece is then carried out in accordance with the national rules of the Greek enforcement procedure described above.

The Brussels I Regulation also provides for the same simplifications for enforcement in another EU country for other types of enforcement orders that are not court decisions - in particular authentic instruments and court settlements.
