

THE RIGHTS OF THE INTERESTED PERSONS ACCORDING TO “THE LAW OF GEORGIA ON ENFORCEMENT PROCEEDINGS”

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Abstract

The Administrative Law is a part of public law, as it is depended on the subordinate principle. It aims to realize public interest. On the other hand, Enforcement Law is part of administrative space, which regulates the rules and procedures of the enforcement process for different court's decisions as well as other acts. As administrating effects our everyday lives, it is a public interest that this process should be kept in the legal borders. This is exactly what the Administrative Law is all about. It regulates the social relations in which were government and other administrative bodies play a major role. It is true that Enforcement Law provides us with the norms, rules and procedures of the legal administration, but it is still court's responsibility to assess the legal quality of it. This is why we need effective justice, to have the competent court ruling practice and to enforce them properly.

Keywords: Enforcement laws, bailiff, creditors, debtors, “other persons”

Introduction

Main principles of the Enforcement Law

As we have already mentioned, Enforcement Law is a part of public law, as it aims to enforce court's decisions and other acts not depending on the creditor's request, but rather depending on the state's authority. Therefore in the presence of legal preconditions, it is state's responsibility to satisfy creditor's request through the legal limitations of the debtor's rights. This is the way the state demonstrates its enforcing competence.

Thus, it is clear that just as state's other actions, the actions of the enforcement bodies must be in conformity with the Constitution. The rights of all those who are involved in the process should be properly protected. This is the aim, which is stated in the Law of enforcement proceedings of Georgia, in particular in the 17th article, paragraph 7. According this paragraph bailiff is obliged to take all legal measures to ensure prompt and

effective enforcement of the court's decision, to explain to the parties their rights and obligations as well as the content of certain enforcement types and possibilities and to help them in protecting their rights and legal interests.

Since enforcement cannot be conducted without interference with the rights it is necessary to have effective judicial control starting from the beginning of the proceedings to its every step. It is also required by Article 13 of the "Convention for the Protection of Human Rights and Fundamental Freedoms" According to this article Anyone whose protected rights have been violated must hold an effective remedy of legal protection from their national state. Even if this violation was conducted by someone while using official authority.

It is worth mentioning that legal ways used in the enforcement process should ensure on the one hand not to drag time of the process and to satisfy creditor's requests as quickly and fully as possible. On the other hand a debtor or other interested persons should have the opportunity to protect themselves from illegal interference. This right is guaranteed by the Constitution of Georgia. 42th article's 1 paragraph states that everyone has the right to address the court to protect their rights. There is no doubt that enforcement bodies need to keep balance between creditor's claim and the interest of protecting debtor's as well as other persons rights.

The circle of the parties in the enforcement proceeding

Enforcing the court decisions is regulated by the law of "Enforcement proceedings" as well as by the order of the Minister of Justice of Georgia. In particular we use the order #21, which was issued on 31th of January 2011 and is about the forms and procedures of the auction, According to the law there are several participants: involved in the enforcement proceedings: 1) a creditor and a debtor (the parties to the enforcement proceedings, 2) a bailiff, 3) private bailiff, 4) and other persons participating in the enforcement proceedings (article 15).

Generally, a party is a person or company, whose rights is influenced or will be influenced directly by the act or action from the Administrative authority and cause damages. It is obvious that interested parties have the responsibility to prove several facts: firstly the fact of violation of their rights, the fact of existing legal interest and the fact that the violation has in fact been the result of administrative authority. Parties' any right or interest must be legally protected which means that we should also have vivid and direct damages on the rights or interests caused by the actions or acts of administrative authority. It is also worth mentioning that when we say "interest" we mean factual interest and not any chance of theoretical ones.

According to the 18(3)th article of Georgian „law on enforcement proceedings” „The party to an enforcement proceeding or an interested person whose legitimate interests are directly and proximately affected by a bailiff’s act may file, on a one-off basis with the chairperson of the National Bureau of Enforcement an appeal against the bailiff’s act within 15 calendar days after the performance of such act.

According to the 19th article of the same law “The party to enforcement proceedings may consult and obtain copies of materials of the enforcement proceedings other than the documents containing commercial (tax and bank) secrets and other confidential documents and their copies”

In the situation where the auction is held online it is very important that the law contains detailed explanation about the possibility for other interested persons (apart from the creditor and debtor) who are interested perhaps in the property that is being sold to be considered as parties as well.

To protect the rights of the interested persons it is important this issue to be solved until the enforcement starts. Enough reason to support this idea would be to state that according to the abovementioned order of the Minister, only the persons whose property rights are registered will be informed about the auction. As for the second auction (repeated auction) parties are obliged to get an information themselves through the web site of the National Enforcement Bureau. It is noteworthy the Law on Enforcement proceedings does not provide protections for the persons who are interested in the attached immovable property. According to the 63’ article 1 paragraph of the law on Enforcement Proceedings it is bailiff who has the authority of disposal on the property. On the other hand the owner of the property is prohibited to dispose it in any way. Moreover according to the order by the Minister of Justice on “Approval of instructions on a public register” (article 14 paragraph 19 “v” 01.15.2010) attachment on the property which was disposed through auction will be removed.

In order to find out if someone in whose favor the property was attached by the decision of the court is considered as „other persons” by the legislator, we need to assess the institute of claim assurance.

Generally, the reason of the claim assurance is to protect creditors’ interest from the debtor’s bad faith and to make sure that court’s decision will not be a formality and will have real results. It is worth mentioning that while filing the lawsuit the plaintiff has effective protection right, as well as preventive protection right. Effective protection means getting the claimed request itself. On the other hand during preventive protection, the plaintiff must be sure that until getting the claimed right, it will not be cancelled. Therefore in the situation when a debtor does not have other property besides the one being sold through the auction when interested persons are not

informed about the auction, it will danger the realization of the legitimate claim and leave them without preventive protection.

According to the 21th article of the Constitution (paragraph1) „, The right to own and inherit property shall be recognized and inviolable” According to the case law of the European Human Rights Court the right to demand confirmed by court’s enacted decision is considered to be a property right. Moreover the concept of property is autonomous for the convention.

Therefore it is obvious that interested person who has the court proven claim, in whose favor is the property attached to guarantee the realization of claimed right has the right to be informed about the enforcement proceedings from the very beginning of it, as well as every step of the way. This will enable the interested persons to use appropriate legal actions to protect their rights in the enforcement process.

Conclusion

To sum it all up, we have discussed the importance of having concrete circle of parties generally in the Enforcement Law, as well as in enforcement process in particular. We also looked at the flaws of the current law. I do think that perfecting enforcement laws in order to make them cover discussed subject better, as well as making them mirror European standards will guarantee the Rule of law in the Georgian court system.

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