

# Comments on the Outstanding Debt, Liquid Debt and Due Claim in Romania

Nicolae Popa<sup>1</sup>, Adriana Tulus<sup>2</sup>

<sup>1</sup> Senior Consultant, founder of the Institute of Development, Education and Academic Excellence, Romania, nicolae.popa@finsol.ro

<sup>2</sup> Legal Adviser, student at Titu Maiorescu University, Bucharest, Romania, adriana.tulus@yahoo.com

**ABSTRACT:** On foreclosure, Romanian legislation lays down a number of requirements for its achievement. In this respect, the Code of Civil procedure stipulates the conditions that should be met by claims for their enforcement. In practice, foreclosure is performed in order to cancel the main claim and its accessories, like interests, penalties, other amounts granted according to the law, by an instrument permitting enforcement, and also enforcement expenses. In this paper, we intend to present issues related to the outstanding debt, liquid debt and due claim, as stipulated in article 663 under the Romanian Code of Civil Procedure, together with opinions and comments of the professional doctrine on the article mentioned above. Also, we brought up the legislative changes made on this body of law and we gave examples of matters in the national case law to describe various possible situations that could occur, in order to underline the special attention that must be given to the regulations on debt instruments, as it is a highly important and topical matter in Romania.

**KEYWORDS:** definite claim, liquid claim, enforcement, chargeable claim, enforcement conditions, enforceable title

## Introductory notions regarding claims in Romania

In order to carry out the enforced execution, we must find ourselves in a situation where the claim is certain, liquid and chargeable, as provided for in Article 663, paragraph 1 of the Code of Civil Procedure. The three characters must be met cumulatively and reported to the enforcement instructions. The claim is certain when it is found in the executor title itself, which is provided for by paragraph 2 of the same article.

One example is found in Decision No 1754 of August 15, 1995, 4th Civil Section of the Bucharest Tribunal: “The appeal to enforcement started under an enforceable title represented by a legal assistance contract in which a fee of ROL 10 million was established and the fee of success in amount of ROL 180 million payable in the event of acceptance of the appeal against an auction.”

The appeal was dismissed, the court considered that the definite nature of the claim was not fulfilled. If the judgment constituting an enforceable order is liable to form the subject of an appeal provided for by law, enforcement shall be carried out only at the creditor's risk. In this case the creditor will be required to reinstate the debtor in his or part rights, as appropriate, if the title is subsequently amended or disbanded.

The claim shall be liquid when its amount is determined by the executor itself or it may be determinable by means of the elements contained in its contents.

There are cases where the claim cannot be determined at a certain time, as is, for example, Civil Decision No 622 of March 7, 2002 of the Bucharest Court of Appeal, 4th Civil Section: “The establishment by enforceable title of a right of claim and the related obligation, which are not expressed in a liquid manner, is the case of labor disputes and in particular of the rights salary (...), since the obligation to pay wage entitlements is established until effective reclassification and cannot be determined at the time of delivery of the judgment.”

If we are in a situation where the amount of the claim is determinable, its calculation will be made by the court executor by closure, which constitutes an enforceable order. Such closure may only be appealed with an appeal against enforcement.

The court executor shall determine the amount in the case of interest, penalties or other amounts to be given to the creditor, if the enforceable title stipulated their existence or granting. The court executor may also update the amount of the main obligation laid down in the money, regardless of its source, where there are criteria contained in the enforcement order, at the request of the creditor, and if the enforcement order does not contain no such criterion, the court executor shall, when updated according to the rate of inflation, calculated on the date on which the judgment became enforceable.

In the case of other enforcement securities, the update shall be made from the date on which the claim became chargeable until the date of actual payment of the obligation contained in any of these securities. Even if interest payments or other such amounts have been awarded by the enforceable title, the update of the amount of the main claim set in money may be made by the court executor.

Another way of determining the amount of the claim is by conclusion by the executing court, at the request of the creditor, with the summons of the parties, if the enforcement order does not include interest, penalties or other amounts, but they are appropriate creditor's law. That conclusion may be appealed within 10 days of the communication and subject to the common law regime. Where the debtor is deprived of the benefit of the payment period or his obligation is matured, we are in a situation where the claim is due (according to Art 663, para. 4 Code of Civil Procedure). If the time limit for payment of the claim has not been fulfilled, or the claim is not current, it is not possible to enforce it.

In particular, the Claim is not due if the payment deadline for the balance compensation has not expired. (Bucharest Court of Appeal, 5th case, Decision No. 2059/R of 30 November 2006).

There are also situations where “The forced execution of a contract giving rise to an obligation affected by a suspensive term which has not been fulfilled and has been established solely in the interest of the debtor of the payment obligation. In such a situation the claim to which the contract gives rise is not due” (District Court 2 Bucharest, Conclusion of March 5, 2007). If the debtor was given a reasonable time limit for payment by the creditor, or has been able to execute within a reasonable time calculated from the date of the application for legal proceedings, he will not be able to request a payment period.

“Also the obligation to make staggered payments, assumed by the debtor by pre-contract ... is a certain liquid and chargeable claim that may be subject to authorization of enforcement proceedings, since the payment of these sums of money has not been conditional on the existence or non-existence of a culmination” (Bucharest Tribunal, 4th civ., Decision No 627/R of 10 March 2011). And if the debtor evades the fulfilment of his obligations under the law on enforced execution, or dispels his wealth, he will not be able to apply for a payment deadline.

Follow-up acts and the commencement of enforced execution shall be carried out only after the cumulative requirements for the certifiable, liquid and chargeable nature of the claim have been met. Where there are other intervenor creditors applying for participation in the distribution of the amounts resulting from the enforcement follow-up, this requirement is not necessary.

It is the executing court, when the enforced execution is granted, which checks these requirements, and if it finds that the conditions are not met, it will reject the application with which it was seized.

The debtor may request the annulment of the enforcement proceedings if a claim which is not certain or chargeable has been enforced, which is possible in the first case if the creditor does not justify his right to seek enforcement, there is no certainty that the holder owes him something or, if the creditor's right is not yet current, the execution being premature. In the latter situation the lender will have to wait until maturity.

It does not constitute a cause of invalidity of the prosecution of the lack of liquid character of the claim, but only a cause for deferral of enforcement until the exact determination of the amount due is determined. The creditor aims to obtain a good, a sum of money, or other material use from the debtor, so we can say that interest is usually material in the enforcement phase. There are also situations where interest can be moral, such as in the case of juvenile court

executions. Another element is that interest must be legitimate and exist at the time when enforcement is requested.

### **Opinions in doctrine**

In the specialized doctrine it was considered that a claim is liquid when it has the amount determined by the very act of claim or is determinable together with other acts or circumstances (Tabără and Buta 2008, 1282).

Some of the authors said that the reference to the definite, liquid and chargeable claim of Law 36/1995 art. 101 restricts the scope of notarial acts that have enforceability, since the scope of authentic instruments is wider and these conditions are not met in all cases (Boldut 2016, 450).

This opinion is not shared by everyone so there are some authors who consider that an authentic act finding or extinguishing real rights, as long as they are not accompanied by other obligations, are not likely to be brought to fruition by way of execution because they comprise only effects of substantial law (Lazăr 2018, 152).

In this respect the meaning of the notion of debt is considered to be an extended one (Țiț 2018, 15 and 63).

### **Legislative amendments to Article 663 on the certifiable, liquid and chargeable claim**

1. The HCCJ, the Board for the Unraveling of matters of law, Decision 34/2015: Whereas, in the second provided for in Article 628 (2) 3. The Code of Civil Procedure, the costs shall be subject to the concept of principal obligation in enforceable order and may be subject to updating in the context of enforced execution.

2. HCCJ, Appeal in the interest of the law, Decision 2/2014: “The High Court of Cassation and Justice held that, ...by virtue of the principle of full compensation of the damage, in addition to updating the claim established by those enforcement orders, moratorium interests may be awarded in the form of statutory interest for the staggered payment of the amounts provided for in the same securities.,,

3. The HCCJ in addition to unraveling questions of law, by Decision No 1/2003 of the European Parliament and of the Council of December 16, 2000 on the protection of individuals with regard to the protection of individuals with 60 of 18.09.2017 held with binding effect that it is possible to easily execute a claim guaranteed by a valid mortgage agreement, constituting an enforceable instrument, even if the right of claim itself is not established by a document constituting, in accordance with the legal provisions, enforceable order.

It follows that no distinction is imposed between mortgage agreements concluded under a credit agreement and mortgages concluded under another type of contract (e.g. sale-purchase, assignment, etc.). All such mortgages concluded under the New Civil Code may be implemented directly independently of the existence of another enforceable order.

It follows that, with regard to enforcement proceedings, by fulfilling the condition of the chargeable nature of the claim, the creditor has a right of choice over it.

The creditor may use the enforceable nature of the mortgage agreement (together or separately from the credit agreement under which it was concluded) or initiate a joint enforcement as any chirographer creditor and may not take into account its privileged quality to other creditors if he has an interest in doing so.

In accordance with Article 663 of the New Code of Civil Procedure, in order to be able to trigger any executorial procedure, in addition to the chargeable nature of the claim to be executed, must be certain and liquid. Thus, in accordance with Article 13(2) of Regulation (EC) 2369 The new Civil Code, although a mortgage can guarantee any obligation, we must always discuss a liquid or liquidate obligation.

At the same time, once the due date provided for in the mortgage agreement is completed, the claim contained therein also fulfils the condition of chargeability. The certainty of the main

claim also results from the mortgage contract in whose content there are provisions on the amount of the mortgage claim, further strengthening this. We can therefore state that enforcement can be carried out in all cases provided that there is a valid mortgage agreement concluded in writing, regardless of whether the guaranteed obligation derives from an enforceable title or not, because in a mortgage contract are found specifically or by reference, all the essential elements to enable the start of enforced execution.

## Conclusions

We may conclude that the enforcement of the main claim, as well as accessories or other amounts granted by an enforceable order, may be carried out only if the conditions laid down in Article 663 have been met cumulatively.

At present, domestic legislation on enforcement is sufficiently comprehensive and attaches a major importance to this matter, especially since in recent years all normative acts starting with the Civil Code and the Code of Civil Procedure have experienced numerous amendments, additions and updates, in order to comply with European Union law and all international treaties to which Romania is a party.

## References

- Popa I.FI., Moise A.A., coordinators, et al. 2016. *Law of Public Notaries, Comment on articles*. Bucharest: Solomon Publishing House.
- Bucharest Court of Appeal, 4th Civil Section, Civil Decision no 622 of 7 March 2002.
- Bucharest Court of Appeal, 5th Civil Section, Decision no 2059/R of 30 November 2006.
- Bucharest Tribunal, 4th Civil Section, Decision no 627/R of 10 March 2011.
- District Court 2 Bucharest, Conclusion March 5, 2007.
- Law no 134/2010, New Code of Civil Procedure, implemented through Law no. 76/2012.
- Law no 138/2014 for amending and supplementing Law no 134/2010 regarding the Code of civil procedure, as well as for the modification and completion of some related normative acts.
- Lazăr, George-Alexandru (coordinator Vasile Bozeșan). 2018. *Enforcement Titles*. Bucharest: Legal Universe Publishing House.
- Tabără, M. and Buta, Gh. 2008. *Code of Civil Procedure commented and annotated with legislation, jurisprudence and doctrine*. ed. 2nd. Bucharest: Legal Universe Publishing House.
- Țiț, Nicolae Horia (coordinator Vasile Bozeșan). 2018. *Declaration of enforced execution*. Bucharest: Legal Universe Publishing House.
- Tribunal Bucharest, 4th Civil Section, Decision no 1754 of August 15, 1995.