

Enforcement of Foreign Judgments

Fundamental Principles [Montenegro]

2020



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I. RECOGNITION AND ENFORCEMENT OF A FOREIGN COURT DECISION (CIVIL AND COMMERCIAL MATTERS)

A. Ability to Apply for Recognition and Enforcement of a Court Judgment

1. Is it possible to apply for enforcement of a foreign court judgment in your country?

Answer: Yes, it is possible, given that such a judgment is recognized in Montenegro through the procedure for recognition of foreign judgement.

B. Applicable Law: General Rules

1. Which laws are generally applicable to the enforcement of a foreign court judgment in your country?

Answer: The applicable laws are:

- 1) Law on International Private Law, which prescribes specific conditions and procedures for the recognition of foreign court judgements;
- 2) Law on Enforcement, which prescribes rules and procedures for the enforcement of recognized foreign judgements.

C. Special Rules: European Union

1. Are there any special rules regarding the enforcement of a foreign court judgment in your country?

Answer: Apart from the laws from point B, which generally govern this matter, there are no other special rules.

2. Does the European Union have a special procedure to enforce court judgments coming from its member states?

Answer: No, it does not.

D. Average Duration of Enforcement Procedure

1. What is the average length of time for this kind of procedure?

Answer: Average length of time depends on the case, but in general, it lasts from 6 months to 2 years.

II. Denial of Recognition and Enforcement of a Foreign Court Judgment: Reasons

A. Can a Court in your country deny recognition and enforcement of a foreign court judgment? If YES: what kind of reasons may justify denial?

Answer: Yes, it can, due to the following:

- If the judgement does not have a confirmation of finality in terms of the law of the country in which the judgement was enacted;
- If upon such objection the court finds that the right of defense or the right of participation in court procedure was violated (e.g. the claim was not delivered properly to the defendant, or the defendant was not given enough time to prepare its response to the claim);
- If the matter falls under exclusive jurisdiction of Montenegro;
- If the foreign court exceeded its authorization to determine its own competence (e.g. the fact used to determine competence of the court is not envisaged in Montenegrin law);
- If there is another final judgement in the same court matter;
- If the judgement violates the Public Order of Montenegro.

B. Costs and expenses

1. What kind of cost and expenses can a claimant expect in this enforcement procedure?

Answer: A claimant may be expected to pay:

- 1) Court fees on the proposal for the recognition of a foreign judgement (it depends on the value of the claim and ranges from EUR 20 to EUR 1,700);
- 2) Court fees on the decision for the recognition of a foreign judgement (it depends on the value of the claim and ranges from EUR 20 to EUR 1,700);
- 3) Fees payable to a public enforcement agent (these depend on the value of the claim, range from EUR 100 to EUR 2,000, and are to be reimbursed by the defendant);

III. FORMAL REQUIREMENTS

A. Time limit

1. Is there a time limit to apply for enforcement of a foreign court judgment?

Answer: Yes, the time limit is 10 years after receipt of the judgement.

B. Final and Definitive Court Judgment: Provisional Enforcement

1. Is it mandatory for the judgment to be a final and definitive court judgment? If NO: Are there any special requirements to provisionally enforce a court judgment which is not final and definitive?

Answer: Yes, it is mandatory.

C. Necessary Requirements

1. What necessary requirements must the foreign court judgment fulfill to be recognized and enforced?

Answer: The foreign judgement needs to be:

- 1) Enforceable in terms of the law of the country in which the judgement was enacted;
- 2) Final in terms of the law of the country in which the judgement was enacted.

D. Other Formal Requirements: Court Fees

1. Is it mandatory to pay court fees for this kind of application?

Answer: Yes, it is mandatory. A claimant may be expected to pay:

- 1) Court fees on the proposal for the recognition of a foreign judgement (it depends on value of the claim and it ranges from EUR 20 to EUR 1,700);
- 2) Court fees on the decision on the recognition of a foreign judgement (it depends on value of the claim and it ranges from EUR 20 to EUR 1,700);

However, please note that in practice, even though the Law on Court Fees prescribes the obligation to pay the fees for this type of application, it is possible that the court fees would not be paid since the court did not give the order to pay them. More precisely, it mostly depends on the court, and the courts are sometimes reluctant to charge these fees.

E. Are there any other formal requirements in your country to enforce a court judgment?

Answer: No, there are not.

IV. PROCEDURE

A. Competent court

1. Which court or courts are competent to decide an enforcement application?

Answer: For commercial affairs, the competent court is the Commercial Court of Montenegro, while for other civil affairs, the competent court is the Basic Court.

B. Informational Requirements for the Application to Enforce a Foreign Court Judgment

1. What information must be contained in the enforcement application of a foreign court judgment?

Answer: The enforcement application must include:

- Details on the applicant and the debtor;
- Details on the basis of law;
- Details on the court judgement and the recognition of the judgement;
- Details on the debt and related interest.

C. What documents must be included with/attached to the application to enforce a foreign court judgment?

Answer: Only the **recognized foreign court judgement together with finality and enforceability stamps, which are obtained from the court that conducted the recognition procedure**, may be included.

D. Phases of the Procedure

1. What are the phases of the procedure to enforce a foreign court judgment?

Answer: The first phase is the **submission of the Proposal for Enforcement, after which the public enforcement agent enacts the Decision on Enforcement and starts the procedure for the collection of debt.**

E. Opposition of the Defendant

1. Can a defendant oppose to this enforcement application?

Answer: Yes, they can, by filing an Objection to Decision on Enforcement.

2. Are there a limited number of reasons for the defendant to oppose to the enforcement of the court judgment? If YES: what are those reasons?

Answer: Yes, those reasons are limited to:

- If the court or public enforcement officer that made a writ of enforcement is not competent;
- If a document on the basis of which enforcement is ordered does not have the effect of an enforceable document;
- If a decision on the basis of which enforcement is ordered is not enforceable;

- If a decision on the basis of which enforcement is ordered is cancelled, annulled or altered;
- If the settlement on the basis of which enforcement is ordered is annulled;
- If the deadline for satisfaction of claim has not expired or if a condition determined by the settlement has not been created;
- If enforcement is ordered on assets, monetary claim and other rights exempted from enforcement or on which the possibility of enforcement is restricted;
- If the claim has ceased on the basis of a fact occurring after the enforceability of the decision or prior to it, or it occurs at a time when the judgment debtor was not able to present in the procedure adopted within the enforceable document, or if the claim has ceased on the basis of the fact that occurred after settlement is reached;
- If the judgment creditor delayed the fulfilment of the obligation for the period that has not expired yet;
- If the deadline within which enforcement may be proposed in accordance with law has expired;
- If the claim has not been transferred to a judgment creditor, or if the obligation has not been transferred to a judgment debtor.

F. Appeal and its Consequences in this Procedure

1. Is it possible to appeal a court decision to recognize and enforce a foreign court decision?

Answer: Yes, it is possible.

2. Can this appeal suspend the enforcement?

Answer: Yes, it can suspend the enforcement. Appeal always suspends enforcement, i.e. one cannot start enforcement prior to the decision upon appeal.

G. Recovery of judicial costs and expenses

1. Are there any rules concerning recovery of the judicial costs incurred as a result of the enforcement application?

Answer: Yes, there are. In general, the party that lost the case is obliged to pay the judicial costs of the other party.

V. RECOVERY OF THE DEBT

A. Means of Enforcement

1. What types of assets are subject to enforcement of the court's judgment?

Answer: The creditor may choose between immovable assets and movable assets, save for the assets explicitly exempted from the enforced collection, such as:

- 1) Clothing, footwear, undergarments and other things for personal use, bed linen, utensils, home appliances, furniture necessary to the judgment debtor and members of his household;
- 2) Food and fuel needed by the judgment debtor and members of his household for three months;
- 3) Cash of judgment debtor who has regular monthly earnings up to the monthly amount exempted from the enforcement according to the law, in proportion to the time remaining until the next earnings;
- 4) Decorations, medals, certificates of war service and other marks of honor and awards, personal correspondence, manuscripts and other personal documents of the judgment debtor, as well as family photographs;
- 5) Appliances of a disabled person necessary for his living;
- 6) Postal delivery or postal money order directed to the judgment debtor cannot be subject to enforcement before delivered to him.

VI. OTHER ISSUES OF INTEREST IN YOUR JURISDICTION

A. Any other issues of interest in your jurisdiction

Answer: It is important to note that recognition of a foreign arbitral decision is regulated in a slightly different matter, by Law on Arbitration.

Submitted by:

Stefan Lučić, Attorney at law

Karanović & Partners

Stefan.lucic@karanovicpartners.com

<https://www.karanovicpartners.com/>