MANUAL - Croatia

for legal practitioners dealing with cross-border enforcement of civil claims

Eduard Kunštek, Ivana Kunda, Gabrijela Mihelčić and Danijela Vrbljanac
University of Rijeka, Faculty of Law

Project EU-En4s — JUST-AG-2018/JUST-JCOO-AG-2018
Funded by the European Union's Justice Programme (2014-2020)

Manual – Croatia

This Manual is intended to help practitioners (primarily authorities in the field of civil enforcement) facing a foreign enforcement title. It offers answers to the most pressing issues faced in cross-border enforcement proceedings in a step-by-step manner, starting with the visual inspection and identification of the elements of the enforcement title. However, the Manual should only be used as an assisting tool in an unofficial capacity and cannot replace the scrutiny of regular inspection. The materials for this Manual have been sourced from national reports and other deliverables obtained within the EU-En4s project.

The authors of the respective national report, other relevant materials and the text herein contained are Eduard Kunštek, Ivana Kunda, Gabrijela Mihelčić and Danijela Vrbljanac from the University of Rijeka, Faculty of Law.

Contents

1. Judgement

1.1 Headlines that form part of the judgement

In judgment of Croatian courts, headlines are not explicitly determined. The Civil Procedure Act prescribes elements of the judgment in Art. 338, as translated in the document available here: http://www.vsrh.hr/EasyWeb.asp?pcpid=286:

> "A written judgment must have an introduction, operative part and reasoning.
>
> The introduction to the judgment contains: an indication that the verdict is pronounced on behalf of the Republic of Croatia, name of the court, name and surname of an individual judge, president of the council, judge rapporteur and members of the council, name and surname or title, personal identification number and domicile, residence or seat of the parties, their representatives and attorneys, a brief indication of the subject matter of the dispute, the day of the conclusion of the main hearing, an indication of the parties, their representatives and attorneys who attended that hearing and the day when the judgment was rendered.
>
> The operative part of the judgment contains the court's decision to accept or reject certain claims concerning the main subject matter and ancillary claims and the decision on the existence or non-existence of a claim raised for set-off (Article 333).
>
> In the reasoning, the court will summarize the claims of the parties, the facts they presented and the evidence they proposed. The court will specifically state and explain which of these facts it established, why and how it established them, and if it established them based on evidence, which evidence it presented and why and how it assessed them, which provisions of substantive law it applied in deciding on the parties' claims, and will also state, if necessary, the views of the parties on the legal basis of the dispute and on their proposals and objections on which he did not give his reasons in the decisions he has already made during the proceedings.
>
> In the reasoning of a default judgment, a judgment based on absence, a judgment based on admission of a claim and judgment based on waiver of a claim, only the reasons justifying the rendering of that judgment will be presented."

Additionally, Court Ordinance (*Sudski poslovnik),* NN no. 37/2014, 49/2014, 8/2015, 35/2015, 123/2015, 45/2016, 29/2017, 33/2017, 34/2017, 57/2017, 101/2018, 119/2018, 81/2019, 128/2019, 39/2020, 47/2020, in Art. 62, lays down in detail the rules on drafting the judgment and other decisions:

> "(1) Court decisions and other documents shall be written in Times New Roman, 12 pt, on A4 paper.
>
> (2) Judgments, important decisions, and decisions of the appellate court are always written on the entire page, leaving a blank space of 2.5 cm wide from the upper and lower, right and left edge of the paper, without spacing, provided that certain parts of the decision (introduction, operative part and reasoning) are visibly separated.
>
> (3) On the first page of court decisions and other documents in the upper right corner, a blank space of 7x4.5 cm shall be left for printing the mark of the postal item in the form of a barcode.

(4) Court decisions and other documents shall be printed on both sides. If the court decision is made up of several sheets, all the sheets will be joined by stitching or gluing.

(5) The coat of arms of the Republic of Croatia in the original colours or in black and white shall be affixed to judgments and decisions terminating the proceedings in the upper left corner. The name "Republic of Croatia" and the name and seat of the court and the seat of the permanent service shall be placed below the coat of arms.

In the middle, above the introduction, "U I M E R E P U B L I K E H R V A T S K E" [I N T H E N A M E O F T H E R E P U B L I C O F C R O A T I A], will be placed in capital separated letters, and below that, in capital letters, the name of the decision "P R E S U D A" [J U D G M E N T] or "R J E Š E N J E " [D E C R E E] will be placed.

(6) In other court decisions, the coat of arms of the Republic of Croatia in the original colours or in black and white shall be placed in the upper left corner. The name "Republika Hrvatska" [Republic of Croatia] and the name and seat of the court and the seat of the permanent service shall be placed below the coat of arms. "R E P U B L I K A H R V A T S K A" [R E P U B L I C O F C R O A T I A] will be placed in capital letters in the middle above the introduction, and below that the name of the decision "R J E Š E N J E " [D E C R E E] will be placed in capital letters.

(7) In the upper right corner in all decisions below the blank space referred to in paragraph 3 of this Article, the reference number of the case and the subnumber under which the decision was made shall be placed. If the decision consists of several pages, the reference number and subnumber under which it was rendered shall be placed on each page in the upper right corner.

(8) The introduction of the decision, made by the council, shall state the names of all members of the council, starting with the president of the council.

(9) Below the introduction, and above the text of the operative part, the decision made by the court ("*presudio je*" [ruled], "*riješio je*" [decided], etc.) shall be indicated in a separate line, in small separated letters without bolding. Below the saying, and before the beginning of the explanation, the title "*Obrazloženje*" [Reasoning] is placed with a capital letter, without separation and bolding.

(10) Below the text of the reasoning, in the middle of the page, the place and date of publication of the decision or rendering shall be put, and on the right half of the page the signature of the presiding judge or individual judge (name and surname), while on the left half of the page the signature of the record keeper shall be put, if prescribed by the rules of appropriate procedure.

(11) The court seal shall be placed to the left of the signature of the president of the council or the individual judge."

Legal instruction is not mentioned in Art. 338 of the Civil Procedure Act. It forms a part of the decision even though it is not one of the constitutive, obligatory parts of thereof. Pursuant to Art. 66 of the Court Ordinance, in all originals and copies of decisions against which the filing of a regular legal remedy is allowed, the instruction on the legal remedy is placed under the signature of the president of the council or the judge. The instruction on legal remedy contains instruction on the type of legal remedy available, the period of time within which and the institution to which it may be submitted, and the number of required copies.

1.2 Structural and substantive division/sequence of the Reasoning

There are no requirements regarding the structure of the Reasoning of the judgment. The text is not divided by listings and numbers. However, the judgment should contain elements prescribed by the law, which were described in the section on the headlines that form part of the judgment.

1.3 Textual identification of the elements comprising the judgement

"the introduction of the judgement": uvod

"the operating part": izreka

"the reasoning of the judgement": obrazloženje

"legal instruction": pouka o pravnom lijeku

1.4 Short description of the elements of the judgement

The Civil Procedure Act prescribes elements of the judgment in Art. 338, the detailed description of which is provided in the section 1.1 Headlines that form part of the judgement.

1.5 Graphical separation of the elements of the judgement

Different parts of the judgment are separated by titles and/or new paragraphs with an empty row, while the elements of the operative part of the judgment are separated by numbering and new row.

1.6 Specification of time-period in which the judgement must be performed

As a rule, judgments rendered by Croatian courts contain the specification of the time-period within which the obligation in the operative part has to be voluntarily fulfilled (*paricijski rok*).

According to Art. 333(1) of the Civil Procedure Act, a judgment which contains a decision on the merits (claim and/or counterclaim), which may no longer be challenged by an appeal, becomes final. If a decision has been made in the judgment on a claim raised by the defendant by an objection for set-off, the decision about existence or non-existence of such claim becomes final.

In many situations, the judgment by becoming final (*pravomoćna*) also becomes enforceable. In other situations, additional preconditions have to be met which relate to the claims for acting, sustaining, or abstaining (omitting). Where the court decision orders fulfilment of the claim for acting or handing over (e.g. payment), the enforceability is conditioned not only by finality but also by the expiry of the deadline for voluntary fulfilment which runs form the day the decision was served to the debtor, unless the law provides otherwise. By expiry of that deadline, the final judicial decision in which the court ordered fulfilment of the claim on acting or handing over becomes enforceable. Such precondition is not prescribed for the court decision in which the court ordered fulfilment of the claim for sustaining or abstaining (omitting), save exceptionally when the enforcement title document provides for a particular deadline for the debtor to adjust his or her behaviour to this obligation. In this case, the court decision becomes enforceable when the specially set period of time expires; otherwise, the enforceability appears simultaneously with finality. Thus, the court decision in which the court ordered fulfilment of the claim for sustaining or abstaining (omitting) regularly becomes enforceable at the same time it becomes final.

The rule that the finality of the decision is the only precondition for its enforceability has further exceptions provided in the legislation. Such are the situation in which the legislation does not touch upon the finality or enforceability of a particular type of decisions, but only prescribes that the enforcement is allowed prior to finality. Most commonly these situations prescribed by the rules of the civil procedure aim at punishing the party which in certain manner misuses or violates his or her procedural rights.

There is a special regime concerned with the decision on protecting the possession which has to be enforced within the period determined by the law. The claimant is precluded from requesting the enforcement of the decree ordering the defendant in the proceeding for the protection of possession to take certain action, if the former has failed to request the enforcement within thirty days subsequent to the expiry of the period which has been set for this action in the decree.

1.7 Identification of Parties

In Croatia, the judgment contains the parties' names and surnames, address and personal identification number (OIB, previously JMBG). This information is stated in the introductory part of the judgment.

1.8 Indication of the amount in dispute

Value of the dispute is initially stated by the plaintiff in the statement of claim. This is his or her duty in particular when this is relevant for determining the subject-matter jurisdiction, composition of the court, type of the proceedings, power to represent a party or right to compensation of the costs of proceedings, and the object of the claim is not the pecuniary amount.

Value of the dispute is regulated under Art. 35 *et seq.* of the Civil Procedure Act. The basic rule is that only the value of the main claim is relevant for determining the value of the dispute. Interest, litigation costs, penalty charges and other subordinate claims shall be taken into account only if they are part of the principal claim. If the value changes in the course of the dispute, the last effective value is to be stated.

1.9 Indication of the underlying legal relationship

The underlying legal relationship is of importance for the enforcement proceedings. The Croatian Enforcement Act differentiates between two main types of enforcement proceedings: the enforcement for the collection of a monetary claim (Arts. 74-245 of the Enforcement Act) and enforcement for the purpose of realizing a non-monetary claim (Arts. 246-277) which are subject to further divisions.

Enforcement for the collection of a monetary claim:

1. Enforcement on real-estate (Arts. 79-132i of the Enforcement Act);
2. Enforcement on movables (Arts. 133-168 of the Enforcement Act);
3. Enforcement on monetary claims (Arts. 171-218 of the Enforcement Act);
4. Enforcement of claims to deliver movables or to transfer real estate (Arts. 219-227 of the Enforcement Act);
5. Enforcement on a share for which a share document has not been issued and on a share or business share in a company (Arts. 228-232 of the Enforcement Act);
6. Enforcement on securities recorded in accounts with the central depository company (Arts. 233-238 of the Enforcement Act);
7. Enforcement of other property or material rights (Arts. 239-240 of the Enforcement Act);

8. Special provisions on enforcement on the property of legal entities (Arts. 241-245 of the Enforcement Act).

Enforcement for the purpose of realizing a non-monetary claim:

1. Court penalties (Arts. 247-248 of the Enforcement Act);
2. Enforcement for the delivery and handing over movables (Arts. 249-254 of the Enforcement Act);
3. Enforcement for the purpose of emptying and handing over real estate (Arts. 255-259 of the Enforcement Act);
4. Enforcement in order to enforce a claim for act, suffering or omission (Arts. 260-266 of the Enforcement Act);
5. Enforcement for the purpose of returning employees to work or service (Arts. 267-270of the Enforcement Act);
6. Enforcement by division of things (Arts. 271-275 of the Enforcement Act);
7. Enforcement of the claim for giving a declaration of will (Arts. 276-277 of the Enforcement Act).

There are also specific examples of relevance of the underlying legal relationship. In the case of enforcement of monetary claims, if the enforcement is carried out on the debtor's salary, the amount of two thirds of the average net payment in the Republic of Croatia is exempted from enforcement. On the other hand, if the enforcement is carried out to collect a claim based on maintenance of a child, the amount of one fourth is exempted. The exempted amount in case of maintenance other than child maintenance, compensation for damage to health or reduction or loss of ability to work and compensation for lost maintenance due to the death of the maintenance provider, is one half of the average net payment in the Republic of Croatia.

In certain cases, the underlying legal relationship is discernible from the operative part of judgment. For instance, in maintenance disputes the term "on the basis of maintenance" (*na ime uzdržavanja*) appears in the operative part. In any case, the legal relationship may always be determined based on the reasoning of the judgment.

1.10 Information contained in the operative part

The operative part of the judgment communicates whether the court's decision upholds or rejects individual claims concerning the main subject matter and ancillary claims, and, if applicable, the court's decision on the existence or non-existence of a claim raised for set-off. It also communicates the deadline for performance ordered by the court. It usually also communicates the court's decision on the costs of the proceedings, under the last number.

1.11 Existence of a threat of enforcement

It is not necessary that the operative part contains the threat of enforcement. Usually, the condemnatory judgments contain the order which is accompanied by the wording "under the threat of the enforcement" (*pod prijetnjom ovrhe*). However, even where such wording is missing that does not affect the availability of enforcement, provided the other conditions are met.

1.12 Final specification of debt

The specifications of the debtor's obligation are in principle finalised by the court in its decision. The operative part of the decision is drafted by the court and the order addressed to the defendant has to be specified. The court may order the defendant to fulfil certain obligation only if that obligation has

become due until the end of the main hearing. There is an option to later on make corrections to the interest rates: The enforcement rules allow for corrections in the request for enforcement based on the court decision as an enforcement title document in case the interest rate had changed. Therefore, the enforcement may be carried out for the interest calculated under the rate different than in the operative part of the decision which is being enforced. This is applicable irrespective of whether the interests (the statutory interests) have increased or decreased. There are court cases which state that the court has an *ex officio* duty to monitor this matter and may order different specification of interests than requested by the creditor, which is an exception to the principle of strict formal legality.

There are certain exceptions to the rule that court may order the defendant to fulfil an obligation only if it has become due. According to Art. 326 of the Civil Procedure Act, the court may order the debtor to perform a specific act only if that act has become due before the commencement of the proceedings. If the court grants a request for maintenance, it may oblige the debtor to perform also those acts that have not become due. A judgment imposing on the debtor the obligation to deliver or take possession of objects that have been leased or let out may be rendered even before the termination of such relationships.

1.13 Partial rejection of a claim

In situations in which a claim is wholly dismissed, the operative part of the judgment normally contains a declaration to that effect, e.g. “the defendant’s claim whereby he requests.... is wholly dismissed as unfounded” (*odbija se kao neosnovan u cijelosti tužbeni zahtjev tužitelja kojim zahtijeva...).* Where there is more than one defendant, the claim may be wholly dismissed only in respect to all of them or just some of them, e.g. “the claim is dismissed as unfounded in relation to the second defendant...” (*odbija se kao neosnovan tužbeni zahtjev u odnosu na drugotuženika...).*

In situations in which a claim is partially dismissed and partially upheld, the operative part of the judgment normally contains a declaration on dismissal, e.g. “the claim is dismissed as unfounded in the part in which the claimant requested the court to order the defendant to...” *(odbija se kao neosnovan tužbeni zahtjev u dijelu u kojem je tužitelj zahtijevao da sud naloži tuženiku...).* The other number of the operative part of the judgment identifies which part of the claim is upheld.

Thus, the basic rule is that, regardless of the dismissal in whole or in part, the claims which are dismissed are identified and specified in the operative part of the judgment.

1.14 Set-off of a claim

Upon the objection of a set-off, the court has a duty to establish whether the claim exists or not and to establish one or both claims and their respective amounts. If possible, the claims will be set off against each other and the balance will be ordered to be paid to the creditor. Hence the operative part of the judgment in such instances usually contains the declaratory part (on the existence of the claims) under the first two numbers of the operative part of the judgment, the constitutive part (on setting them off) under the number three of the operative part of the judgment, and lastly, the condemnatory part (ordering the payment of the balance if there is any) under the number four of the operative part of the judgment.

1.15 References to the Reasoning found within the operative part

The operative part of the judgment does not usually contain the elements or references to the reasons for a decision. More often than not such reasons, including the grounds (substantive and procedural) are stated only in the reasoning.

1.16 Wording used to mandate performance

In Croatian law the operative part of the condemnatory judgment always has to contain the phrasing "[the defendant] is ordered [payment of the ...]" (*nalaže se [tuženiku plaćanje iznosa od...]).* This order has to be clearly stated and the contents of the ordered performance have to be precisely defined.

1.17 Reciprocal claims

In Croatian law it is possible, under the Enforcement Act, that the operative part of the judgment states the conditional or reciprocal obligation in the manner that the defendant's obligation is conditioned by the previous or simultaneous performance of the claimant's obligation or fulfilment of a condition. In such instances, the operative part of the judgement contains the order to the defendant which is conditioned.

The enforcement of such decision is carried out pursuant to art. 33 of the Enforcement Act.

1.18 Indication of interest (rates)

Interest rates are precisely listed in the operative part of the judgment. However, when statutory interests are at stake which are determined according to the provision in Art. 29 of the Obligations Act, it is possible to "rectify" the failure in it precise listing in the operative part of the judgment by invoking this provision.

There is an option that the interests are determined in the enforcement proceedings, which is explained in the section 1.12 Final specification of debt.

1.19 Legal ramification for incomplete, undetermined, incomprehensible or inconsistent operative part

If the operative part of the judgment is incomplete, undetermined, incomprehensible or alike it is in severe violation of the rules of the civil procedure. Such violation always exists where the operative part of the judgment is incomprehensible, contradictory to itself or the reasoning, or if the judgment lacks reasons on decisive facts or if on the decisive facts there is contradiction between reasons of the judgment and contents of the documents or minutes on statements in the proceedings or such documents or minutes themselves. The outcome is that the judgment has to be annulled in the appeal proceedings regardless whether the party stated this grounds or not.

1.20 Legal effects of the Reasoning of the judgement

In Croatian civil procedural law, the finality of the decision (in its subjective and objective limits) and its enforceability relate only to the operative part of the decision (judgment or decree). Reasoning does not produce such effects.

1.21 Obtaining the res judicata effect

Res judicata effects is produced at the same time when the judgment becomes final (unappealable).

1.22 Res judicata of negative declaratory relief

Negative declaratory claims and judgments are extremely rare in Croatian court practice. However, it may be stated that in a situation in which there is a positive declaratory judgment, the outcome would be that the negative declaratory action concerning the same factual and legal basis is inadmissible.

Although the authors cannot support their position by reference to Croatian case law of legal doctrine, it seems logical that in the opposite situation where the negative declaratory judgment is rendered a positive one on the same issue between the same parties would also be inadmissible as there would be a *res judicata* effect on that matter. The most logically challenging situation is where the claim for negative declaratory judgments was dismissed as unfounded. In such a case the court may not on its own motion decide by ordering the losing party to pay the amount in question unless (because of the doctrine of *non ultra petita),* unless the winning party raises such a counterclaim in the same proceedings. Therefore, the judgment whereby the court dismisses the negative declaratory judgment (such as in the hypothetical above), there is no enforceability attached to this judgment on the merits (only on costs of proceedings, if any) as any statements on the amount due by the other party would be contained only in the reasons. Conversely, if the defendant in such proceedings would raise a counterclaim asking the court to order the plaintiff to pay the due amount, if upheld this would be included in the operative part of the judgment and would eventually become final and enforceable.

1.23 Suspensive periods barring the enforcement of a judgement

Under Croatian law, judgment always leaves certain period of time after the service on that party to voluntarily perform the obligation ordered therein. Upon expiry of that period of time without voluntary performance taking place, there is no additional step necessary prior to the commencement of the enforcement proceedings.

2. Court settlements

2.1 Elements of a court settlement

The Civil Procedure Act does not contain explicitly a provision on the necessary contents of the court settlement as is the case for the judgment or a decree. It is thus possible to answer this question indirectly in the light of the provisions of the Enforcement Act on the conditions related to the enforceability of the court settlement (as an enforcement title document) and its adequacy for enforcement. Enforceability of the court settlement is regulated under Art. 27of the Enforcement Act which states that the settlement is enforceable if the claim which has to be fulfilled according to it has matured. Maturity of the claim is proven by minutes on the settlement or public document or solemnised private document, and if neither is possible, by the final decision rendered in the litigation proceedings to declare the maturity.

Court settlement, as any other enforcement title document, is adequate for enforcement if it names the creditor, the debtor, the object type, quantity and time for performance of the obligation. Consequently, to be able to order enforcement on the basis of the court settlement it has to name at least the mentioned information.

Art. 322(1) of the Civil Procedure Act provides that the parties' agreement on the settlement is recorded in the minutes. It also defines what minutes contain. Under Art. 124(1) and (2) of the Civil Procedure Act, the minutes contain: name and composition of the court, place, day and time, the matter at dispute and names of the present parties, third parties and their statutory representatives or attorneys. Thus, the minutes have to contain essential information on the contents of the act.

Art. 322(2) and (3) of the Civil Procedure Act additionally state that the settlement is entered into when the parties, following the reading of the minutes, sign the minutes on the settlement. Upon their request, the parties are issued their certified copy of the minutes containing the settlement.

As a result of the recent amendments to the Civil Procedure Act, the court may propose to the parties the resolution of the dispute by mediation. Settlement entered into in the mediation proceedings carried out at the court before the judge mediator is considered a court settlement.

2.2 Formal requirements

Formal requirements are discussed in detail in the section 2.1 Elements of a court settlement.

2.3 Identification of Parties

There are no specific rules on identifying the parties, hence the parties should be identified in the same way as in the judgment: by name and surname, personal identification number, address of the domicile or residence, or seat.

3. Notarial deeds

3.1 Prerequisites for enforceability

It is necessary that both the notarial deed and the solemnized private deed (which are enforcement title documents, and thus enforcement titles) are provided with the so-called enforceability certification (*potvrda ovršnosti).* It is issued by a notary public pursuant to Art. 36(5) of the Enforcement Act. If the debtor lodges a legal remedy, the court conducting the enforcement proceedings will examine whether the conditions for issuing such a certificate have been met, taking into account the statements of persons authorized to confirm the occurrence of the circumstances on which the acquisition of that capacity depends. If the court finds that the conditions for issuing a notarial certificate of enforceability have not been met, it shall revoke that certificate by a decision in enforcement proceedings. According to Art. 6 the request for revocation of the certificate of enforceability given by the notary public on his document submitted outside the enforcement proceedings is decided in non-contentious proceedings by the municipal court in whose territory the notary's seat is located. In fact, the court always decides on revocation of the certificate of enforceability given by the notary public, but when it is requested in connection with the legal remedy of the debtor, in that case it is the court that conducts the enforcement proceedings.

3.2 Special clause

a) An example of a clause referring to a monetary claim:

> "The lessee agrees that, on the basis of this contract and after any monetary claim the lessor has against him is due, direct enforcement will be carried out against him."

b) An example of a clause referring to a non-monetary claim:

> "The lessee agrees that under this contract, once it ceases to produce legal effects, enforcement may be carried out directly against him for the purpose of handing over the leased premises to the lessor."

3.3 Consent

The debtor's consent to direct enforceability is considered to be part of a notarial act. The consent refers to a specific obligation.

3.4 Structure

The content of a notarial deed is prescribed by Art 69 of the Notarial Act. According to it, a notarial deed must contain:

1) data on notaries public who participate in the drafting of the deed (surname and name, their notarial capacity and seat);
2) data on participants: on natural persons (personal and birth name, domicile address, date of birth), and on legal entities (entity registration number [*matični broj subjekta* – MBS] from the court register or the number of another register and registered office);
3) an indication of the manner in which the identity of the persons under point 2) has been established;
4) the text of the legal act with an indication of powers of attorney and attachments;
5) a note that the notarial deed was read to the participants or formalities were performed which under this Act replace the reading of the deed;
6) day, month, year and place, and, when required by law or participants, the hour when the deed was drawn up;
7) signature of the persons under points 1) and 2), the official seal of the notary public who drew up the notarial deed.

3.5 Personal information

Personal information that must be specified in the notarial act for the purposes of identifying the parties is stated in the section 3.4 Structure of a notarial deed.

3.6 Obligations contained in attachments

In Croatian law, attachments contain clarifications. According to a rule in Art. 71 of the Notarial Act which states that participants may attach to the notarial deed power of attorney and other attachments in the original or transcript, but if the issuer did not confirm them in the notarial deed, they cannot obtain greater credibility than prior to attaching. There is also a rule from Art. 57 of the Notarial Act which stipulates the duty to read to the parties and ask direct questions to make sure that the content of the notary deed corresponds to the will of the parties while the attachments are read only at the request of the parties.

3.7 Conditional claims

Art. 54(4) of the Notarial Act regulates the case when the obligation depends on a condition or deadline that is not determined by the calendar. For the enforceability of a notarial deed, unless the parties have agreed otherwise, it is necessary to establish by a public document or a document certifying the creditor's signature, i.e. by a final judgment rendered in civil proceedings, that the condition has occurred or that the deadline has expired.

In principle the preconditions for the enforcement of a conditional obligation are regulated by Art. 33 of the Enforcement Act. It states that when the debtor's obligation is conditioned by the occurrence of a condition, the court will, at the proposal of the bailiff, order enforcement if he declares that the condition has occurred.

However, if the debtor points out in the appeal that the condition has not occurred, the court will decide on the occurrence of the condition in the enforcement proceedings, unless the decision depends on establishing the disputed facts.

If the decision depends on establishing the disputable facts, the court will decide on the legal remedy in enforcement proceedings if they are generally known, if their existence can be determined by applying the rules on legal presumptions or if the bailiff proves the conditions with a public document or a publicly certified private document. In other cases, the court will suspend the proceedings.

The bailiff who fails to prove in the enforcement proceedings that the condition has occurred, may initiate litigation to establish that on the basis of the enforcement document he is authorized to request unconditional enforcement in order to realize his claim.