

THE IMPACT OF ELECTRONIC ENFORCEMENT WRITS ON THE LEGAL SYSTEM IN THE REPUBLIC OF MOLDOVA

IMPACTUL SCRISURILOR DE EXECUTARE ELECTRONICĂ ASUPRA SISTEMULUI JURIDIC ÎN REPUBLICA MOLDOVA

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Olga BACIU,

ORCID: 0000-0003-2502-8571

e-mail: baciu.olga@hotmail.com

Moldova State University

***Summary.** This study aims to elucidate the benefits of introducing electronic enforcement writs in the Republic of Moldova. We conducted a comparative analysis of legislative frameworks and practical implementations in various countries. The research methods included examining specific laws, regulations, and guidelines that enable electronic issuance and execution of enforcement titles, with a focus on digital signatures and secure communication systems. Key findings reveal that countries like Estonia, Lithuania, and Ukraine have significantly improved their enforcement processes by adopting electronic means, resulting in greater efficiency, reduced costs, and enhanced accessibility. Moldova's adoption of similar practices could modernize its legal system, aligning with national strategies for digitization and judicial independence, ultimately facilitating a more transparent and effective enforcement process.*

***Keywords:** digitization, writ, enforcement procedure.*

INTRODUCTION

Digitization has become an important part of work processes in many fields. Digitization allows the optimization of many work processes, including those in the field of law. The digitization process has become the target of many normative acts, becoming more and more widespread and used. As an example, we can mention the National Development Strategy “Moldova Europeană 2030” (NDS) which actually proposes a development vision focused on people, in which the individual is seen as the main beneficiary, not as a resource or instrument of progress. The strategy defines priorities in various interventions – regulatory, institutional, budgetary, investment, educational – that will bring direct benefits in terms of well-being and stimulate people’s potential in various field [1].

The development objectives established within the National Development Strategy are focused on improving the quality of life and identifying the main national problems, establishing a direct link between welfare aspirations and policies that will contribute to achieving these objectives. In this context, the Strategy aims to „Ensure efficient, inclusive and transparent governance”[2], which includes the integration of science, te-

chnologies and data in the governance process, centering public services on citizens' needs, ensuring a transparent, inclusive and efficient decision-making process at all levels, digitizing public services and developing e-government infrastructure. It also mentions the objective of „Establishing a fair, incorruptible and independent justice system”[2], which prioritizes the transparency of the justice system by developing communication mechanisms between justice institutions and citizens. Thus, we note that these objectives and priorities cover a wide range of areas in the legal system. In this article we aim to focus on enforcement, which is the final stage of the legal process and an indicator of the efficiency of the justice system. Namely about the digitization of executive writs.

MATERIAL AND METHOD

In this study we will try to present the benefits of the introduction of electronic enforcement writs, presenting a comparative analysis of the legislation in the field in different countries. This analysis is focused not only on the research of legislative aspects, but also taking into account the practical aspects of the field. Our legislative analysis will cover a broad spectrum of countries that have successfully implemented electronic enforcement writs. We will examine the specific laws, regulations, and guidelines that facilitate the electronic issuance and execution of enforcement writs in these countries. This will include an in-depth look at the legal provisions that enable digital signatures, electronic submissions, and secure communication systems.

RESULTS AND DISCUSSION

The enforcement procedure begins with the presentation of the enforcement document to the bailiff. Therefore, we note that enforcement writs issued by the courts are among the legal documents that confirm the rights of creditors and are to be executed through bailiffs. Thus, these writs are issued to the creditor upon request on paper by the first instance, after the judgment becomes final, and in certain cases provided by law, the writs are issued immediately. After the writ is issued, the creditor presents it for execution. There are exceptions expressly provided by the Enforcement Code [3] in which the courts can ex officio present the writ of execution for execution (for the pursuit of the sums to be made income to the state or from the state's account, in cases related to reinstatement at the workplace, etc.). One of the problems encountered by creditors in connection with the issuance of enforceable writs is the need to physically travel to the seat of the courts throughout the entire territory of the country to receive them. This situation is determined by the provisions of the Enforcement Code, which provides, although it does not stipulate that enforcement writs must be issued only on paper, but does not regulate another way to obtain them.

In context, we can mention that the practice in such situations shows that the travel of the creditors or their representative to the courthouses throughout the national territory represents a significant financial and time burden. We believe that this problem can

be solved relatively simply, taking into account the trend of digitization of legal services which is currently gaining a healthy scale. At the same time, we can mention that in some cases, the courts issue the documents only on certain days and limited time intervals, and sometimes, even when the creditor's representative appears physically, the enforcement writ cannot be issued due to the high volume of activity in the chancellery. These difficulties lead to the need to repeat the presentation. The introduction of digital enforceable writs will allow the process of issuing enforceable writs to be more efficient, will enable a significant reduction of expenses and will increase the level of digitalization of the legal system.

Thus, we propose to present an analysis of the normative acts, including the normative acts of other states, in order to strengthen our position regarding the need to introduce electronic enforceable writs. By Law no. 211/2021, the Strategy on ensuring the independence and integrity of the justice sector for the years 2022-2025 and the Action Plan for its implementation was approved. We believe that the proposal formulated in this study meets objective 3.3. from the Strategy regarding „Development and implementation of judicial information systems”. According to this objective, „Beyond the nuances of approach and perception, nowadays, no one can ignore or reject the impact of new technologies on justice, and the pandemic situation has accelerated the phenomenon of their development. [...] Also, in addition to the information system within the courts the development of information systems aimed at case management at the criminal investigation stage and enforcement of judgments, as well as ensuring the interconnection of systems.” [4]

In addition, one of the specific objectives established within the National Development Strategy is „Development and implementation of the e-Execution Information System” (subpoint 3.3.7).

The example from the Strategy [4] regarding ensuring the independence and integrity of the justice sector for the period 2022-2025 highlights that “IS e-execution” is mentioned as an implicit objective, including the possible integration of the issuance of electronic enforcement writs in this system. The enforcement of a judgment rendered by any court is considered an integral part of the process under Article 6 of the European Convention on Human Rights (see the *Hornsby v. Greece case*) [5], and justice reform implicitly implies an impact on the enforcement procedure. In this way, we want to strengthen our position including by presenting examples from international acts, as well as examples from normative acts from other states.

According to the Council of Europe's „Good practice guide on enforcement of judicial decisions” (adopted at the 26th plenary session of the CEPEJ on December 10-11, 2015) [6], one of the factors contributing to swift execution (3.1.1.3.) is the promotion of „e-execution”. This guide highlights the increasing use of new communication technologies in the justice sector across Council of Europe member states. Specifically, in the context of enforcing enforceable writs, this trend involves the widespread adoption of electronic exchanges among the various entities involved in

the enforcement process, and the dematerialization of actual enforcement procedures. Several countries, including Armenia, Denmark, Georgia, Portugal, and the Czech Republic, have embraced electronic means for executing enforcement measures such as attachments of bank accounts, immovable property, vehicles, and conducting public auctions electronically [6].

The dematerialization of enforcement procedures offers several advantages. Firstly, it saves time in implementing protective or enforcement measures by streamlining administrative processes. Secondly, it enhances the efficiency of public auctions by potentially increasing the number of bidders who can participate remotely. These benefits underscore why member states are encouraged to adopt electronic execution practices, provided that they incorporate necessary precautions to ensure legal certainty.

The guidelines emphasize that while promoting e-execution, member states must prioritize safeguards to uphold legal standards. This includes measures to protect the confidentiality and integrity of exchanged information, verifying the identity of parties involved in serving documents, and ensuring that documents are received by the intended recipients through mechanisms like acknowledgment of receipt systems. In this way, the promotion of e-execution as outlined in the Council of Europe’s guide reflects a contemporary approach to enhancing the effectiveness and efficiency of enforcement procedures across Europe, while maintaining rigorous legal standards and safeguards. According to art. 12 (“Use of new technologies”) from the chapter on the “fundamental principles” of enforcement from the Global Code of Enforcement of the International Union of the Judicial Officers (UIHJ): „Acts of enforcement may be carried out using all forms of support, including non-material ones, subject to the precautions provided for by the national law of the state where the enforcement is made” [7]. This article underscores the flexibility and inclusivity in the methods of enforcement, allowing for the utilization of various forms of assistance, both material and non-material. However, it emphasizes the importance of adhering to the regulatory safeguards specified by the national laws of the jurisdiction where the enforcement takes place.

Like another example, is the experience of Estonia. According to art. 23 para. (6) of the Code of enforcement procedure of Estonia: „An application for enforcement and an enforcement instrument may be submitted by electronic means. The application shall bear the digital signature of the sender or be communicated in any other technically secure manner. The Minister responsible for the area may establish technical requirements for electronic submission of applications for enforcement and enforcement instruments” [8]. This provision reflects Estonia’s progressive approach towards modernizing its enforcement procedures through electronic means. It allows parties involved in enforcement processes to submit their applications electronically, ensuring efficiency and convenience. The requirement for a digital signature or other secure communication method ensures the authenticity and integrity of the submitted documents, aligning with international standards for electronic transactions.

Another example is Lithuania. According to art. 43¹ para. (3) and para. (6) of the

Law on Bailiffs of Lithuania [9] the provisions outline the procedures and requirements for handling documents and information in electronic form within the enforcement process. Paragraph (3) states that parties involved in the enforcement process and interested persons have the right to transmit all documents and information related to enforcement electronically. Documents submitted electronically must be signed with a qualified electronic signature or verified through other means to confirm the identity of the sender. And paragraph (6) addresses the storage of documents within the electronic executive file maintained by the bailiff.

Digital copies of documents that are originally on paper form and received during the enforcement process are stored in the electronic executive file. This digital archiving includes most documents, with exceptions specified by legal requirements that prevent digitization. Paper documents that cannot be digitized due to specific legal constraints are maintained in their original form, and the bailiff records this exception in the electronic executive file through a reasoned order. Paper documents received by the bailiff's office must be digitized within a maximum of five working days from the date of their receipt. This ensures that all relevant documents are promptly included in the electronic executive file for comprehensive record-keeping and accessibility. The integration of electronic transmission and storage of documents streamlines the enforcement process, improving efficiency and accessibility of information for all parties involved. Compliance with qualified electronic signatures and identity verification mechanisms ensures the authenticity and integrity of electronically submitted documents, aligning with legal standards and ensuring procedural fairness.

Another good example is Ukraine. According to Article 431(1) of the Civil Procedure Code of Ukraine [10], judgments are enforced through writs of enforcement issued by the court of first instance. These writs can be issued in electronic form using the Unified Judicial Information and Telecommunication System. This system facilitates the preparation of procedural documents by filling out prescribed forms provided by the Regulations on the Unified Judicial Information and Telecommunication System. Overall, Ukraine's adoption of electronic writs of enforcement demonstrates its commitment to modernizing and enhancing the efficiency of its judicial processes. By utilizing electronic formats and digital signatures, Ukraine aims to expedite enforcement proceedings while maintaining the necessary legal safeguards and ensuring the reliability of enforcement documents. This approach aligns with global trends towards digitalization in legal systems, aiming to improve accessibility and effectiveness in judicial enforcement mechanisms.

According to Article 760 of the Polish Procedural Code [11], the submission of requests and statements in enforcement proceedings offers flexibility to the applicant. Applicants have the option to submit their requests and statements in enforcement proceedings either in writing or verbally, which is recorded in minutes. This flexibility allows applicants to choose the method that suits their preference or the specific requirements of their case. However, if a specific provision mandates or if the applicant elects to use

the Information and Communication Technology (ICT) system, then applications and declarations must be submitted exclusively through this system. This requirement underscores Poland's effort to integrate electronic means into its legal processes, aiming to enhance efficiency and accessibility in enforcement proceedings.

The provision reflects Poland's legal framework that accommodates traditional written submissions as well as modern electronic submissions. It acknowledges the evolving role of technology in legal proceedings, offering stakeholders the option to leverage ICT systems for streamlined and efficient processing of enforcement requests. The use of ICT systems ensures consistency and standardization in the submission of documents, contributing to improved administrative efficiency and transparency. It also aligns with broader European trends towards digitalization in legal systems, promoting the use of electronic means to facilitate judicial processes.

CONCLUSION

The inclusion of electronic enforcement writs in the Republic of Moldova is a crucial step towards modernizing its legal system and improving the efficiency of the enforcement process. The traditional method of issuing and processing enforcement writs, which requires physical travel and handling of paper documents, poses significant financial and time burdens on creditors and their representatives. This outdated system often leads to delays and increased costs, hindering the swift execution of justice. Adopting electronic enforcement writs offers numerous advantages. Firstly, it streamlines the administrative processes involved in issuing and executing enforcement writs, thereby saving time and reducing the workload on court staff. Electronic writs can be issued and transmitted instantly, eliminating the need for physical presence and reducing the risk of lost or damaged documents.

Secondly, the digitization of enforcement writs enhances accessibility and convenience for all parties involved. Creditors can submit and receive documents electronically, regardless of their location, which is particularly beneficial in a country like Moldova where travel across the national territory can be cumbersome and costly. Furthermore, electronic enforcement writs align with the global trend towards digitization in legal systems, as seen in countries like Estonia, Lithuania, and Ukraine. These countries have successfully integrated electronic means in their enforcement procedures, resulting in more efficient and transparent processes. For instance, Estonia allows applications for enforcement to be submitted electronically with digital signatures, ensuring authenticity and security.

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