

BURGAS FREE UNIVERSITY  
CENTRE FOR LEGAL STUDIES



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**ENFORCEMENT OF MONETARY OBLIGATIONS ON SHARES AND  
STOCKS IN COMMERCIAL COMPANIES AND ON A COMMERCIAL  
ENTERPRISE**

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**ABSTRACT**



DISSERTATION FOR THE AWARD OF THE DEGREE OF DOCTOR OF  
EDUCATION AND SCIENCE  
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# **I. GENERAL CHARACTERISTICS OF THE DISSERTATION**

## **1. Relevance of the Topic and Practical Significance of the Study**

The topic of enforcement of monetary obligations on shares and stocks in commercial companies and on commercial enterprise was chosen in view of the need to incorporate our doctrine and practice to the latest trends in foreign regulations and research on the institute of enforcement of monetary obligations. The dynamics of the "creditor-debtor" relationship globally requires a "*serious response*" from the institutions and the modernization of both the institute itself, in terms of its harmonization with EU legislation, and the introduction of modern, fast and adequate electronic enforcement.

In this regard, the thesis does not remain isolated from new trends and Practice. Therefore, it is aimed on the one hand at overcoming the narrow positivist approach in the research, and on the other - at analysis through the prism of a broader legal-dogmatic, historical-legal and comparative-legal basis, while revealing the latest directions in the development of the regulation of modern legislations.

## **2. Subject, aim and methods of the research**

The subject of this dissertation is the peculiarities and legal problems posed by the enforcement of monetary obligations on shares in commercial companies and on a commercial enterprise.

The aim of the scientific research is to make a comprehensive analysis of the proceedings for the enforcement of monetary obligations on shares and stocks in commercial companies and on a commercial enterprise, which will reveal the

characteristic features of the current Bulgarian legislation, designed against the background of its functional analogues in foreign legislations. Concrete proposals aimed at harmonising the Bulgarian legislation with the European one are also set out, while efforts are made to avoid "mechanical" borrowing.

Historical, comparative and positive law arguments are presented in support of the view that the institution of enforcement of monetary remedies is most closely linked in legal-logical terms to the resolution of the conflict between the interests of the debtor and the claimant.

The work "draws" on a wide range of general and special methods for conducting theoretical research in the field of legal science, the leading ones being the critical analysis and the formal-logical approach, which are used in many places in the study - in clarifying the functions and elements of the factual composition of the enforcement methods, as well as the various theories of their legal nature, but above all in interpreting the provisions and justifying the need for urgent changes in their normative content due to the dynamics of the development of the

The historical method is used to trace the emergence and historical development of the institution of the execution of monetary remedies and its adoption in the legislation of countries from different legal families (Romanesque, Germanic and Anglo-American), as well as to trace its reception in Bulgarian post-liberation law.

The analytical method is applied in revealing the goals and objectives of the executive means and in clarifying their functional characteristics.

Of the special scientific methods, the most widely applied are the legal-dogmatic and comparative law methods, through which the functional analogues of the enforcement methods in foreign legislations are clarified and the way in

which the existing legislation in our country fits into the general comparative law background is sought. The legal-dogmatic method has been widely used in the analysis of the existing regulations of the means of enforcement in the CCP.

The work applies a number of methods of interpreting law such as linguistic, systematic, teleological, expansive and narrow interpretation. Some of the devices used to fill in the gaps in the civil law such as the analogy of law and analogy of right and also the application of the stronger ground argument and arguments to the contrary are also used.

### **3. Volume and structure of the dissertation**

The dissertation consists of a total of 307 pages, structured in three chapters, paragraphs, paragraphs and sub-paragraphs with subject headings, which consistently clarify the functions and development of executive means, their scope, their factual composition and legal nature. It also includes: a list of abbreviations used; an annex with a synthesised set of *de lege ferenda* proposals, previously argued in the text itself. The bibliography includes 69 titles, of which 39 in Bulgarian, 21 in English and German and 9 sources available on the Internet.

Structurally, the study comprises an introduction, three chapters and a conclusion. The first chapter covers a description of the concepts, the subject of the study, as well as a historical and comparative legal analysis of the issues. The second chapter deals with the objects of enforcement of monetary obligations, and the third - with the admissibility of the enforcement process and the right of enforcement of monetary obligations on shares in commercial companies and on a commercial enterprise.

The text is in line with legislation and case law as of January 2023.

## **II. BRIEF OUTLINE OF THE MAIN CONTENT OF THE DISSERTATION**

### **1. Chapter one. Concept and legal nature of enforcement of monetary obligations on shares in commercial companies and on a commercial enterprise**

The first chapter deals with the concepts, the subject of the dissertation and the nature of the enforcement of monetary obligations on shares in commercial companies and on a commercial enterprise.

The historical analysis includes a comparison between the main moments in the theory of civil litigation (in particular in the institute of enforcement of monetary obligations, in the periods of development of Bulgarian civil litigation). It traces the institute of enforcement of monetary obligations under the Civil Procedure Act (1892-1952), under the Civil Procedure Code of 1952 (repealed), and under the new Civil Procedure Code of 2008.

The comparative-legal analysis covers the trends in foreign regulations of the institute of enforcement of monetary obligations, affecting the legislation of countries representing different legal families - the UK, the USA, the countries of North and South-East Asia and the Member States of the European Union.

## **2. Chapter Two. Objects of enforcement of monetary obligations**

The study of the characteristics of the objects of enforcement constitutes a preparatory stage for the purposes of the study.

The analysis of the peculiarities of each of the objects of cash execution created the prerequisite for the smooth transition to the next step, which constitutes the essence of the dissertation work.

Topics were raised on the peculiarities of shares in general partnerships, limited liability companies, limited partnerships, and the peculiarities of shares and business enterprise as objects of cash execution.

## **3. Chapter Three. Admissibility of Enforcement Proceedings and Right of Enforcement of Monetary Obligations on Shares in Commercial Companies and on a Commercial Enterprise**

When **examining the specifics of the enforcement of monetary obligations on shares in a partnership**, emphasis was placed on the correlation between Art. 1 CCP and Art. 1 OF THE CIVIL CODE.

The opinion of V. Popova and L. Kornezov that it is irrelevant whether the unsuccessful enforcement on the movable property of the debtor-partner was conducted before or after the attachment.

It is found that there are problems concerning the correlation between Art. 1 CCP and Art. 96 para. 398b(1) of the Civil Code, since the problems already existing under Art. 1 of the old CCP.

It was concluded that Article 517(2) of the CCP does not specify all the consequences of the attachment of a share in a partnership.

The problem was highlighted that the six-month period provided for empowering the creditor to bring the action for dissolution of the collecting society is on the one hand too long and on the other hand Article 517(2)(2) does not specify the exact moment from which this period starts to run.

It was concluded that the filing of the action for dissolution of a general partnership and the subsequent procedural steps were too "cumbersome" and inefficient, and that the time limits set in no way corresponded to the nature of the enforcement process, which requires timeliness in procedures and efficiency. It was also submitted that the balance between respect for the interests of the claimant and the debtor-partner, which is essential to the fairness of the relationship in question, was not respected.

The hypotheses of **enforcement of monetary obligations on shares in a partnership** of more than one partner by the same and different creditors were studied, which are of particular practical importance.

Emphasis was laid on the hypothesis of enforcement of monetary obligations on shares in a partnership, in case the company's assets are insufficient to satisfy the claim against the debtor partner.

The hypothesis was also examined, where in the event of enforcement of monetary obligations on shares in a partnership, insolvency proceedings are opened against the company.



All the peculiarities and legal problems concerning the **execution of cash on shares in a limited liability company** were examined in detail.

In analysing the possibility of bringing a constitutional action for the dissolution of the limited liability company, in particular if the court found the claim to be well founded, the further development of the legal proceedings was discussed.

It was concluded that at this stage of the court proceedings, a relationship is created between, on the one hand, the procedure for liquidation of the commercial company and, on the other hand, the pending enforcement proceedings, as a result of which a relationship is also created between the court-appointed liquidator and the enforcement authority. It is this interaction that should be regulated by legislation through the necessary amendments to the LC.

There are many complications in directing **enforcement proceedings against limited partnership interests**, given the hybrid nature of limited partnerships. As a consequence of these complications, deviations from the typical development of the execution on a share of a commercial partnership, as laid down by law in Art. 517 para. 3 CCP. For this reason, an attempt has been made to systematize the procedure using various scientific techniques.

In order to resolve the issue of cash execution on limited partnership interests in an uncontroversial manner, a group of hypotheses and their sub-hypotheses were analysed and compared in detail, the most important of which, in terms of scientific and practical contribution, are the following:

- peculiarities of the enforcement of monetary obligations on limited partners' shares in a limited partnership in the situation where the partnership consists of one general partner and one limited partner;

- peculiarities of the enforcement of monetary obligations on limited partners' shares in a limited partnership in the situation where the partnership consists of one general partner and two limited partners;
- specific features of enforcement proceedings over limited partners' shares in a limited partnership where the partnership consists of two general partners and one limited partner;
- the particularities of the enforcement of monetary obligations on the shares of partners in a limited partnership in the situation where the partnership consists of one general partner and one limited partner.

Deviations were found in the proceedings for the calculation of the share of the departed partner in a limited partnership - it is done by preparing a balance sheet, where the assets of the partnership are valued at their market value. This principle of calculating the share of a dissolved partner in a limited partnership should be done from the market value of the assets. The principle has been adopted in European Union legislation - Article 33 of Council Regulation (EEC) No 2137/85 of 25 July 1985 on the European Economic Interest Grouping.

When examining the specifics of **enforcement proceedings over all shares of partners in a commercial partnership under Article 517(4) of the CCP**, it was concluded that the provision should be applicable also to enforcement over all shares in a limited partnership.

The opinion of L. Kornezov that the phrase "before the conclusion of the first hearing of the case" should be dropped from Article 517, paragraph 4, clause 2 of the CCP.

On the basis of the study carried out on the specifics of the **execution proceedings on available shares**, the right of the creditor to cancel the shares of the debtor was criticized from the point of view that it is settled by means of the

protective proceedings, which can be revoked by an action of any interested person under Article 537(2) of the CCP.

The opinion was expressed that the nature of this proceeding should not be protective, but should be a declaratory action, similar to the proceedings for the establishment of facts under Article 124(4) and (5) of the Civil Procedure Code, arguing that in protective proceedings the judgment does not have the force of res judicata, whereas in the present case the intended effect is that the judicially obtained cancellation of the shares should have the force of res judicata with respect to the parties to the dispute and can be opposed by any person.

An examination of the effects of a seizure of existing shares concluded that the legislature had not regulated the manner in which seized shares are voted.

A study of the **enforcement over units and shares in a limited partnership with shares concluded that the** general partnership rules apply to unlimited partners - general partners. Possible hypotheses arising from the termination of the participation of a general partner were examined.

When examining the topic of **enforcement of monetary obligations on a limited partner's share in a limited partnership with shares**, it was concluded that enforcement on a limited partner's share should be carried out according to the rules of enforcement on cash and book-entry shares (depending on their type).

In order to bring greater clarity to the subject, specific hypotheses arising from the termination of a limited partner's participation were examined.

Taking into account the fact that in the legal literature and in practice **the execution on a separate part of a commercial enterprise** is extremely poorly covered and the execution on a whole commercial enterprise is in no way provided for in the Bulgarian legislation, the dissertation was focused in two directions - on the one hand on the incompleteness concerning the execution on a separate part

of an enterprise and on the other hand on the necessity to regulate the execution on a whole enterprise by legislation. Specific legislative changes were proposed and argued in this respect.

### **III. MAIN CONTRIBUTIONS OF THE THESIS**

**1.** It is concluded that the filing of the action for dissolution of a partnership and the subsequent procedural steps are too "cumbersome" and inefficient, and the time limits set do not correspond in any way to the nature of the enforcement process, which requires timeliness in procedures and efficiency. It was also submitted that the balance between respect for the interests of the claimant and the debtor-partner, which is essential to the fairness of the relationship in question, had not been respected.

The hypotheses of enforcement of monetary obligations on shares in a partnership of more than one partner by the same and different creditors were studied, which are of particular practical importance.

Emphasis was laid on the hypothesis of enforcement of monetary obligations on shares in a partnership, in case the company's assets are insufficient to satisfy the claim against the debtor partner.

The hypothesis was also considered, where in the event of enforcement of monetary obligations on shares in a partnership, insolvency proceedings were opened against the company.

**2.** All the peculiarities related to the execution of cash on shares in a limited liability company were examined in detail.

In analysing the possibility of bringing a constitutional action for the dissolution of the limited liability company, in particular if the court found the claim to be well founded, the further development of the legal proceedings was discussed.

It was concluded that at this stage of the court proceedings, a relationship is created between, on the one hand, the procedure for liquidation of the commercial company and, on the other hand, the pending enforcement proceedings, as a consequence of which a relationship is created between the court-appointed liquidator and the enforcement authority. It is this interaction that should be regulated by legislation through the necessary amendments to the LC.

**3.** When directing the enforcement proceedings on the shares of partners in a limited partnership, deviations from the typical development of the enforcement on a share of a commercial partnership, legislatively laid down in Art. 3 CCP. For this reason, an attempt has been made to systematize the procedure using various scientific techniques.

In order to resolve the issue of cash execution on limited partnership interests in an uncontroversial manner, a group of hypotheses and their sub-hypotheses were analysed and compared in detail, the most important of which, in terms of scientific and practical contribution, are the following:

- peculiarities of the enforcement of monetary obligations on limited partners' shares in a limited partnership in the situation where the partnership consists of one general partner and one limited partner;
- peculiarities of the execution of monetary obligations on limited partners' shares in a limited partnership in the hypothesis where the partnership consists of one general partner and two limited partners;
- specific features of enforcement proceedings over limited partners' shares in a limited partnership where the partnership consists of two general partners and one limited partner;

- The peculiarities of the enforcement of monetary obligations on the shares of partners in a limited partnership in the hypothesis where the partnership consists of one general partner and one limited partner .

Deviations were found in the proceedings for the calculation of the share of the departed partner in a limited partnership - it is done by preparing a balance sheet, where the assets of the partnership are valued at their market value. This principle of calculating the share of a dissolved partner in a limited partnership should be done from the market value of the assets. The principle has been adopted in European Union legislation - Article 33 of Council Regulation (EEC) No 2137/85 of 25 July 1985 on the European Economic Interest Grouping.

**4.** When examining the specifics of enforcement proceedings on all shares of partners in a commercial partnership under Article 517(4) of the CCP, it was concluded that the provision should be applicable also to enforcement on all shares in a limited partnership.

**5. On the basis** of the study carried out on the specifics of the enforcement proceedings on available shares, the right of the creditor to cancel the shares of the debtor was criticized from the point of view that it is regulated by the means of the protective proceedings, which can be revoked upon the claim of any interested person under Article 537(2) of the CCP.

The opinion was expressed that the nature of these proceedings should not be protective, but should be a declaratory action, similar to the proceedings for the establishment of facts under Article 124(4) and (5) of the Civil Procedure Code, arguing that in protective proceedings the judgment does not have the force of *res judicata*, whereas in the present case the intended effect is that the judicially achieved cancellation of the shares should have

the force of res judicata in relation to the parties to the dispute and be capable of being opposed by any person.

An examination of the effects of a seizure of existing shares concluded that the legislature had not regulated the manner in which seized shares are voted.

**6.** In examining the enforcement over units and shares in a limited partnership with shares, it is concluded that the general partnership rules apply to unlimited partners - general partners. Possible hypotheses arising from the termination of the participation of a general partner were considered.

When examining the topic of enforcement of monetary obligations on a limited partner's share in a limited partnership with shares, it was concluded that enforcement on a limited partner's share should be carried out according to the rules of enforcement on cash and book-entry shares (depending on their type).

In order to bring greater clarity to the subject, specific hypotheses arising from the termination of a limited partner's participation were examined.

**7.** In view of the fact that in the legal literature and in practice the execution on a separate part of a commercial enterprise is extremely poorly covered and the execution on a whole commercial enterprise is in no way provided for in the Bulgarian legislation, the research was focused in two directions - on the one hand on the deficiencies concerning the execution on a separate part of an enterprise and on the other hand on the necessity to regulate the execution on a whole enterprise by legislation. Specific legislative changes were proposed and argued in this respect.



#### **IV. PRACTICAL SIGNIFICANCE OF THE STUDY**

The in-depth study of the enforcement of monetary obligations on shares and stocks in commercial companies and on a commercial enterprise justifies the usefulness of the conclusions and conclusions in the work, as it is an attempt to reach a reasonable conclusion about the quality of our regulation, the need for its modernization and, in parallel, to provoke additional interest in the modernization of enforcement proceedings and faster reaching the balance of the "creditor-debtor" relationship.

The reached conclusions and conclusions could be of significant benefit to the legislator in the process of normative drafting, in relation to supplementing and improving the regulation of enforcement proceedings. The dissertation would also be useful to legal practitioners in the field of civil procedural law.

## V. LIST OF PUBLICATIONS ON THE DISSERTATION TOPIC

1. Peculiarities of shares in limited liability companies as an object of enforcement of monetary obligations - *Yearbook of Varna Free University "Chernorizets Hrabar"*, no. XXV of 2019.
2. Development of the Bulgarian Civil Litigation - Comparison of the Main Moments of the Institute of Enforcement of Monetary Obligations - *sp. Legal Digest, 2021, Vol. XXVIII, pp. 104-115, And Burgas Free University.*
3. How the figure of the corporate debtor is perceived by the legislations of the UK, the USA and some Asian countries. Main highlights - *paper from 22.04.2021, presented at the "XXII ANNIVERSARY CONFERENCE FOR STUDENT RESEARCH WITH INTERNATIONAL PARTICIPATION", organized by Burgas Free University.*
4. Peculiarities of the general partnership and its shares as an object of cash execution - *Studia Iuris, issue 1, 2022 of the University of Plovdiv "Paisii Hilendarski"*.
5. The Institute of Enforcement of Monetary Obligations from the Perspective of the Recognition and Enforcement of Judgments in the Member States of the European Union. *e-Journal, issue 18, 2022 of Varna Free University "Chernorizets Hrabar"*.
6. Execution of Monetary Obligations on a Separate Part of a Commercial Enterprise - *in press in the Journal of Laws, No. Legal Digest, 2022, Volume XXIX of Burgas Free University.*