

Pagna ewlenija>Flus/Talbiet monetarji>L-Ordni Ewropea tal-Flas European payment order

Slovenja

1 Existence of an order for payment procedure

Slovenia recognises the following two payment order procedures:

- a payment order procedure regulated by the Articles 431 to 441 of the Civil Procedure Act (Zakon o pravdnem postopku, ZPP)
- an enforcement procedure based on an authentic document (invoice, bill of exchange or a 'cheque protest', accompanied, where appropriate, by return invoices in order to establish a claim, a public document, an extract from accounting records certified by the responsible person, an authenticated private document, a written statement of income from employment) before the Local Court in Ljubljana (Okrajno sodišče v Ljubljani), where the court, upon creditor's proposal, issues an enforcement order by way of an automated procedure and based on an authentic document within 3–4 days, by which:
 - a) the debtor is obliged to pay the amount required by the creditor (payment order or the condemnatory part of the enforcement order);
 - b) enforcement against the debtor's property indicated in the creditor's claim is authorised, provided that the debtor does not file an objection to the decision (authorisation of enforcement) within 8 days;
 - c) the debtor is obliged to pay the costs of proceedings (see paragraphs 23, 40c and 41 of the Enforcement and Securing of Claims Act (Zakon o izvršbi in zavarovanju, ZIZ)).

1.1 Scope of procedure

The payment order procedure is a special, fast-track procedure for enforcing a pecuniary claim that has fallen due, where the claim is supported by a document which the law determines as having greater evidential value (authentic document). A payment order is issued in both domestic and cross-border cases.

1.1.1 What types of claims are eligible (e.g. only pecuniary claims, only contractual claims etc.)?

A claim that forms the basis for a payment order may only contain the pecuniary liability (pecuniary claim). Only claims that are contractual or non-contractual liabilities and that have been nominally determined may form the subject of a claim. One exception is the notice of termination of commercial premises and the consequent emptying of stocks, where rules apply under a special procedure to issue a payment order. This exception is laid down in Article 29 of the Commercial Buildings and Premises Act (Zakon o poslovnih stavbah in poslovnih prostorih), which states that, on the basis of a notice of termination given by a lessor and a request to vacate a commercial building or commercial premises, a court shall issue an order to vacate the commercial building or commercial premises if it ensues from the notice of termination or request and from the tenancy agreement or the evidence referred to in the preceding Article that the lessor has the right to terminate or request that the commercial building or commercial premises be vacated.

Only contractual claims based on an authentic document may be the subject of payment order procedures.

1.1.2 Is there an upper limit regarding the value of the claim?

There is no upper limit on the value of the claim.

1.1.3 Is the use of that procedure optional or obligatory?

Under the provisions of the Civil Procedure Act, a court also issues a decision on issuing a payment order ex officio when a claimant in an action has not made application to this effect but the conditions for issuing a payment order have been met, i.e. the claimant files an ordinary action and does not propose that a payment order be issued. The issuing of a payment order is therefore obligatory for a court (a payment order is issued by an associate at the court) and does not depend on a claim from a claimant if the legally prescribed conditions for its issuing have been met.

The creditor may choose whether to file a mandatory payment action and propose a payment order be issued pursuant to Article 431 of the ZPP or file an electronic application for enforcement pursuant to Article 41 of the ZIZ, on the basis of which the central court issues a payment order by way of an automated procedure.

1.1.4 Is the procedure available if the defendant lives in another Member State or in a third country?

Yes.

1.2 Competent court

In Slovenia, jurisdiction to decide on a proposal to issue a payment order is determined in the same way as with other actions; this means that jurisdiction *ratione materiae* for issuing a payment order is held by district courts (okrožna sodišča) as well as local courts (okrajna sodišča). Jurisdiction *ratione materiae* is determined with regard to the value of the dispute (or with regard to the nature of the case, e.g. in commercial cases). Local courts have jurisdiction to adjudicate in disputes on property claims when the value of the item in question does not exceed EUR 20 000. District courts have jurisdiction to adjudicate in disputes on property claims when the value of the item in question exceeds EUR 20 000. Only district courts have the jurisdiction to hear and adjudicate on cases relating to commercial law at the first instance. Commercial disputes are those in which one party in a civil case is a legal person (company, institution, collective). Commercial disputes also include cases in which one of the parties is the state or another self-governing local community, such as a municipality. Territorial jurisdiction determines which of the courts with jurisdiction *ratione materiae* have jurisdiction to rule on a specific case. The general rule regarding territorial jurisdiction stipulates that in an action filed against a natural or legal person, the action must be filed with the court covering the area in which the defendant has permanent residence or in which the legal person has its registered office. If it is a case against a non-national natural or legal person, the court with general territorial jurisdiction is the court covering the area in which the natural person has residence in Slovenia or in which the legal person has its branch office. Slovenian law also has a rule on special territorial jurisdiction, which is determined in relation to the subject of the dispute and parties thereto.

For an enforcement procedure based on an authentic document in which payment orders are also issued, the Local Court of Ljubljana has exclusive jurisdiction.

For more on this, see the replies under 'Bringing a case to court'.

1.3 Formal requirements

Under Article 431 of the ZPP, the two conditions applying to the issuing of a payment order are as follows: the claim must refer to the pecuniary claim fallen due and there must exist an authentic document from which the claim derives. An action or motion to issue a payment order must contain all the elements that every action is obliged to contain: a reference to the court, the names and permanent or temporary residence of the parties, the names of the legal

representatives or agents, a specific request setting out the main subject of the case and the side claims, the facts supporting the claimant's request, evidence substantiating those facts, the value of the dispute and a signature. In addition, the authentic document (original or a certified copy) must be attached to the action.

The condition for issuing a payment order, which is contained in an enforcement order based on an authentic document (Article 41 of the ZIZ) is that an application for enforcement based on an authentic document must be filed electronically, a court fee must be paid and the application for enforcement based on an authentic document must include the following:

- names of the creditor and debtor including their identification data (e.g. tax number, personal identification number or date of birth);
- authentic document;
- debtor's liability;
- means and subject of enforcement;
- other information necessary, depending on the subject of enforcement, for the enforcement to be carried out; and
- request that the court order the debtor to pay the amount claimed, including costs incurred, within eight days, and in cases relating to bills of exchange and cheques, within three days after the order is served.

1.3.1 Is the use of a standardised form obligatory? (If yes, where can that form be obtained?)

Under Article 431 of the ZPP, there is no requirement in Slovenia to submit a motion to issue a payment order on a standardised form; indeed, no such form exists. The motion must contain the legally defined elements referred to above under point 1.3 (obligatory elements of an action).

In the process of issuing a resolution on enforcement based on a credible document (Article 41 of the ZIZ) containing a payment order, the application must be filed on a standard form (Article 29(2) of the ZIZ, the Rules on forms, types of enforcement and the course of the automated enforcement procedure) electronically (<https://evlozisce.sodisce.si/esodstvo/index.html>) or in writing.

1.3.2 Is representation by a lawyer required?

There is no requirement for parties to be represented by a lawyer in proceedings to issue a payment order (nor is this required in proceedings under Article 431 of the ZPP, nor under Article 41 of the ZIZ).

1.3.3 In how much detail do I have to describe the reason for the claim?

Under Article 431 of the ZPP, a mandatory payment action must state the basis and amount of debt, and proof that enables the truth of the claims made therein to be established; it must also indicate the amount and the currency, as well as the date the pecuniary claims fell due. If interest is being claimed, that interest must also be precisely defined (interest rate and the period for which the claim is being made). The due date of the claim must be clear from the authentic document.

In an enforcement based on an authentic document, the claim does not need to be further substantiated; an indication of an authentic document is sufficient (Article 41 of the ZIZ).

1.3.4 Is it necessary to present written evidence of the claim at issue? If yes, which documents are admissible as proof?

Yes, the original or a certified copy of the authentic document must be attached to the action or the motion to issue a payment order. There is no requirement to attach the original or a certified copy of the authentic document to issue a payment order in a commercial dispute. It is sufficient for a copy of this document to be certified by an authorised body of a legal person.

An authentic document is a document that does not have the quality of an executory title, but expresses a high degree of probability that the claim exists. A document is authentic if it is determined as such by the Civil Procedure Act or another act. Under the Civil Procedure Act, authentic documents are: public documents, private documents on which the signature of the debtor has been authenticated by a body authorised for authentication, bills of exchange and cheques, with the objection and the return invoices if these are required to give rise to a claim, extracts from authenticated books of account, invoices, and documents that have the character of a public document under special regulations. A foreign document that meets the conditions for use in Slovenia may also constitute an authentic document.

Exception: without the submission of an authentic document, the court issues a payment order against a defendant when the claim relates to a pecuniary claim that has fallen due that does not exceed EUR 2 000 and the action indicates the basis and level of the debt, and proof that enables the truth of the claims made therein to be established, where this exception does not apply to commercial disputes (Article 494 of the ZPP).

In an enforcement procedure based on an authentic document where a payment order is issued, it is not actually possible to submit an authentic document (since the information system does not allow this); but a declaration regarding the authentic document is sufficient (Article 41 of the ZIZ).

1.4 Rejection of application

The court will reject a payment order request if the preconditions for its issuing are not met, i.e. a pecuniary claim fallen due and the existence of an authentic document from which the claim derives.

Where the court does not dismiss the motion to issue a payment order, it continues the procedure on the basis of an action.

The Local Court in Ljubljana rejects the application for enforcement based on an authentic document if the claim is not due or if the defendant is bankrupt.

1.5 Appeal

No appeal is permitted against a decision dismissing a motion to issue a payment order, neither may the claimant contest this decision by means of an appeal against the judgement.

The legal remedy available to the defendant against a payment order issued is an objection. The deadline for an objection is eight days from the serving of a payment order on a defendant (three days in the case of disputes involving bills of exchange and cheques). An objection must be substantiated, otherwise it shall be deemed to have no grounds. An appeal may be lodged against the decision in which the court rules on the objection.

Where a defendant contests a payment order only with regard to the ruling on costs, this ruling may only be contested by means of an appeal against the decision.

The claimant may appeal against the Local Court in Ljubljana's decision rejecting the application for enforcement based on an authentic document within 8 days, the appeal being ruled on by the Higher Court in Ljubljana.

1.6 Statement of opposition

The defendant may issue an objection against the claimant's claim. An objection must be justified. The objection must state the facts that support the objection and adduce evidence, otherwise it shall be deemed to be unfounded (Article 435(2) of the ZPP). The defendant must therefore state in the objection the legally significant facts, i.e. the facts based on which the claim could be dismissed (if they are proved to be true). Assertions of these facts must be concrete and specific.

An objection may be lodged within 8 days against a Local Court in Ljubljana's decision granting an application for enforcement based on an authentic document and issuing an enforcement order based on an authentic document. An objection must be justified. An objection is considered justified when the debtor has indicated the facts based on which the claimant's claim could be dismissed (e.g. that the debt had been paid) and adduced evidence supporting the facts alleged in the objection (Article 61 of the ZIZ). The Local Court in Ljubljana decides on an objection.

1.7 Effect of statement of opposition

Where a court does not reject a defendant's objection as having been filed too late or being incomplete and unlawful, or does not dismiss it, it shall continue the procedure in accordance with the action.

If a defendant submits a justified objection, the court issues a decision annulling the payment order and, after the decision has become final, proceeds with the main issue.

The parties may state new facts and submit new evidence at the first main hearing, while the defendant may also make new objections regarding the contested part of the payment order.

If the Local Court in Ljubljana upholds an objection against an enforcement order based on an authentic document, the court annuls the part of the enforcement order permitting the enforcement and naming the executor, as well as the acts of execution performed (i.e. the court does not annul the payment order, but rather decides whether the payment order is to remain in force or whether it is to be annulled in a later judgment). The court then proceeds with the proceedings as in the case of an objection to a payment order; if it does not have jurisdiction, it declares that it is not competent and the case is referred to the competent court. In doing so, the court takes into account the agreement on territorial jurisdiction if the creditor claimed and specified it in the application for enforcement, or if the debtor claimed it in the objection against the enforcement order and submitted it to the court. An application for enforcement based on an authentic document that served as the basis for issuing an annulled enforcement order is considered an action in civil proceedings (Article 62 of the ZIZ).

1.8 Effect of lack of statement of opposition

Unless the opposing party lodges an objection or an appeal, the decision or the payment order shall become final and enforceable.

If the debtor does not object to an enforcement order based on an authentic document within 8 days, the enforcement order based on an authentic document becomes final and enforceable (this also applies to the payment order), and the enforcement of the creditor's claim will result in an enforcement against the debtor's objects of enforcement stated in the claimant's application for enforcement.

1.8.1 What needs to be done in order to obtain an enforceable decision?

The claimant must explicitly request the court to issue a certificate of enforceability. A court ruling is enforceable if it becomes final and if the deadline for voluntary compliance with the obligations has passed (Article 19(1) of the Enforcement and Securing of Claims Act).

The Local Court in Ljubljana issues a certificate of finality and enforceability of an enforcement order based on an authentic document ex officio and sends it to the creditor and (together with the enforcement order) to all those responsible for the enforcement of the order (the executor, the bank, the employer, etc.).

1.8.2 Is this decision final or is there still a possibility for the defendant to appeal against that decision?

A payment order against which no objection has been lodged, or where an objection has been refused or dismissed, shall become final and may no longer be contested by means of an appeal.

A final payment order may be contested by means of extraordinary legal remedies.

A final payment order based on an authentic document containing a payment order may be contested by means of extraordinary legal remedies (motions for reopening a case and appeals on a point of law, Article 10 of the ZIZ).

Related links

<http://www.pisrs.si/Pis.web/pregledPredpisa?sop=1998-01-2303>

<http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO1212>

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