

SECURING PUBLIC CLAIMS ACCORDING TO THE TAX AND SOCIAL INSURANCE PROCEDURE CODE OF THE REPUBLIC OF BULGARIA

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Abstract

When we speak about securing public claims we should first explain the methods for collecting public claims. In order to ensure the payment of public claims, the legislation regulates legal institutions through which effective collection of claims is achieved. Guarantees are legal instruments that the state creates and uses to ensure the collection of its claims. According to the Tax and Social Insurance Procedure Code of the Republic of Bulgaria, public claim proceedings are regulated as independent proceedings together with the proceedings for collecting public claims.

The present publication is focused on the guarantees for the enforcement of public claims, securing public claims, competent authorities and instruments, precautionary measures and their effect.

Keywords: *Tax law, public claims, securing, precautionary measures.*

1. Introduction

The effective collection of public claims is achieved through the legal institutions introduced in the legislation, which ensure their payment. Guarantees are legal means that the state creates and uses to secure its claims. In the legal literature, there is a distinction between guarantees in the broad sense and guarantees in the narrow sense.¹

2. Content

Guarantees in a broad sense are regulated by current legislation and their main purpose is preventive - state coercion has not yet been implemented, although in some cases the obligations have become liquid and exigible. Guarantees in the narrow sense are understood as legal institutions established in connection with the enforcement proceedings themselves - the institutions of privileges and precautionary proceedings.² Guarantees in a broad sense are considered to be financial automatism (obligation of third parties to withhold public claims without issuing an act for their establishment; advance payment of fees before the service is performed by a state body; submission of declarations, liability for another person's financial debt; joint liability, Offsetting, Extinguished Prescription, coercive enforcement).

The privileges of the state in the enforcement process are considered as guarantees in the narrow sense. The term privileges used in art. 136 of the Obligations and Contracts Act (OCA) and art. 721, para. 1 of the Commerce Act (CA), reveals the

possibility recognized by law that a claim be satisfied with preference by the entire property of the debtor or by a specific object of the debtor. It is about the preference of the state for its public claims before other creditors of the debtor. According to the provisions of art. 136 of the OCA and art. 722 CA, the state is not in first place among the creditors of the debtor.

Art. 133 OCA provides that the entire property of the debtor shall serve as general security for his creditors who shall have equal right to be satisfied by it provided there are no legal grounds for privileges. In the legal regulation concerning privileges in art. 136 of the OCA there are two types of privileges – special privileges in relation to specific items of the debtor (art. 136, para. 1, items 1-4 of the OCA) and general privileges applied to all the debtor's property. The order of the privileges specified in art. 136 of the OCA gives priority to the special privileges.

In the case of special privileges, claims of the state on taxes on a certain property or on a motor vehicle (art. 136, para. 1, item 2 of the OCA) are preceded by the claims on costs for securing and forcible execution. These are local taxes, which are public municipal claims. The privilege applies only to local taxes and not to fees. After the claims for local taxes come other special privileges - claims secured by a pledge or mortgage - out of the value of the pledged or mortgaged properties; (art. 136, para. 1, item 3 of the OCA), claims for which the right of retention is exercised - out of the value of the retained property; should this claim arise from costs for maintenance or improvement of the retained property, it shall be satisfied before the claims under item 3 (art. 136, para. 1, item 4 of the OCA).

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¹ S. Penov, *Financial Law, General Part*, Sofia, University Press „Sv. Kliment Ohridski”, 2021, p. 286.

² G. Petkanov, *Tax Process*, Sofia. Tilia OOD, 1996, p. 139.

Under the general privileges, claims of the state other than fines (art. 136, para. 1, item 6 of the OCA), are preceded by the maintenance claims, as they are satisfied preferentially from the entire property of the debtor. State claims should be understood as state and municipal claims with different origin, and not only public state and municipal claims within the meaning of art. 162, para. 2 of the Tax and Social Insurance Procedure Code (TSIPC).

Upon distribution of the liquidated property in the bankruptcy proceedings according to art. 722, para. 1, item 6 of the CA, public-law receivables of the State and the municipalities such as taxes, customs duties, fees, mandatory social-security contributions and others, which have arisen prior to the date of the decision on initiation of bankruptcy proceedings are in sixth place in the order of payment of claims.

2.1. Legal regulation of the precautionary proceedings

The function of the precautionary proceedings is to preserve the debtor's property so that the public claim can be collected by the procedure established for coercive enforcement in case the debtor fails to comply voluntarily. In the TSIPC, an entire chapter called "Security Interests" is devoted to precautionary proceedings. Also, in art. 1 of the TSIPC, the proceedings for securing public claims are regulated as an independent proceeding, together with the proceedings for collection of public claims. The essence of the precautionary proceedings is that the persons are deprived of the physical and legal opportunity to perform actions with which to make changes in their property sphere.³

The legal framework of the TSIPC distinguishes 6 types of precautionary proceedings:

- Proceedings for imposition of preliminary precautionary measures, regulated in art. 121 of the TSIPC during the audit;
- Proceedings for preliminary precautions in case of fiscal control on the movement of goods of high fiscal risk - art. 121a of the TSIPC;
- Proceedings for imposition of precautionary measures in order to stay the enforcement of the audit instrument under art. 153 and art. 157 TSIPC, whose function is to suspend the preliminary implementation of the audit instrument when appealing them administratively or judicially;
- Proceedings for imposition of precautionary measures upon notification of dissolution, transfer and transformation of enterprise under art. 77 of the TSIPC and upon notification of adjudication in bankruptcy under art. 78 of the TSIPC in conjunction with art. 195, para. 5 TSIPC;

- Precautionary proceedings regulated in Chapter 24 of the TSIPC;

- Precautionary proceedings in the phase of coercive enforcement under art. 221, para. 4 of the TSIPC (in cases where no precautionary measures have been imposed, the coercive enforcement against claims of the debtor and against corporeal movables and immovables thereof shall commence by the imposition of a garnishment or, respectively, by recording of a preventive attachment, acting on a warrant issued by the public enforcement agent.)

All types of precautionary proceedings under the TSIPC are developed on the basis of the principles of tax law, namely the principle of legality (art. 2 of the TSIPC), objectivity (art. 3 of the TSIPC), autonomy and independence (art. 4 of the TSIPC), *ex officio* Principle (art. 5 TSIPC), good faith and right to defense (art. 6 TSIPC), as well as the principle of the *pro rata basis* in the imposition of precautionary measures.

In this publication we will consider the precautionary proceeding provided for in Chapter 24 of the TSIPC, as it applies in principle to all public claims, unless otherwise provided in special legislation.

2.2. Authorities and Documents in precautionary proceedings

State authorities with explicitly assigned competence participate in the precautionary proceedings - these are public enforcement agents. According to art. 167, para. 1 of the TSIPC, the public enforcement agent shall be a coercive enforcement authority and shall perform the steps for securing and coercive enforcement of public claims according to the procedure established by this Code. Public enforcement agents are authorities of the National Revenue Agency. When it comes to secure public municipal claims from local taxes and fees, the TSIPC applies, and the rights and obligations of public enforcement agents belong to the employees of the municipal administration, determined by an order of the mayor of the municipality.

The documents issued by the public enforcement agent when imposing precautionary measures are called warrant (art. 195, para. 3 TSIPC). The content of the warrant is regulated in art. 196, para. 1 of the TSIPC and it must contain the name and position of the authority which issues the said warrant; the title of the instrument, the number and date of issuance; the grounds of fact and law for the issuance thereof; the designation, identification number, mailing address and permanent address or, respectively, the registered office and address of the place of management of the debtor; the amount of the public obligation and the interest; the type of the precautionary measure and the

³ S. Penov, *Financial Law, General Part*, Sofia, University Press Sv. Kliment Ohridski, 2021, p. 294.

property whereon the said measure is imposed; an injunction on disposition of the property whereon the precautionary measure is imposed; the authority before whom the warrant is appealable and the time limit for appeal; the date of issuance of the warrant and the signature of the issuing authority, with an indication of the position thereof. The lack of some of the mandatory elements of the content may lead to the issued act being found legally non-conforming. According to art. 196, para. 2 of the TSIPC, a copy of the warrant shall be sent to the debtor and to the third parties affected by the actions for imposition of precautionary measures.

According to art. 195, para. 1 of the TSIPC, the preconditions for initiating the precautionary proceedings are that the public claim be ascertained and exigible. The public claim shall be assessed in terms of grounds and amount by a law at the time of the act for its establishment.

The law allows the debtor to request from the public enforcement agents the replacement of precautionary measures, provided that he offers an equivalent security interest.

The legislator has also provided the possibility of appealing the warrant imposing precautionary measures. The procedure for this is specified in Art. 197 TSIPC. An obligatory administrative appeal is envisaged before the territorial director of the National Revenue Agency (NRA), respectively, for public municipal claims - the head of the unit for local taxes and fees in the respective municipality. The second phase of the appeal is in court before the administrative court exercising jurisdiction over the permanent address or the registered office of the appellant. The deadline for filing a complaint is 7 days and is preclusive. The administrative authority shall issue a reasoned decision within fourteen days, which shall be subject to appeal within seven days from the service of the decision. The court assesses the legal conformity of the act by which the precautionary measure was imposed. The court shall revoke the precautionary measure if the debtor provides security in the form of cash, an irrevocable and unconditional bank guarantee or government securities, if an enforcement title does not exist. According to art. 197, para. 6 of the TSIPC, the appeal by administrative and judicial order does not suspend the execution of the warrant for imposition of a precautionary measure, *i.e.* the appeal has no suspensive effect.

The public enforcement agent also has the competence to revoke the security interest at the request of the debtor or *ex officio*. A precondition for this is extinguishment of the public debt, in case of significant disproportion of the imposed precautionary measures, as well as in case of amnesty of the public debt imposed by law.

2.3. Types of Precautionary Measures

In art. 198, para. 1 of the TSIPC are indicated the types of precautionary measures. They may be imposed together or separately in compliance with the principle of proportionality, and the total amount of security interest must not exceed the amount of the claims. The precautionary measures are:

- preventive attachment of a corporeal immovable or a ship;
- garnishment of corporeal movables and claims of the debtor;
- garnishment of the bank accounts of the debtor;
- garnishment of goods of the debtor in circulation.

The legislator explicitly prohibits the imposition of precautionary measures on the non-seizable property of the debtor under art. 213 TSIPC. An act of the public enforcement agent that does not comply with this legal prohibition is illegal.

According to art. 200 of the TSIPC, a garnishment shall be imposed by the public enforcement agent by means of a security interest warrant. This method applies to corporeal movables and claims of the debtor.

2.3.1. Garnishment of Corporeal Movables

Upon garnishment of a corporeal movable, the public enforcement agent shall draw up an inventory, shall value and shall deliver the item of property for safe-keeping to the debtor or to a third party, or shall impound and store the items of property, and a garnishment mark (sticker) may be placed on the item of property (art. 201 para. 1 TSIPC).

In the cases where a motor vehicle is garnished, a notice of the garnishment imposed shall be transmitted to the authorities of the Ministry of Interior. A change of registration shall not be admitted before the lifting of the garnishment (art. 201 para. 3 TSIPC).

In the cases where a civil aircraft is garnished, a notice of the garnishment imposed shall be transmitted to the Directorate General of Civil Aviation Administration for entry into the civil aircraft register. The transfer of the right of ownership, the creation and transfer of rights in rem and the creation of encumbrances in respect of the aircraft, effected after receipt of the notice of the garnishment imposed, shall have no effect in respect of the public execution creditor (art. 201 para. 4 TSIPC).

In the cases where the garnishment is imposed on agricultural or forestry machinery subject to registration according to the procedure established by art. 11 of the Agricultural and Forestry Machinery Registration and Control Act, a notice of the garnishment imposed shall be sent to the relevant Regional Directorate for Agriculture in the register of which the garnished agricultural or forestry machinery

is subject to registration. Any transfer of the right of ownership, creation and transfer of rights in rem and creation of encumbrances of agricultural or forestry machinery, effected after receipt of the communication on a garnishment imposed, shall have no effect in respect of the public execution creditor (art. 201 para. 5 TSIPC).

2.3.2. Garnishment of Debtor's claims from a third party

Garnishment of Debtor's claims may be differentiated in view of the debtor's obligation to the debtor. Such third parties may be banks or other natural or legal persons.

According to art. 202, para. 1 TSIPC, claims of the debtor to banks shall be garnished by means of service on the banks of a garnishment notice, and the garnishment shall be considered imposed as from the time on the day of service on the bank of the garnishment notice. All types of bank accounts, deposit accounts, as well as items of property deposited in safe-deposit vaults, including the content of safe-deposit boxes and amounts delivered by the debtor for trust management, shall be subject to garnishment.

Electronic garnishment of accounts receivable by the debtor into a bank account shall be imposed by a public enforcement agent under the terms and according to the procedure established by art. 450a of the Code of Civil Procedure and for the purposes of collecting public claims, the State and municipalities shall be exempt from the payment of fees and other costs for access to the Single Environment for Exchange of Electronic Garnishments referred to in art. 450a of the Code of Civil Procedure.

Garnishment of the debtor's claims on a payment account opened with a payment service provider other than a bank shall be carried out by serving a garnishment notice on the payment service provider and the garnishment shall be considered imposed at the time on the day of serving the garnishment notice on the payment service provider (art. 202, para. 7 TSIPC).

Garnishment of a liquid or exigible claim of the debtor from a third party shall be imposed by means of a garnishment notice which shall be transmitted to the debtor, to the taxable person and to the banks wherewith the garnishee holds accounts and garnishment shall be considered imposed in respect of the garnishee and the banks as from the day and time of receipt of the garnishment notice (art. 202, para. 2 and 3 TSIPC).

Claims under writs of execution shall be garnished by means of drawing up an inventory and impounding by the public enforcement agent, who shall deliver the said writs for safe-keeping at a bank. A memorandum shall be drawn up on the impoundment

and delivery of the writs of execution to a bank (art. 202, para. 4 TSIPC).

If a garnished claim is secured by a pledge, the pledgee shall be ordered not to deliver the item of property pledged to the debtor and to surrender the said item to the public enforcement agent (art. 202, para. 5 TSIPC).

If the garnished claim is secured by a mortgage, the garnishment shall be noted in the relevant book at the Recording Service (art. 202, para. 6 TSIPC).

2.3.3. Garnishment of Securities and Participating Interests

This type of garnishment covers all property rights under the security.

Physical securities shall be garnished by means of drawing up an inventory and impounding by the public enforcement agent, who shall deliver the said securities for safe-keeping at a bank. A memorandum shall be drawn up on the impoundment and delivery of the physical securities at a bank. Upon garnishment of physical registered shares or bonds, the public enforcement agent shall notify the company of this. The garnishment shall have effect in respect of the company as from the receipt of the garnishment notice (art. 203, para. 2 TSIPC).

Garnishment of dematerialised securities shall be imposed by means of dispatch of a garnishment notice to the Central Securities Register, simultaneously notifying the company. The central securities register shall immediately notify the relevant central securities depository with which the securities have been registered and the relevant regulated market of the garnishment imposed (art. 203, para. 3 TSIPC). Garnishment shall take effect as from the time of service of the garnishment notice.

Garnishment of government securities shall be imposed by means of dispatch of a garnishment notice to the person keeping a register of government securities (art. 203, para. 4 TSIPC).

Garnishment of an equity interest in a commercial corporation shall be imposed by means of dispatch of a garnishment notice to the Registry Agency. The garnishment shall be recorded according to the procedure applicable to the recording of a pledge on an equity interest in a commercial corporation and shall take effect as from the recording. The Registry Agency shall notify the company of the recorded garnishment (art. 203, para. 8 TSIPC).

2.3.4. Garnishment of Cash

Cash held by the debtor in national or foreign currency until otherwise proven and such found on the person thereof, at the residence thereof or in other premises, means of transport, offices, safes or safe-deposit boxes owned or rented thereby shall be

garnished herein by means of drawing up an inventory, impounding and depositing the cash on the account of the public enforcement agent (art. 204 TSIPC).

2.3.5. Garnishment of Goods in Circulation

Goods in circulation shall be garnished by means of drawing up an inventory. The goods in circulation shall be delivered for safe-keeping to the debtor and to the financially accountable executive officers who dispose of the said goods. The sale of goods in circulation and the purchase of the necessary raw and prime materials, as well as the payment of the costs of production and distribution, may be effected only after a prior written consent of the public enforcement agent who has created the security interest and under conditions determined thereby (art. 207 TSIPC).

2.3.6. Preventive Attachment

As a type of security interest, the preventive attachment is aimed at a corporeal immovable or a ship owned by the debtor.

A corporeal immovable shall be attached by means of recording the warrant at the order of the competent recording magistrate according to the procedure for recording. The recordation judge shall send a notification to the debtor of the fact of recordation (art. 205, para.1 TSIPC).

The legal effect of the preventive attachment arises from its registration. The procedure for recording preventive attachment on corporeal immovable is regulated in the Rules for entries, which exhaustively list the required data on the foreclosed corporeal immovable, data on the creditor, the debtor, with the aim to individualize the corporeal immovable.

A ship shall be attached by means of recording the warrant in the relevant ship registers of the Maritime Administration Executive Agency. The Maritime Administration Executive Agency shall send a notification to the debtor of the fact of recordation. Any transfer of the right of ownership, creation and transfer of rights in rem and creation of encumbrances in respect of the ship, effected after receipt of the garnishment warrant, shall have no effect in respect of the public execution creditor (art. 205, para. 2 TSIPC).

3. Conclusions

From the above, we can conclude that the procedure for securing public claims occupies a central place in the tax enforcement process. By their legal nature, precautionary measures are a form of administrative procedural coercion aimed at successfully ensuring the future enforcement process.

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