

# SOME CONSIDERATIONS REGARDING THE NOTION OF ENFORCEMENT ORDER

Nicolae-Horia ȚIȚ\*

## Abstract

*The issue of enforcement orders is particularly important for the field of regulations applicable to the execution. Enforcement order are the fundament of enforcement proceedings, aimed at fulfilling the obligation contained in the title. With reference to the current regulation of enforcement orders, we must distinguish between formal titles, that require a verification of their enforceability prior to the onset of the enforcement proceedings, and substantial titles, which are enforceable by law at the end of the procedure of which they emanate. With reference to this distinction, the article analyses the characteristics of enforcement orders, making a number of clarifications and remarks about the procedure for declaration of enforceability, recently reintroduced into the Civil Procedure Code by Law no. 138/2014.*

**Keywords:** *enforcement, enforcement order, European enforcement order, declaration of enforceability, judgement.*

**Acknowledgement:** *this work was supported by the strategic grant POSDRU/159/1.5/S/141699, Project ID 141699, co-financed by the European Social Fund within the Sectorial Operational Program Human Resources Development 2007-2013.*

## 1. Introduction

The issue of enforcement increasingly concerns theorists and practitioners in Romania, especially after the advent of the new Civil Procedure Code (CPC). Enforcement rules go through a strong process of autonomy to those applicable to the trial phase of the civil trial<sup>1</sup>, a phenomenon that determines the individualization of civil execution law as a distinct branch of law<sup>2</sup>. There are numerous scientific papers on enforcement procedure (we refer in particular to courses and dissertations), many authors analyse enforcement issues and in many Law faculties enforcement procedure is studied as a matter separate from civil procedure. Modifications to the new CPC by Law no. 138/2014<sup>3</sup> intensified the interest in the matters regarding enforcement procedures, as well as the practical problems raised by the entry into force of

this law, from the time application of enforcement rules to the end to change the procedural rules (among them standing out the removal of the enforcement approval procedure from the jurisdiction of the enforcement court and the its attribution to the enforcement officer, the reintroduction of the declaration of enforceability procedure for arbitration awards and enforcement orders other than judgements, the regulation regarding the possibility to appeal only the minutes of the auction, and not the act of adjudication in the forced sale of immovable assets procedure etc.).

This article aims to address the issue of enforcement orders, based on the importance and relevance to the enforcement proceedings, under Article 632 para. 1 CPC. Although the importance of this topic is relatively high, it is to be noticed in the legal literature in Romania the absence of a monographic approach to the enforcement orders; however, there are numerous general studies<sup>4</sup> or

---

\* Senior Assistant, Ph D, Faculty of Law, Private Law Department, "Alexandru Ioan Cuza" University of Iași (e-mail: [horia.tit@gmail.com](mailto:horia.tit@gmail.com)).

<sup>1</sup> In another study, we brought as the main argument of the phenomenon of autonomy of enforcement procedure the terminology used in Art. 24 and 25 para. 1 CPC and art. 3 par. 1 of Law no. 76/2012, which tends to individualize enforcement proceedings as an activity different from the trial, given the possibility that the two are governed by different procedural rules. See, in this regard, Nicolae-Horia Țiț, "Conceptual Distinctions regarding the notion of Enforcement", *Journal of Public Administration, Finance and Law* Special issue 1 (2014): 146-147, accessed March 4th, 2015, [http://www.jopafll.com/uploads/issue6/CONCEPTUAL\\_DISTINCTIONS\\_REGARDING\\_THE\\_NOTION\\_OF\\_ENFORCEMENT.pdf](http://www.jopafll.com/uploads/issue6/CONCEPTUAL_DISTINCTIONS_REGARDING_THE_NOTION_OF_ENFORCEMENT.pdf)

For the theory of the separation of the enforcement from the jurisdictional phase of the trial („déjudiciarisation partielle des procédures civiles d'exécution"), see Francois Vinckel, *La codification des procédures civiles d'exécution* (Paris: Lexis Nexis, 2013).

<sup>2</sup> Gabriela Răducan, *Dreptul executării silite. Titlul executoriu european* (București: Hamangiu, 2009), 5.

<sup>3</sup> Published in Official Journal no. 753/16.10.2014, entered into force on the 19<sup>th</sup> of October 2014.

<sup>4</sup> Evelina Oprina, Ioan Gârbuleț, *Tratat teoretic și practic de executare silită. Volumul I. Teoria generală și procedurile execuționale conform noului Cod de procedură civilă și noului Cod civil* (București: Universul Juridic, 2013) 300-379, Gabriel Boroș (coord.), *Noul Cod de procedură civilă. Comentariu pe articole. Vol. II. Art. 527 - 1133* (București: Hamangiu, 2013), 101-114, Ioan Leș, *Noul Cod de procedură civilă. Comentariu pe articole, art. 1-1133* (București: C.H. Beck, 2013), 899-909, Gabriela Cristina Frențiu, Denisa-Livia Băldean, *Noul Cod de procedură civilă comentat și adnotat* (București: Hamangiu, 2013), 966-977, Ion Deleanu, Valentin Mitea, Sergiu Deleanu, *Tratat de procedură civilă. Vol. III, ediție revizuită, completată și actualizată. Noul Cod de procedură civilă* (București: Universul Juridic, 2013), 85-201, Ion Deleanu, Valentin Mitea, Sergiu Deleanu, *Noul Cod de procedură civilă, comentariu pe articole, Vol. II (art. 622-1133)* (București: Universul Juridic, 2013), 29-41; Gabriel Boroș, Mirela Stancu, *Drept procesual civil* (București: Hamangiu, 2015), 941-970. For the French

dedicated to certain categories of enforcement orders. Most contain a descriptive presentation of enforcement orders, listing the main regulations applicable, but relatively few conceptual distinctions. Through this paper, we propose a novel classification of executive orders, by reference to the substantive law and in particular to the general theory of obligations. To this end, we analyse the relevant provisions of the CPC and the Civil Code (CC) and the European regulations on executive titles, in order to highlight the relevance of the existence or occurrence of an enforcement order within the obligational legal relationship. Starting from the classical distinction made between judgments and other enforcement orders, we will consider both the substantial insight concerning the enforcement in kind and though compensation obligation and the procedural one, on the formalities to be carried out prior to the enforcement application. By this analysis, we propose to determine a change of approach in the matter of enforcement orders, especially in the context of generalization, by Regulation 1215/2012, of the possibility to certify as European Enforcement Orders of judgments given in a Member State<sup>5</sup>.

## 2. What we refer when we define and classify enforcement orders?

With reference to the provisions of art. 632-642 CPC, and exclusively from a formal perspective, enforceable titles can be classified into two broad categories: judgments and other documents or decisions which the law gives enforceable nature<sup>6</sup>, the essential difference in procedural terms, among them being that the first are not subject to the procedure of declaration of enforceability, while others are (art. 640<sup>1</sup> CCP for documents other than judgements and art. 615 CPC for arbitral awards).

By entering into the equation the concept of European Enforcement Order (EEO), they would individualize as a separate category (art. 636 CPC)<sup>7</sup>. We also might identify as a distinct category of enforceable titles those emitted during enforcement procedures, for which it is not necessary for a declaration of enforcement (e.g. the enforcement

officers minutes regarding expenses made during the procedure - Art. 696 para. 4 CPC, or the adjudication act as a result of forced real estate sale - Art. 855 para. 2 final sentence CPC, except that, for the act of adjudication it is necessary to create a new execution file, i.e. a new application for enforcement and a new verification of the conditions to trigger the enforcement, under Art. 665 CPC).

From another perspective, a substantial one, the enforcement order is the incarnation of a civil obligation<sup>8</sup>, capable of being implemented within the enforcement procedure prescribed by law (Art. 628 para. 1 CPC). What determines the existence of the enforcement order is the substantial legal relationship, whose content consists of rights and obligations whose breach or failure, improper or delayed fulfilment resulted in issuing the title, either by following an adversarial judicial proceedings (in case of judgments, European order for payment procedure or the judgement given in the European small claim procedure), or following a graceful procedure (like the declaration of enforceability or the certification as a European Enforcement Order for uncontested claims<sup>9</sup>).

Tracing the emergence of the enforceable title, we can talk about a phenomenon of crystallization of legal relationship, of certification and liquidation of the debt, if we were to consider the features that it must satisfy according to art. 662 CPC. This phenomenon puts its mark on procedure to be followed in order to obtain an enforceable title. As a general rule (although its status rule can be easily put into question, especially in the current widespread use of the documents that are directly enforceable without the need for triggering civil judgment<sup>10</sup>), the appearance is the result of contentious procedure, based on contradictory and completed by the delivery of an act of jurisdiction, whether it is a judgment or arbitration award. In this procedure, finalized with a judgement, the substantial rules have a paramount importance and the role of the right holder is essential, considering the principle of availability<sup>11</sup>.

In this regard, it should be noted that the notion of enforcement is not specific to procedural law. In substantial law, reference to enforcement is made in

doctrine, see Roger Perrot, Philippe Thery, *Procédures civiles d'exécution, 3e Édition refondue* (Paris: Dalloz, 2013), Anne Leborgne, *Droit de l'exécution, Voies d'exécution et procédures de distribution, 2e Édition* (Paris: Dalloz, 2014), Nicolas Cayrol, *Droit de l'exécution* (Paris: LGDJ, 2013), Philippe Hoonakker, *Procédures civiles d'exécution. Voies d'exécution. Procédures de distribution, 3e Édition* (Buxelles: Larcier, 2014).

<sup>5</sup> Flavius George Păncescu, *Drept procesual civil internațional* (București: Hamangiu, 2014), 253-254. For the system established under Regulation 44/2011, see Loïc Cadiet, Emmanuel Jeuland, Soraya Amrani-Mekki, *Droit processuel civil de l'Union Européenne* (Paris: Lexis Nexis, 2011), Peter Stone, *EU private International Law, Second Edition* (Cheltenham, UK, Northampton, MA, USA: Edward Elgar, 2010), 222-286, Helene Gaudemet-Tallon, *Competence et execution des jugements en Europe. Reglement 44/2001. Conventions de Bruxelles (1968) et de Lugano (1988 et 2007)* (Paris: LGDJ, 2010).

<sup>6</sup> Deleanu, Mitea, Deleanu, *Tratat*, 200-201.

<sup>7</sup> Carla Crifo, *Cross-border Enforcement of Debts in the European Union, Default Judgement, Summary Judgements and Orders for Payment* (Wolters Kluwer, 2009).

<sup>8</sup> Boroi, Stancu, *Drept procesual civil*, 941.

<sup>9</sup> Ioan Leș, Adrian Stoica, *Titlul executoriu european pentru creanțe necontestate*, *Revista română de drept privat*, 2(2008): 198-214.

<sup>10</sup> Savelly Zilberstein, Viorel Mihai Ciobanu, *Tratat de executare silită* (București: Lumina Lex, 2001), 149-150.

<sup>11</sup> For details, see Nicolae-Horia Țiț, "Considerations regarding the will of the parties in Enforcement Procedures", *Journal of Public Administration, Finance and Law Special 6* (2014): 302-309, accessed March 5th, 2015, [http://www.jopaf.com/uploads/issue7/CONSIDERATIONS\\_REGARDING\\_THE\\_WILL\\_OF\\_THE\\_PARTIES\\_IN\\_ENFORCEMENT\\_PROCEDURES.pdf](http://www.jopaf.com/uploads/issue7/CONSIDERATIONS_REGARDING_THE_WILL_OF_THE_PARTIES_IN_ENFORCEMENT_PROCEDURES.pdf)

matters relating to fulfilment of obligations, along with the payment, as way of executing an obligation. Emphasis should be placed differently, however: the rules contained in the Civil Code (Articles 1516 – 1548) are substantial, conducting to a transformation of the legal relationship determined by voluntary non-performance of the obligation, i.e. the payment. In the absence of payment, the creditor, as provided by art. 1516 par. 2 C. civ., has three alternatives: to request for an enforceable judgement or, in case he already holds an enforceable title, to apply for the enforcement of the obligation; to obtain, if the obligation is contractual, the rescission or termination of the contract or, where appropriate, the reduction of their reciprocal obligations; to use, where appropriate, any other means provided by law to achieve its right<sup>12</sup>.

The creditor is entitled to achieving full, accurate and timely execution of the obligation (art. 1516 par. 1 of the Civil Code.), which means that its right is automatically doubled under the law: the creditor holds two rights: a substantial one, the subjective right itself, contained by the legal relationship with the debtor and resulted either by a manifestation of will or by a legal fact, and a procedural one, embodied in the enforceability of the title, allowing him to opt between an execution in kind or by equivalent, according to Article 1527 and 1530 Civil Code<sup>13</sup>.

The way in which the obligation is transformed, becoming an enforceable debt often relates to the completion of a judicial or arbitral proceeding, through which the court or the arbitration establishes the alleged acts and deeds indicated by the applicant and give their legal qualification, resulting in a judicial act which, by law, is apt to be brought out by enforcement. As a result the jurisdiction, the legal relationship may undergo a transformation, because, in some cases, the enforceable debt is different from the original obligation of the debtor (especially in the case of contractual relations), but an equivalent amount of money meant to cover the creditor's damage or compensate for the loss.

There may also be situations where the judgement strictly implements into and enforcement order the structure of the existing legal relationship, so that the debtor will be enforced for the exact actions that represented his obligation in the first place, by virtue of the acts or deeds that generated the legal relationship. In some cases, by virtue of the law, the obligation is ex lege enforceable, without the need for the creditor to apply to the court, given the nature of the contractual obligation and the formal requirements of the contract (for example, for the obligation to return the leased asset, the lease contract concluded for a specific period of time by an authentic document or the agreement signed under private signature and registered at the competent fiscal body shall be

enforceable under the law, subject to the formality of the declaration of enforceability, according to art. 1809 par. 2 and 3 CPC).

### 3. Formal and substantial titles. Some considerations on the declaration of enforceability procedure

Another distinction might consider formalities required for the document to be enforceable.

Following the amendment of the CPC by Law no. 138/2014, the procedure of the declaration of enforceability was reintroduced for the titles that are not the result of a procedure in front of a court, i.e. documents that the law provide as enforceable titles (art. 640<sup>1</sup> CCP) as well as for arbitral awards (art. 615 and art. 635 first sentence CPC) and the decision of other bodies having jurisdiction over some special matters (Art. 635, second sentence CPC).

Some distinctions are required in this regard. It is noteworthy that in all possible situations, the enforceability of a security or title is determined solely under the law<sup>14</sup>; a document cannot gain enforceable power by virtue of the will of the parties, even if the content of the legal relationship is represented by rights that parties may dispose of.

Even if this issue is not explicitly mentioned in Art. 625 CPC, which regulates the principle of legality in the course of procedural enforcement, the eminently legal character of enforceability derives from the interpretation of art. 632 CPC, which establishes, first, that any procedure of enforcement execution can take place only pursuant to an enforceable title, then lists enforceable titles stating that such a character can have only those which the law provides for. Therefore, in order for the right to be achieved via enforcement procedure, there has to be first a legal provision stating the enforceable character of the title, at a general and abstract level, conferring a higher legal force to certain decisions or documents.

The distinction to which we referred in the previous paragraph envisages the procedure that the creditor must follow to obtain the writ of execution, procedure, also imperatively established by law: in cases where the law confers enforceable abstract character to certain securities, it is often not enough to trigger the execution procedure, requiring, in particular, a verification of certain formal requirements in relation to document or judgment, the verification procedure conducted through the declaration of enforceability. This is to certify that, in particular, the title held by creditor falls into the category of those who by law can be enforced and that, eventually, there are no formal impediments that would prevent the title to be enforced. During the

<sup>12</sup> For the substantial remedies provided by law for the creditor, see Liviu Pop, Ionuț-Florin Popa, Stelian Vidu, *Tratat elementar de drept civil. Obligațiile* (București: Universul Juridic, 2012), 254-262.

<sup>13</sup> Nicolae-Horia Țiț, "Conceptual Distinctions regarding the notion of Enforcement": 148-149.

<sup>14</sup> For the notion of law in this context, see Ion Deleanu, Valentin Mitea, Sergiu Deleanu, *Tratat*, p. 31.

procedure of the declaration of enforceability, the court will not check the requirements for triggering the enforcement, which shall be verified by the bailiff via the minutes for the approval of enforcement, under art. 665 CPC, particularly with regard to situations covered by law when the application for enforcement (Art. 665 para. 5 CPC) will be rejected by the bailiff<sup>15</sup>. The procedure of the declaration of enforceability concerns only the verification of the title and not of the claim, or, in other words, the substance of the right<sup>16</sup>.

In this respect, two observations are required. The first one concerns the very notion of enforcement title or order, specifically the source of enforceability. As noted above, the enforceability arises from law in all situations; the title is enforceable under the law, not on his declaration of enforceability. A document is an enforceable title even if not declared enforceable, this character being conferred by law. The procedure of the declaration of enforceability is a non-contentious procedure which checks whether that document falls into the category of writs of execution and cannot be interpreted as a procedure through which the title becomes enforceable<sup>17</sup>.

This interpretation is supported both by the drafting par. 1 of Art. CPC 640<sup>1</sup> (according to which "execution titles other than judgments can be enforced only if declared enforceable") and the content itself of the enforceable formula: "... we empower and order the bailiffs to enforce title ... "(art. 640<sup>1</sup> par. 6 CPC). Therefore, the title exists before the procedure of declaration of the enforceability is triggered, because its enforceability derives directly from the law and the court only checks and certifies it by the procedure of the declaration of enforceability. Therefore, the declaration of enforceability has only a declarative, not a constitutive effect. The document does not become an enforcement title as a result of the procedure of the declaration of enforceability, but is enforceable by law, and this character is only checked and certificated throughout this procedure.

Another argument in this regard is represented by the fact that the law provides for two distinct situations in which the request for enforcement may be rejected: the judgment or, where applicable, the document, is not by law an enforcement title (art. 665 para. 5 pt. 2 CPC), and that the document other than a

judgment have not been declared enforceable (Art. 665 para. 5 pt. 3 CPC). The law therefore provides the two as different issues, the enforceability being conferred by the law and not by its declaration by the court.

A second observation on this issue concerns a matter discussed and controversial in the literature and recent practice. Two opinions were developed in connection with legal and technical operations related to the declaration of enforceability: first, that it is not necessary to submit the original title and the declaration of enforceability is to be contained in a separate writ of execution, communicated to the creditor, manifested especially in the practice of the courts; the second, that the original title must be filed by the creditor and the declaration of enforceability is applied on the title, becoming a part of it, expressed in the doctrine<sup>18</sup>.

In connection with this matter, we have a mid-opinion: first, we consider that the enforcement formula should not be applied on the enforceable title. As noted above, the title exists prior to the procedure of the declaration of enforceability and it is the law, and not the declaration which gives the title its power. Enforceability exist in the abstract, as conferred by law and investiture procedure serves only formal verification and confirmation. Otherwise, the writing of art. 640<sup>1</sup> CPC would have to be different, namely "documents (not enforcement titles), other than judgments can be enforced only if they are declared enforceable". Such wording would be contrary to the rule laid down in art. 632 para. 2 final thesis CPC, according to which enforceable titles are the documents that "... can be enforced by law." Therefore, substantial enforceability is conferred by law: for example, the documents authenticated by a notary public, to the extent that they contain a certain and liquid debt, become enforceable titles if the debt has fallen due (art. 100 of the Law no. 36/1995 of public notaries and notary activity, in conjunction with Art. 639 para. 1 CPC)<sup>19</sup>.

Enforceability is established by law in connection with substantial features of the claim, especially since the certainty of the claim practically merges in current regulation with the undoubted existence of the claim in the wording of the enforcement title (Art. 662 para. 2 CPC). The

<sup>15</sup> In this regard, the introductory wording of art. 665 para. 5 CPC is objectionable because the executor does not solve in the procedure for the approval of enforcement an application for the approval of the enforcement, but the application for enforcement itself, launched by the creditor under art. 663 CPC. The phrase was taken from the previous regulation, prior to Law no. 138/2014 that regulated the application for enforcement and the application for the approval of the enforcement as two separate acts, the first being launched by the creditor to the executor and the second by the executor to the court. For details, see Nicolae-Horia Țiț, "Sesizarea organului de executare și încuviințarea executării silite în reglementarea noului Cod de procedură civilă", *Revista de științe juridice*, 2(2013): 192.

In this context, the wording used in the art. 665 para. 5 CPC ("bailiff will reject the application for the approval of enforcement ...") does not match the one used in par. 1 ("request for enforcement shall be settled within 3 days after its registration") and requires, de lege ferenda, to be replaced by "bailiff will reject the request for enforcement."

<sup>16</sup> Gabriel Boroî, Delia-Narcisa Theohari, „Sinteza principalelor modificări și completări aduse Codului de procedură civilă prin Legea nr. 138/2014”, introductory study of the brochure *Noul Cod de procedură civilă și 12 legi uzuale* (București: Hamangiu, 2014), XXV.

<sup>17</sup> Ion Deleanu, Valentin Mitea, Sergiu Deleanu, *Tratat*, 200.

<sup>18</sup> Boroî, Stancu, *Drept procesual civil*, 943; Gabriel Boroî, Carla Alexandra Anghelescu, "Verificarea înscrisului în original în cadrul procedurii de investire cu formulă executorie", [http://www.inm-lex.ro/fisiere/d\\_175/Investirea%20cu%20formula%20executorie%20originalului.pdf](http://www.inm-lex.ro/fisiere/d_175/Investirea%20cu%20formula%20executorie%20originalului.pdf) (visited March 5th 2015).

<sup>19</sup> Oprina, Gărbuleț, *Tratat*, 340-341.

declaration of enforceability is nothing but a formalization of the existing substantial enforceable character, by simply checking the consistency between the actual title held by the creditor and the category of documents provided by law<sup>20</sup>.

We can conclude that there is a substantial sense of the notion of enforcement title, represented by the certain and undoubted establishment of the obligation to be accomplished by the executor, which is usually a judgment but in some cases may be determined by express provisions of the law, which removes the obligation of the creditor to apply to a court and gives him the right to take direct enforcement, based on the category of the title (e.g., promissory note, according to Art. 640 CPC) or on the formalities that were brought out while preparing the document (e.g. document authenticated by a notary public, according to Art. 639 CPC and Art. 100 of Law no. 36/1995). There is also a formal sense, different from the first, which requires certification of the court, if the title is another document than a judgment. In these circumstances, the declaration of enforceability is not a part of the substantial title, to be included in the conclusion rendered by the court for that purpose. This finding emerges from its very wording ("... for which purpose the present conclusion for the declaration of enforceability was passed")<sup>21</sup>.

From this point of view, we do not embrace the opinion that the writ of execution shall be applied directly on the original title, but consider correct the practice of the courts that have declared the enforceability by a separate document, containing the enforcement formula. From the wording of art. 640<sup>1</sup> par. 6 CPC undoubtedly comes the conclusion that the declaration of enforceability is part of the court order, and not of the title itself, with the consequence that the effect it produces is strictly related to the power conferred to the creditor to request triggering of enforcement, and not necessarily to confer enforceable character to the title itself<sup>22</sup>.

Secondly, on the question of the mandatory filing the original title along with the application for the declaration of its enforceability, we consider that, at least as a general rule, it is not necessary. As noted, the title exists and has an enforceable abstract character independent of the declaration of enforceability procedure. Enforceability precedes this procedure and derives directly and exclusively in the law. Therefore, the verification of the court has no constitutive character, but only declarative, in which case it would

not be required that the original title be filed. The verification made by the court regarding the enforceable character of the title, namely if the title held by the creditor is such a title provide by law, can be made based in a copy and not necessarily the original, especially since in some cases, the creditor is not in possession of the original, preserved by the instrumentation agent (e.g. acts authenticated by a notary public, which are prepared in a single original, kept in the archives of public notary - art. 97 paragraph 1 of Law no. 36/1995). Being a non-contentious procedure, according to art. 532 para. 2 CPC, the court may take ex officio any measure necessary for solving the application, therefore could, if it considers necessary, order the original appearance for confrontation, if it considers that it is necessary for the verification and declaration of enforceability. Original submission is not required as a rule and there is no express mention in this regard as long as the formula is not to be applied on the original title, as we have shown above.

#### 4. Conclusions

*The notion of enforcement title or order has two components: one that involves the embodiment into the title of the substantial characteristics and elements of the legal relationship, in terms of the options that the law provides for the creditor (execution in kind, termination / rescission and restitution of benefits, execution by equivalent), the other, formal, given the conditions which must be met in order to proceed to enforcement. In case of judgments or other titles that do not require a declaration of enforceability enforceable (European enforcement orders, acts of adjudication), the two components are embedded and embodied in the very existence of the title. With arbitral awards and other documents requiring a declaration of enforceability, the two components are separated: in addition to the mere fulfilment of requirements provided by law for enforcement, a formal verification of these conditions must be made by a court, achieved through a declaration of enforceability. This does not confer the title its enforceable character, but only confirms and certifies that character, for which the declaration of enforceability is not a component of the title, but of the court order.*

<sup>20</sup> Perrot, Thery, *Procédures civiles d'exécution*, 139.

<sup>21</sup> On the contrary opinion, see Toma Cătălin Răileanu, „Câteva considerații privind investirea cu formula executorie”, <http://www.juridice.ro/360231/cateva-consideratii-privind-investirea-cu-formula-executorie.html> (visited March 5th, 2015).

<sup>22</sup> In France, the declaration of enforceability ("formule exécutoire") is applied on a copy of the title. See, Perrot, Thery, *Procédures civiles d'exécution*, 139. However, the French legislation regarding this issue is different from the present Romanian legislation and in many parts similar to the regulation of the former Romanian Civil procedural Code, in the sense that even the judgement are subject to a declaration of enforceability, and the enforceability of the title derives from this declaration (Leborgne, *Droit de l'exécution, Voies d'exécution et procédures de distribution*, 186-187).

In French doctrine, the enforcement order is defined as the "document which bears the declaration of enforceability" („On définit parfois le titre exécutoire comme étant celui qui est revêtu de la formule exécutoire” - Perrot, Thery, *Procédures civiles d'exécution*, 139) and, therefore the declaration formula is a part of the title, unlike the Romanian system.

## References

- Savelly Zilberstein, Viorel Mihai Ciobanu, *Tratat de executare silită* (București: Lumina Lex, 2001)
- Evelina Oprina, Ioan Gârbuleț, *Tratat teoretic și practic de executare silită. Volumul I. Teoria generală și procedurile execuționale conform noului Cod de procedură civilă și noului Cod civil* (București: Universul Juridic, 2013)
- Gabriela Răducan, *Dreptul executării silite. Titlul executoriu european* (București: Hamangiu, 2009)
- Gabriel Boroi (coord.), *Noul Cod de procedură civilă. Comentariu pe articole. Vol. II. Art. 527 - 1133* (București: Hamangiu, 2013)
- Ioan Leș, *Noul Cod de procedură civilă. Comentariu pe articole, art. 1-1133* (București: C.H. Beck, 2013)
- Gabriela Cristina Frențiu, Denisa-Livia Bâldean, *Noul Cod de procedură civilă comentat și adnotat* (București: Hamangiu, 2013)
- Liviu Pop, Ionuț-Florin Popa, Stelian Vidu, *Tratat elementar de drept civil. Obligațiile* (București: Universul Juridic, 2012)
- Ion Deleanu, Valentin Mitea, Sergiu Deleanu, *Tratat de procedură civilă. Vol. III, ediție revăzută, completată și actualizată. Noul Cod de procedură civilă* (București: Universul Juridic, 2013)
- Ion Deleanu, Valentin Mitea, Sergiu Deleanu, *Noul Cod de procedură civilă, comentariu pe articole, Vol. II (art. 622-1133)* (București: Universul Juridic, 2013)
- Gabriel Boroi, Mirela Stancu, *Drept procesual civil* (București: Hamangiu, 2015)
- Gabriel Boroi, Delia-Narcisa Theohari, „Sinteza principalelor modificări și completări aduse Codului de procedură civilă prin Legea nr. 138/2014”, introductory study of the brochure *Noul Cod de procedură civilă și 12 legi uzuale* (București: Hamangiu, 2014)
- Roger Perrot, Philippe Thery, *Procédures civiles d'exécution, 3e Édition refondue* (Paris: Dalloz, 2013)
- Anne Leborgne, *Droit de l'exécution, Voies d'exécution et procédures de distribution, 2e Édition* (Paris: Dalloz, 2014)
- Nicolas Cayrol, *Droit de l'exécution* (Paris : LGDJ, 2013)
- Philippe Hoonakker, *Procédures civiles d'exécution. Voies d'exécution. Procédures de distribution, 3e Édition* (Buxelles : Larcier, 2014)
- Flavius George Păncescu, *Drept procesual civil internațional* (București: Hamangiu, 2014)
- Loïc Cadiet, Emmanuel Jeuland, Soraya Amrani-Mekki, *Droit processuel civil de l'Union Européenne* (Paris: Lexis Nexis, 2011)
- Peter Stone, *EU private International Law, Second Edition* (Cheltenham, UK, Northampton, MA, USA: Edward Elgar, 2010)
- Helene Gaudemet-Tallon, *Competence et execution des jugements en Europe. Reglement 44/2001. Conventions de Bruxelles (1968) et de Lugano (1988 et 2007)* (Paris: LGDJ, 2010)
- Francois Vinckel, *La codification des procédures civiles d'exécution* (Paris: Lexis Nexis, 2013)
- Carla Crifo, *Cross-border Enforcement of Debts in the European Union, Default Judgement, Summary Judgements and Orders for Payment* (Wolters Kluwer, 2009)
- Ioan Leș, Adrian Stoica, *Titlul executoriu european pentru creanțe necontestate*, *Revista română de drept privat*, 2(2008): 198-214
- Gabriel Boroi, Carla Alexandra Angheliescu, „Verificarea înscrisului în original în cadrul procedurii de investire cu formulă executorie”, [http://www.inm-lex.ro/fisiere/d\\_175/Investirea%20cu%20formula%20executorie\\_depunerea%20originalului.pdf](http://www.inm-lex.ro/fisiere/d_175/Investirea%20cu%20formula%20executorie_depunerea%20originalului.pdf) (visited March 5th 2015).
- Toma Cătălin Răileanu, „Câteva considerații privind investirea cu formula executorie”, <http://www.juridice.ro/360231/cateva-consideratii-privind-investirea-cu-formula-executorie.html> (visited March 5th, 2015)
- Nicolae-Horia Țiț, „Conceptual Distinctions regarding the notion of Enforcement”, *Journal of Public Administration, Finance and Law* Special issue 1 (2014): 146-147, accessed March 4th, 2015, [http://www.jopafll.com/uploads/issue6/CONCEPTUAL\\_DISTINCTIONS\\_REGARDING\\_THE\\_NOTION\\_OF\\_ENFORCEMENT.pdf](http://www.jopafll.com/uploads/issue6/CONCEPTUAL_DISTINCTIONS_REGARDING_THE_NOTION_OF_ENFORCEMENT.pdf)
- Nicolae-Horia Țiț, „Considerations regarding the will of the parties in Enforcement Procedures”, *Journal of Public Administration, Finance and Law* Special 6 (2014): 302-309, accessed March 5th, 2015, [http://www.jopafll.com/uploads/issue7/CONSIDERATIONS\\_REGARDING\\_THE\\_WILL\\_OF\\_THE\\_PARTIES\\_IN\\_ENFORCEMENT\\_PROCEDURES.pdf](http://www.jopafll.com/uploads/issue7/CONSIDERATIONS_REGARDING_THE_WILL_OF_THE_PARTIES_IN_ENFORCEMENT_PROCEDURES.pdf)
- Nicolae-Horia Țiț, „Sesizarea organului de executare și încuviințarea executării silite în reglementarea noului Cod de procedură civilă”, *Revista de științe juridice*, 2(2013): 181-195