

Who bears the costs of enforcement proceedings in Romania?

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In practice, we encounter a wide range of situations when it comes to collecting debts through enforcement proceedings. Among other things, the question arises as to who bears the costs of enforcement and to what extent.

What does the general rule say?

As a general principle, Article 670(2) of the Romanian Code of Civil Procedure¹ (CCP) states that all costs associated with enforcement shall be borne by the debtor.

What is included in enforcement costs?

According to Art. 670 (3) CCP, the following are considered enforcement costs:

- the stamp duties required to initiate foreclosure proceedings;
- the bailiff's fee as stipulated by law;
- the legal fees incurred during the enforcement phase;
- any fees payable to experts, translators, and interpreters;
- expenses related to the publication of enforcement proceedings and other enforcement documents;
- transportation costs;
- other costs required by law for enforcement.

How are enforcement costs paid?

Pursuant to Art. 670 (1) CCP, the party requesting an enforcement action or measure is obliged to advance the costs required for that action. This rule also applies to costs for measures ordered ex officio.

This means that, among other things, the creditor must pay their own legal fees. These can generally be recovered from the debtor, but this depends on the bailiff (especially in the case of costs incurred during enforcement).

What is the bailiff's legal status?

The bailiff enjoys special legal status; according to Judgment No. 8 of May 16, 2016ⁱ, of the Supreme Court, the bailiff is not a party to the enforcement relationship between creditor and debtor.

This was confirmed by the Supreme Court in its ruling No. 16 of March 15, 2021ⁱⁱ: the legitimacy of the bailiff in enforcement appeal proceedings is not based on his position as a party to the enforcement relationship between creditor and debtor, but on his legal relationship with the creditor.

The bailiff therefore only asserts his financial claims arising from the enforcement against the creditor (but usually collects them from the debtor, if possible, so that the debtor ultimately bears them).

¹ Law No. 134/2010, published in the Official Gazette of Romania No. 545 of August 3, 2012, as amended

Can the debtor limit enforcement costs?

If a debtor who has been notified under Article 668 of the German Code of Civil Procedure (CCP) fulfills the obligation immediately or within the statutory period, he shall only bear the costs of the enforcement measures actually carried out and the fees of the bailiff and, if applicable, the creditor's attorney's fee, proportionate to the services provided.

What happens if enforcement is waived?

Regardless of who initially advanced the costs, Article 670(2) CCP places responsibility for enforcement costs on the debtor—**unless** the creditor decides to abandon enforcement. In that case, the creditor bears the costs, unless the law provides otherwise.

What happens if enforcement fails?

If enforcement fails due to lack of assets or for other reasons, all costs, with the exception of the bailiff's fee, shall be borne by the creditor. These costs may later be recovered from the debtor within the statutory limitation period under Art. 670 (5) CCP (German Code of Civil Procedure), provided the debtor's assets allow recovery.

What happens when enforcement proceedings are discontinued?

Under Art. 723(1) of the Code of Civil Procedure, in all cases where the enforceable title or the enforcement itself is abolished, the party concerned has the right to reverse the enforcement by restoring the previous situation. In this case, "the enforcement costs for the actions taken remain the responsibility of the creditor".

Conclusion

In principle, the debtor must bear the enforcement costs incurred or determined between the date of receipt of the application for enforcement and the date of fulfillment of the obligation under the enforcement order.

However, the advance payment for initiating enforcement proceedings and the bailiff's and lawyer's fees are borne by the creditor. These can generally be recovered from the debtor, although recovery of attorney's fees can sometimes be challenging. The enforcement costs in the event of waiver, failure, or abolition of enforcement are borne by the creditor.

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