

Peculiarities of the Substantive Defence of the Debtor Against Enforcement in Polish and Lithuanian Law

Joanna Derlatka

<https://orcid.org/0000-0002-2633-4151>

PhD in Law Assistant Professor
Department of Civil Law, Civil Procedure Law, and Labor Law
Institute of Legal Sciences, Faculty of Law and Social Sciences
Jan Kochanowski University in Kielce
Uniwersytecka 15, 25-406 Kielce, Poland
E-mail: joanna.derlatka@ujk.edu.pl

Egidija Tamošiūnienė

<https://orcid.org/0000-0001-6052-9609>

Vilnius University, Faculty of Law
Department of Private Law
Professor of Practice Dr.
Saulėtekio 9 – I block, LT-10222 Vilnius, Lithuania
Phone: (+370 5) 236 61 70
E-mail: egidija.tamosiuniene@tf.vu.lt

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Joanna Derlatka

(Jan Kochanowski University in Kielce (Poland))

Egidija Tamošiūnienė

(Vilnius University (Lithuania))

Studies of enforcement proceedings are usually limited to analysing the effectiveness or specific features of the application of procedural rules governing compulsory enforcement proceedings. This focus of scientific research on the area regulated by procedural law is based on the classic distinction between investigative and enforcement proceedings, recognising that all disputed facts have already been established in civil proceedings (investigative proceedings), while the enforcement proceedings seek only to enforce the court decision as quickly as possible. However, this article aims to reveal how substantive law measures can influence enforcement proceedings that have already been initiated. The object of the study is to analyse the remedies available to the debtor under substantive law against the enforcement proceedings that have already begun, to distinguish them from procedural remedies in the enforcement proceedings, and to reveal their exceptional nature. The article provides a comparative analysis of these measures in Polish and Lithuanian civil proceedings, by revealing their similarities and differences and comparing how the same objectives are pursued by different means. In

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Poland, the debtor's right to challenge the basis of the enforcement process is clearly established in civil procedure law, while, in Lithuania, this right of the debtor is recognised in court practice, with its exceptional nature being emphasized. The conclusions at the end of the article emphasize that the debtor may use such measures in exceptional cases and for a limited period, while also seeking to balance the interests of the creditor (recovery agent) in the enforcement process.

Keywords: investigation proceeding, enforcement proceeding, judicial control over the enforcement proceedings, debtor's defence measures.

Skolininko gynybos materialiosios teisės priemonėmis vykdymo procese ypatumai Lenkijos ir Lietuvos teisėje

Joanna Derlatka

(Jan Kochanowski universitetas (Lenkija))

Egidija Tamošiūnienė

(Vilniaus universitetas (Lietuva))

Vykdymo proceso tyrimuose dažniausiai apsiribojama proceso teisės normų, reglamentuojančių priverstinį vykdymo procesą, efektyvumo ar taikymo ypatumų analize. Toks mokslinių tyrimų koncentravimasis į procesinės teisės reguliuojamą sritį grindžiamas klasikiniu tiriamojo ir vykdymo procesų atskyrimu, pripažįstant, kad visi ginčijami faktai jau yra nustatyti civilinėje byloje (tiriamajame procese), o vykdymo procese siekiama tik kaip įmanoma greičiau įvykdyti priimtą teismo sprendimą. Tačiau šio straipsnio tyrimo tikslas – atskleisti, kaip materialiosios teisės priemonėmis gali būti paveiktas jau pradėtas vykdymo procesas. Tyrimo objektas – skolininkui materialiosios teisės suteiktų gynybos priemonių prasidėjus vykdymo procesui analizė, jų atskyrimas nuo procesinių gynybos priemonių vykdymo procese, atskleidžiant išimtinį pobūdį. Straipsnyje atlikta lyginamoji šių priemonių Lenkijos ir Lietuvos civiliniame procese analizė, leidžia atskleisti jų panašumus ir skirtumus, palyginti, kaip tų pačių tikslų siekiama skirtingomis priemonėmis. Lenkijoje skolininko teisė ginčyti vykdymo proceso pagrindą aiškiai įtvirtinta civilinio proceso įstatyme, Lietuvoje – tokia skolininko teisė pripažįstama teismų praktikoje, kartu pabrėžiamas jos išimtinumas. Straipsnio pabaigoje daromos išvados akcentuoja, kad tokiomis priemonėmis skolininkas gali naudotis išimtiniais atvejais ir ribotą laiką, kartu siekiant ir kreditoriaus (išieškotojo) interesų pusiausvyros vykdymo procese. Taip pat pažymima, kad Lietuvoje šių priemonių neįtvirtinimas įstatyme kuria teisinį netikrumą.

Pagrindiniai žodžiai: tiriamasis procesas, vykdymo procesas, teisminė vykdymo proceso kontrolė, skolininko gynybos priemonės.

Introduction

The purpose of enforcement proceedings is to satisfy the creditor's claim¹. This proceeding is conducted in the interest of the creditor but require respect for the rights of the debtor². During the enforcement proceeding, the disputed or violated substantive subjective right or protected interest is effectively restored. The state, having assumed the obligation to ensure the protection of substantive subjective rights, implements this not only by ensuring that every legal subject has judicial protection of their violated rights and interests, but also by enforcing the execution of the court judgment adopted during civil proceedings. This enforcement mechanism is concentrated in the hands of the state. The implementation of the constitutional right to judicial protection and the effective protection of the subjective rights or interests protected by Law of persons whose rights have been violated or disputed depends on

¹ MARCINIĄK, Andrzej (2023). *Sądowe postępowanie egzekucyjne w sprawach cywilnych*, Warsaw, p. 22; DERLATKA, Joanna (2025). Postępowanie egzekucyjne. In: *Postępowanie cywilne*. RZEWUSKI, Maciej (ed.), Warsaw 2025, p. 482;

² OLAŚ, Andrzej (2024). *Zasada proporcjonalności w postępowaniu cywilnym*, Warsaw, pp. 411–456.

how court decisions are enforced³. A person defending their violated rights needs not a court judgment declaring the violation or merely establishing the violation, but actual protection of their rights. This can only be ensured by an effective system for the enforcement of court decisions⁴.

The legislator is under an obligation to create regulations that, on the one hand, ensure the debtor's protection against unlawful and unjust enforcement, and, on the other hand, guarantee the creditor the possibility of effective satisfaction of their claims. The Lithuanian legal doctrine also recognises the objective of the enforcement process – notably, to ensure a balance between the interests of the creditor and the debtor, while also protecting fundamental human rights⁵. Striking an appropriate balance between the exercise of legitimate creditor rights and the provision of a necessary minimum of protection to the debtor is of key importance for assessing the legislative frameworks used in enforcement proceedings. A proper balancing of these opposing interests and values requires the application of the principle of proportionality, according to which, the objective of enforcement proceedings should be achieved through the use of methods of enforcement that are the least burdensome for the debtor and that guarantee the debtor the possibility of maintaining a livelihood for themselves and their family at least at a minimal level⁶.

The **main purpose** of this study is to determine the types of legal remedies available to the debtor to defend against enforcement. It is important to understand that once a court judgment has been delivered, the possibilities for influencing the enforcement proceedings are very limited, as all disputed circumstances must have been established at the time the judgment was being rendered.

The **main objectives** of this article are to reveal the main features of the Polish and Lithuanian legal regulation in this area by using a comparative method and to assess the influence of the court practice on the development of measures for the debtor's defence in enforcement proceedings. At the same time, the aim is to highlight and explain the differences in legal regulation in this area. In Poland, such measures are enshrined in procedural law, whereas, in Lithuania, there is a legal gap in this area, which the courts are attempting to fill through case law. The study identifies shortcomings in the legal framework in this area that create legal uncertainty. It is worth considering whether the defence against enforcement is carried out in proceedings conducted by an enforcement authority or a procedural (judicial) authority. It is also important to determine whether the debtor can challenge the validity of the creditor's claim before initiating enforcement proceedings. The legal doctrine and practice generally take the position that disputes over rights are no longer resolved in enforcement proceedings, as this dispute has been resolved by a final court judgement, but this article will analyse how the debtor can use substantive law measures to influence the enforcement proceedings initiated against oneself. This analysis covers the specifics of legal enforcement proceedings in Poland and Lithuania, as well as an overview of the substantive legal remedies available to debtors in enforcement proceedings. To this extent, the procedural laws of Poland and Lithuania, as well as the substantive law provisions relevant to the study, are analysed. To fully achieve the objectives of this study, we refer to the jurisprudence of the constitutional courts of both countries on enforcement proceedings, as well as the case law of

³ STAUSKIENĖ, Egidija; VIŠINSKIS, Vigintas (2008). *Teismo sprendimų vykdymas*. Vilnius: Saulelė, p.5.

⁴ VIŠINSKIS, Vigintas (2002) Vykdyimo procesas Lietuvoje: esama padėtis ir reformavimo kryptys. *Jurisprudencija*, t. 28(20).

⁵ JOKUBAUSKAS, Remigijus; KIRKUTIS, Mykolas; TAMOŠIŪNIENĖ, Egidija; VIŠINSKIS, Vigintas (2022). *Vykdyimo procesas: asmenų teisių ir pareigų balansas*. Vilnius: Mykolo Romerio universitetas.

⁶ FLAGA-GIERUSZYŃSKA, Kinga (2022). Przeciwdziałanie nadmiernej uciążliwości egzekucji i szykanowaniu dłużnika w świetle postanowień Kodeksu postępowania cywilnego. In: *Prawa wierzyciela a ochrona dłużnika w egzekucji sądowej. Teoria i praktyka*. BEDNORZ-GODYŃ, Henryka (ed.); MARCINIĄK, Andrzej (ed.). Warsaw, p. 100.

the supreme and appellate courts regarding the implementation of the debtor's defence measures in enforcement proceedings.

Thus, the subject of the study covers the procedural and substantive law measures available to the debtor for defence against enforcement proceedings, seeking similarities and differences between the legal systems of the two countries. In order to fully reveal the peculiarities of the legal institution under analysis, the first chapter also considers the purpose of enforcement proceedings and their fundamental differences from court proceedings. The second section of this article analyses the similarities and differences in the legal regulations of both countries in this area, whereas the third and fourth sections discuss specific measures for the protection of the debtor in Polish and Lithuanian Law and case law. These aspects of the study allow the scientific article to be described as original and novel, thus distinguishing it from the works of other authors, which are typically limited to an overview of the purpose of the enforcement proceedings, the role of the court in the enforcement proceedings, or the defence of the parties to the enforcement proceedings by means of procedural law⁷. However, these sources, as well as the enforcement law doctrine of other foreign countries⁸, are of major importance in revealing the specifics of the application of the debtor's defence measures guaranteed by substantive law in the enforcement proceedings, while distinguishing these measures from the usual judicial control in the enforcement proceedings, and to reveal their specificity and, at the same time, the overall picture of defence measures in enforcement proceedings.

⁷ VIŠINSKIS, Vigintas (1999), *Teismo sprendimų vykdymo procesinės problemos*. Daktaro disertacija (Socialiniai mokslai: Teisė (001S)). Lietuvos teisės akademija; VĖLYVIS, Stasys; VIŠINSKIS, Vigintas; ŽALĖNIENĖ, Inga (2007) Antstolio procesinių veiksmų apskundimas, *Jurisprudencija*, Nr. 91(1); JOKUBAUSKAS, Remigijus; KIRKUTIS, Mykolas; TAMOŠIŪNIENĖ, Egidija; VIŠINSKIS, Vigintas (2022), *Vykdyimo procesas: asmenų teisių ir pareigų balansas*, Vilnius: Mykolo Romerio universitetas; STAUSKIENĖ, Egidija (2006), *Teismo vaidmuo vykdymo procese*. Daktaro disertacija (Socialiniai mokslai: Teisė (001S)), Mykolo Romerio universitetas, etc. In the Polish legal doctrine, publications addressing the enforcement opposition action are often fragmentary in nature, focusing on specific issues such as the value of the subject matter in dispute or the analysis of the grounds of the action – GRZEGORCZYK, Paweł (2013). Co oznacza obowiązek powołania wszystkich zarzutów w pozwie opozycyjnym i jakie są konsekwencje jego naruszenia (art. 843 § 3 k.p.c.)? *Polski Proces Cywilny*, No 2, p. 245–254; GOŁĄB, Agnieszka (2025), Oznaczenie wartości przedmiotu sporu w powództwie opozycyjnym. *Monitor Prawniczy*, No 3, s. 174–177; GRZEGORCZYK, Paweł (2012). Wykładnia art. 840 § 1 pkt 2 in fine KPC. *Monitor Prawniczy*, No 23, p. 1267–1270. Some of these works are comparative in nature; however, they are limited to the relationship between Polish and German Law (GRZEGORCZYK, Paweł; MARKIEWICZ, Krystian (2018). O skutkach wyroku uwzględniającego powództwo opozycyjne spółki jawnej wobec tytułu wykonawczego wydanego przeciwko jej współnikom (art. 778¹ KPC). In: *Ars in vita. Ars in iure. Księga jubileuszowa dedykowana Profesorowi Januszowi Jankowskiemu*. BARAŃSKA, Anna (ed.); CIEŚLAK, Sławomir (ed.). Warsaw, p. 365; OSOWY, Piotr (2021). Powództwa przeciwegzekucyjne. In: *Postępowanie zabezpieczające i egzekucyjne. System Postępowania Cywilnego*. FLAGA-GIERUSZYŃSKA, Kinga (ed.), Warsaw, p. 824). While the German legal system, as regulated by the German Code of Civil Procedure (Zivilprozessordnung, ZPO), has been widely recognised in the literature as a model for the Polish enforcement opposition action, the relationship between Polish and Lithuanian Law has not yet been the subject of scholarly examination. Article 840 of the Polish Code of Civil Procedure reflects the German regulation of the enforcement opposition action (Vollstreckungsabwehrklage, contained in § 767 ZPO) and action against the enforcement clause (die Klage gegen die Vollstreckungsklausel, contained in § 768 ZPO). Similar remedies are likewise recognised in Austrian Law (§ 35 Exekutionsordnung – Oppositionsklage; § 36 Exekutionsordnung – Impugnationsklage).

⁸ ANDREWS, Neil (2011). *The Three Paths of Justice*. Cambridge: Springer; BROX, Hans, WALKER, Wolf-Dietrich (2018). *Zwangsvollstreckungsrecht*. Verlag Franz Vahlen; JAUERNIG, Othmar, BERGER, Christian, KERN, Christoph Alexander (2010). *Zwangsvollstreckungs und Insolvenzrecht*. München: C. H. Beck; NEUMAYR, Matthias, NUNNER-KRAUTGASSER, Bettina (2018). *Exekutionsrecht*. Wien: Manz; RECHBERGER, Walter H, SIMOTTA, Daphne-Ariane (2017). *Zivilprozessrecht: Erkenntnisverfahren*. Wien: Manz. ROSENBERG, Leo, GAUL, Hans Friedhelm, SCHILKEN, Eberhard and BECKER-EBERHARD, Ekkehard (2010). *Zwangsvollstreckungsrecht*. München: C. H. Beck, etc.

Considerations on the scope of the debtor's defence against enforcement will be conducted by using a comparative research method. The study also uses a dogmatic-legal research method. The dogmatic-legal method will be used to evaluate and analyse legal provisions regarding debtor defence in Polish and Lithuanian Law.

1. The Right to Enforcement in the Polish and Lithuanian Legal Framework and in the Jurisprudence of the European Court of Human Rights

The starting point of these considerations is the thesis that enforcement proceedings serve to satisfy the creditor's claims that could not be obtained voluntarily⁹. The obligation to ensure the enforcement of a judgment taken against the state falls primarily on state institutions from the date on which the decision becomes binding and enforceable¹⁰. The effective enforcement of a binding court judgment is a fundamental element of the rule of Law. It is essential to ensure the trust of the public in the authority of the judiciary. Judicial independence and the right to a fair trial (Article 6 of the ECHR) is in vain if the decision is not enforced¹¹. Consequently, judicial enforcement¹², which constitutes the essence of enforcement proceedings, should be conducted efficiently and expeditiously. The efficiency of enforcement is guaranteed by the coercive measures applied by enforcement authorities – namely, the bailiff and the court – provided for by procedural law¹³. The provisions contained in Articles 758–1088 of the Polish Code of Civil Procedure express the formal sanctioning of the legal protection granted by the state to the enforcing creditor¹⁴. The legislator is obliged to ensure conditions for the fair examination and consideration of a case, and, on top of that, to enable the execution of a judicial decision. Efficient judicial enforcement fosters citizens' trust in the administration of justice and fulfils the essence of the rule of Law. The execution of a judgment or ruling, regardless of the court that issued it, must be regarded as an integral part of the judicial process within the meaning of Article 6(1), first sentence of the European Convention on Human Rights¹⁵. The legal doctrine emphasises that an individual who has obtained a judicial decision determining liability

⁹ WENGEREK, Edmund (1978). *Sądowe postępowanie egzekucyjne w sprawach cywilnych*. Warsaw, p. 9; MA-ĆYS, Vladas (1924) *Civilinio proceso paskaitos*. Kaunas: Teisių fakulteto leidinys, p. 313.

¹⁰ *Arbačiauskienė v. Lithuania*, [ECtHR], no. 2971/08 [1 March 2016].

¹¹ Council of Europe Opinion No.13 (2010) On the role of judges in the enforcement of judicial decisions, 19 November 2010 [online]. <https://rm.coe.int/168074820e>.

¹² Enforcement, which is the core of enforcement proceedings, is defined as all coercive measures appropriate for a specific method of enforcement, which the enforcement authority may apply in a specific order within the framework of the method of enforcement chosen by the creditor, in order to satisfy the creditor in accordance with the content of the enforcement title – KOWALKOWSKI, Roman (2002). In: *Encyklopedia egzekucji sądowej*. KNYPL, Zenon (ed.); KOWALKOWSKI, Stanisław (ed.); LANGA-BIESZKI, Hanna (ed.); MERCHEL, Zbigniew (ed.); SZCZUREK, Zbigniew (ed.); TREDER, Jan (ed.). Sopot, p. 61. Enforcement is also a process that serves to implement the norms of substantive law – GOŁĄB, Stanisław; WUSATOWSKI, Zygmunt (1933). *Kodeks postępowania cywilnego, część druga*. Kraków, p. 1; CIOCH, Paweł; NOWIŃSKA, Joanna (2007). *Postępowanie cywilne*. Warsaw, pp. 373–374.

¹³ RESICH, Zbigniew (ed.); SIEDLECKI, Władysław (ed.). (1976). *Kodeks postępowania cywilnego. Komentarz, Vol. 2*. Warsaw, p. 1076. Act of 17 November 1964 – the Code of Civil Procedure. *Journal of Laws of 2024.1568*, consolidated text – hereinafter referred to as *CCP*.

¹⁴ SZCZUREK, Zbigniew (2007). In: *Egzekucja sądowa w Polsce*. SZCZUREK, Zbigniew (ed.). Sopot, p. 32; RZEWUSKA, Magdalena (2011). Skuteczność egzekwowania świadczeń alimentacyjnych należnych małoletnim od dłużników ukrywających się za granicą. *Palestra*, Nos. 11–12, pp. 76–78.

¹⁵ European Convention of Human Rights (ECHR) [online]. https://www.echr.coe.int/documents/d/echr/convention_ENG. In accordance with Article 6(1)(1) ECHR, regulating the right to a court: “In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law”. See also: Constitutional Tribunal ruling of 27 May 2008, P 59/07, OTK-A 2008/4/64.

has, pursuant to Article 6(1), first sentence of the ECHR, the right to demand its enforcement – that is, the right to its enforcement¹⁶. The right to the enforcement of a judgment is an essential component of a fair civil trial¹⁷. By adopting and enforcing court decisions, justice is implemented in the state, the stability of legal relations established and confirmed by final court decisions is guaranteed, and the trust of legal subjects in state authority and laws is strengthened¹⁸.

Accordingly, one should acknowledge the existence of a right to enforcement, which also arises from Article 6(1) of the European Convention on Human Rights (ECHR). The right to a fair trial, as guaranteed by this provision, encompasses numerous procedural safeguards. It is worth noting that these safeguards include, first, procedural fairness; second, the right of access to a court enabling the judicial determination of civil rights and obligations; and third, the right to the enforcement of a judgment delivered in a civil case¹⁹. Considering the ECtHR's case law, the enforcement of a court judgment constitutes an integral part of the 'process' within the meaning of Article 6(1) of the ECHR. The Strasbourg Court reiterated that while the enforcement of a final judgment issued by a court should be considered an integral part of the process for the purposes of Article 6(1) of the Convention, the right to enforce a final court judgment cannot be absolute. The right of 'access to court' does not oblige states to enforce every civil judgment, regardless of the specific circumstances of the case²⁰.

However, the principle of proportionality requires that the creditor should exercise the right to enforcement while respecting the debtor's rights. It may turn out that enforcement proceedings are being conducted in violation of procedural rules. Enforcement proceedings may also prove unjustified for material reasons, for example when the creditor's claim has already been satisfied (i.e., when the debtor has fulfilled the obligation), and the creditor still demands its enforcement.

2. Legal Remedies against the Actions of Enforcement Authorities in the Polish and Lithuanian Law

In the Polish Law, a distinction is made between the debtor's formal and substantive defence against enforcement. In Lithuania, it is recognised that facts established by a final court judgment are *res judicata* (claim preclusion), have prejudicial effect, and cannot be re-examined²¹. Essentially, this means limited influence on the enforcement proceedings through substantive law measures. The control over the legality of enforcement proceedings in Lithuania is entrusted to the court. To ensure

¹⁶ HOFMAŃSKI, Piotr; WRÓBEL, Andrzej (2010). In: *Konwencja o Ochronie Praw Człowieka i Podstawowych Wolności. Komentarz do artykułów 1–18. Vol. I. Komentarz*. GARLICKI, Leszek (ed.). Warsaw, p. 241 ff; DERLATKA, Joanna (2017). Zasada sprawnej egzekucji sądowej jako element efektywnego wymiaru sprawiedliwości, *Zeszyty Naukowe KUL*, No. 3 (239), p. 133.

¹⁷ ŁAZARSKA, Aneta (2012). *Rzetelny proces cywilny*. Warsaw, pp. 308–309.

¹⁸ Decision of the Constitutional Court of the Republic of Lithuania of 13 November 1997.

¹⁹ HOFMAŃSKI, Piotr; WRÓBEL, Andrzej (2010). In: *Konwencja o Ochronie Praw Człowieka i Podstawowych Wolności. Komentarz do artykułów 1–18. Tom I. Komentarz*. GARLICKI, Leszek (ed.). Warsaw, p. 241 ff.

²⁰ See: *Mihai Vodă v. Romania* [ECtHR], no. 35812/02, [19 January 2010], in which, the ECtHR noted that: "The Court reiterates that execution of a final judgment given by any court must be regarded as an integral part of the 'trial' for the purposes of Article 6 of the Convention (see *Hornsby v. Greece*, 19 March 1997, § 40, Reports of Judgments and Decisions 1997-II, and *Immobiliare Saffi v. Italy* [GC], no. 22774/93, § 63, ECHR 1999-V). However, the right of 'access to court' does not impose an obligation on a State to execute every judgment of a civil character without having regard to the particular circumstances of a case (see *Sanglier v. France*, no. 50342/99, § 39, 27 May 2003). The State has a positive obligation to organise a system for enforcement of judgments that is effective both in law and in practice and ensures their enforcement without undue delay (see *Fuklev v. Ukraine*, no. 71186/01, § 84, 7 June 2005). When the authorities are obliged to enforce a judgment and they fail to do so, their inactivity can engage the State's responsibility on the ground of Article 6 § 1 of the Convention (see *Scollo v. Italy*, 28 September 1995, § 44, Series A No. 315-C)".

²¹ Ruling of the Constitutional Court of the Republic of Lithuania of 13 May 2010.

the legality of the enforcement proceedings, effective judicial control of the enforcement proceedings must be established (there may be various forms of such control), whereby the court would be able to resolve all issues (disputes) arising in the enforcement proceedings. The main purpose of such control is to ensure the legality, effectiveness, and efficiency of the enforcement process and the protection of the violated rights of individuals²². In Lithuania, the court's activities to ensure the legality of the enforcement proceedings are the court's control of the procedural activities of bailiffs (examination of complaints against bailiffs' actions, Article 510 of the Lithuanian Code of Civil Procedure), examination of statements in the enforcement process (ensuring the smooth running of the enforcement process, Article 593 of the Lithuanian Code of Civil Procedure) and the protection of the rights and legitimate interests of the creditor, debtor and other persons in contentious proceedings.

Enforcement matters fall under the jurisdiction of district courts and bailiffs operating thereat (Art. 758 CCP, Art. 594 CPK). Enforcement measures, other than those reserved for the court, shall be taken by bailiffs (art. 759 § 1 CCP, Art. 585 CPK). Actions reserved to the court may be performed by a judicial clerk (Art. 759 § 1¹ CCP). All procedural decisions in the enforcement process in Lithuania are made by a judge (Art. 593, 594 CPK). If the debtor challenges the formal correctness of the bailiff's actions and the debtor questions compliance with the procedural provisions of the bailiff's actions, s/he should use a complaint against the activities of the bailiff (Art. 767 CCP, Art. 510 CPK). The complaint against the activities of a bailiff is a part of the broader (extensive) institution of judicial supervision over the bailiff's actions. The judicial supervision over the 'activities of a bailiff' is exercised in two ways: 'at the request' – by means of a complaint against the activities of a bailiff (this is regulated in Art. 767 CCP) and also is exercised 'ex officio' (Art. 759 § 2 CCP). In Lithuania, the Law does not provide for *ex officio* control of bailiffs' procedural actions. If the debtor complains regarding procedural actions and raises procedural objections, s/he may file a complaint against the activities of the bailiff involved. If the debtor defends themselves against enforcement by raising substantive objections (this means objections based on the violation of substantive law), this situation is regulated in a separate provision – specifically, by art. 840 CCP. In this case, the debtor initiates legal proceedings against enforcement. This is a special type of court proceeding whose purpose is to limit or cancel enforceability of a writ of execution. Through this remedy, the debtor questions the validity of the enforcement title, as a basis for judicial enforcement. Its purpose is to discontinue enforcement proceedings. There are no specific legal provisions in Lithuanian Law regulating the debtor's defence by means of substantive law. However, in the Lithuanian court practice, such debtor defence measures are recognised in exceptional cases.

In accordance with Article 767 § 1 sentences 1–2 CCP, there is a right to complain about a bailiff's action at a district court, unless stipulated otherwise in the Statute. It also applies to a bailiff's omission to act. Similar legal provisions are also enshrined in Articles 510 and 512 of the Lithuanian Code of Civil Procedure. It is worth noting that the specificity of the judicial executive procedure results in the possibility of filing complaints in these proceedings not only about a court ruling but also about such action of an executive body that does not constitute a ruling as well as about that body's omission to act²³. Thus, *expressis verbis*, in case of a bailiff's both active and passive conduct, a complaint about

²² Ruling of the Constitutional Court of the Republic of Lithuania of 30 June 2008.

²³ Compare SZCZUREK, Zbigniew (2013). *Kodeks postępowania cywilnego. Postępowanie zabezpieczające i egzekucyjne. Komentarz*. Sopot, pp. 155–156; CUDAK, Arkadiusz (2015). In: *Kodeks postępowania cywilnego, Vol. III: Komentarz do art. 730–1088*. MARCINIAK, Andrzej (ed.); PIASECKI, Kazimierz (ed.). Warsaw, p. 177; PIETRZ-KOWSKI, Henryk (2005). *Zarys metodyki pracy sędziego w sprawach cywilnych*. Warsaw, p. 429. Court orders may be appealed in cases provided for by CCP (Article 767⁴ § 1 CCP). The issue addressed herein, however, concerns the possibility of challenging actions performed in the course of enforcement proceedings by the bailiff acting as the enforcement authority, who operates under a presumption of competence to act within such proceedings.

a bailiff's action is admissible. Any bailiff's action may be subject to a complaint²⁴. A refusal within the meaning of Article 510 of the Lithuanian Code of Civil Procedure does not include a refusal by a bailiff to perform actions that do not fall within the bailiff's competence. The scope of admissibility of a complaint about a bailiff's action covers all legally regulated types of a bailiff's conduct, i.e., positive conduct (action) as well as negative conduct (omission). Arkadiusz Cudak rightly observed, however, that, also, some other types of a bailiff's action are subject to a complaint: firstly, those activities that are not enforcement ones because they are performed before a bailiff initiates enforcement (e.g., call for advance payment); secondly, activities performed by a bailiff without the initiation of enforcement (e.g., return of an application to initiate enforcement in case a debtor did not eliminate defects in the document); and, thirdly, a bailiff's activities performed within executive proceedings but after the enforcement (e.g., rulings concerning the costs of the proceedings)²⁵. Olimpia Marcewicz rightly observed that a bailiff's omission constitutes a failure to perform a duty clearly imposed by the Statute²⁶. Such an omission should be understood as conduct consisting in a bailiff's failure to take enforcement action to which s/he is obliged under a specific statutory provision. Other forms of conduct of this body, such as a failure to act requested by a creditor, constitute the enforcement authority's inaction²⁷.

It should be noted that, in Lithuania, the examination of complaints regarding the actions or refusal to act of a bailiff consists of pre-trial and judicial examination stages²⁸. The Lithuanian CPC establishes a mandatory pre-trial procedure for examining disputes concerning the actions of bailiffs: a complaint regarding the actions of a bailiff or refusal to perform them shall be submitted to the bailiff, who must examine the complaint and issue a corresponding order to satisfy or reject the complaint; if the bailiff refuses to satisfy the complaint by order, s/he must forward the complaint together with the enforcement case to the district court in whose jurisdiction the bailiff's office is located (Art. 510 § 3). This procedural rule aims to protect a person's rights that have been violated by a bailiff in a simpler manner – it is protected by recognising that the bailiff's actions do not comply with the requirements of the Law and, on that basis, by revoking them, and if it is recognised that the bailiff unlawfully refused to perform them – by obliging the bailiff to perform those actions²⁹. This procedure for examining complaints about the procedural actions of bailiffs also ensures the efficiency and concentration of the enforcement proceedings. In enforcement proceedings, both the parties and other participants are entitled to legal remedies enabling the review of decisions issued by the court acting as the enforcement authority. In such proceedings, the court's rulings may be reviewed through ordinary appellate measures, which include a complaint (*zazalenie*). Court rulings may also be reviewed by means of

²⁴ CUDAK, Arkadiusz (2015). *Skarga na czynności komornika*. Sopot, pp. 7–8; MARCINIĄK, Andrzej (2011). Nadzór judykacyjny nad czynnościami komornika, *Przegląd Prawa Egzekucyjnego*, No. 6, p. 14–15. A complaint is applicable to every type of a bailiff's action taken within his competence and to action referred to this executive body by a court (see Article 1051 §3 CCP); KORZAN, Kazimierz (1986). *Sądowe postępowaniu zabezpieczające i egzekucyjne w sprawach cywilnych*, Warsaw, p. 199.

²⁵ CUDAK, Arkadiusz (2015). *Skarga na czynności komornika*. Sopot, pp. 54–55; GIL, Izabella (2017). In: *Postępowanie cywilne, Meritum*. MARSZAŁKOWSKA-KRZEŚ, Elwira (ed.), Warsaw, p. 1365.

²⁶ MARCEWICZ, Olimpia (2017). In: *Kodeks postępowania cywilnego, Vol. II: Komentarz do art. 730–1217*. JAKUBECKI, Andrzej (ed.), Warsaw, p. 149.

²⁷ Compare Ruling of the Supreme Court of Poland of 8 January 2025, I NSP 436/24, Legalis No. 3166416; Ruling of the Supreme Court of Poland of 18 May 2022, I NSP 100/22, Legalis No. 2844919; Ruling of the Supreme Court of Poland of 23 October 2023, I NSP 287/24, Legalis No. 3171244. See Act of 17 June 2004 on Complaints about Violation of a Party's Right to a Hearing in Preparatory Proceedings Conducted or Supervised by a Prosecutor and Judicial Proceedings Without Undue Delay, *Journal of Laws* of 2023.1725, consolidated text (also known in jurisprudence as the Act on Complaints about the Excessive Length of Proceedings).

²⁸ Ruling of the Supreme Court of Lithuania of 2 April in civil case No. e3K-3-92-469/2020.

²⁹ Ruling of the Supreme Court of Lithuania of 16 October 2013 in civil case No. 3K-3-488/2013.

the so-called horizontal complaint (*zažalenie poziome*), i.e., a complaint lodged with another panel of the same court, which constitutes a special remedy of appeal. A complaint against the court rulings enumerated in Article 767⁴ § 1² CCP shall be examined by the court of second instance³⁰. The court of second instance examines the complaint in a panel composed of a single judge (Article 767⁴ § 1⁴ CCP). As a rule, the complaint is examined by the court that issued the challenged ruling, sitting in a panel of three judges and acting as a court of second instance (Article 767⁴ § 1¹ CCP). In Lithuania, decisions of the court of first instance in cases concerning the procedural actions of a bailiff may be appealed by way of a separate appeal (Article 513(3) of the Lithuanian Code of Civil Procedure). Such appeals are examined in accordance with the rules laid down in Articles 334–339 of the Lithuanian Code of Civil Procedure. They are usually examined by a single judge in written proceedings, but, depending on the complexity of the case, a panel of judges may be formed (Article 336(2) of the Lithuanian Code of Civil Procedure). The court examining the separate appeal may decide to examine it in oral proceedings (Article 336(1) of the Lithuanian Code of Civil Procedure). Where a dispute arising from actions taken in the enforcement proceedings (realisation of the estate, compensation for damage, etc.) is examined by a court, the judgment of the court of first instance may be reviewed on appeal (Article 301(1) of the Lithuanian Code of Civil Procedure).

Following Andrzej Marciniak, it should be assumed that acting by a bailiff in accordance with the provisions of the Law, although it violates the rights of parties, is not subject to complaint but should be fought against via anti-enforcement litigation³¹.

In Lithuania, it is also recognised that when a court examines complaints about the actions of a bailiff, it may have a limited influence on the enforcement proceedings, since the examination of such a complaint only resolves the issue of the (il)legality of the bailiff's action (inaction). Still, such a case does not determine the scope of the rights of the creditor, debtor, or other persons interested in the enforcement process. It should also be noted that the debtor's defence measures provided by substantive law also have a significantly limited impact on the enforcement proceedings.

3. The Opposition Lawsuit (Anti-Enforcement Action) in the Polish Law

The debtor may exercise a substantive defence against enforcement by instituting an opposition lawsuit (anti-enforcement action) provided for in Article 840 et seq. of the Polish CCP. Opposition lawsuits constitute instruments of substantive defence against enforcement. As sanctioned in Article 804 § 1 of the Polish Code of Civil Procedure, the division of competences between the court conducting the trial and the enforcement authorities essentially excludes the latter from examining any substantive-law objections directed against the obligation confirmed in the enforceable title to perform the duty or to surrender the property from which enforcement is sought³². Such objection may be raised only through an opposition lawsuit and are to be examined by the court in contentious proceedings. This division of competences thus reflects the legislator's intent to ensure that the debtor, is afforded the possibility of substantive defence against enforcement through appropriate opposition actions. Cases arising from opposition lawsuits, although closely related to the writ of execution, do not fall within the category

³⁰ See more: DERLATKA, Joanna (2023). Ewolucja przepisów o zażaleniu w sądowym postępowaniu egzekucyjnym a dewolutywny paradygmat postępowania zażaleniewego *Przegląd Prawa Egzekucyjnego*, No. 3, pp. 33–51.

³¹ MARCINIAK, Andrzej (2023). *Sądowe postępowanie egzekucyjne w sprawach cywilnych*, Warsaw, p. 335.

³² MARCINIAK, Andrzej (2023). *Sądowe postępowanie egzekucyjne w sprawach cywilnych*, Warsaw, p. 335. According to Article 804 § 1 CCP, an enforcement authority shall not be authorised to review the validity or maturity of an obligation covered by an enforcement title.

of enforcement cases. Instead, they constitute independent proceedings, to which the general rules governing recognition proceedings should apply in principle, including provisions concerning the rules for settling the costs of proceedings³³.

The opposition lawsuit available to the debtor, in which s/he may raise substantive objections against the creditor's claim, is referred to in the Code of Civil Procedure as an action for depriving the enforceable title of enforceability (Article 840 CCP). Substantive objections raised by the debtor against the creditor's claim may rely only on circumstances that occurred after the close of the final oral hearing in the original proceedings; otherwise, the authority of *res judicata* of the original court judgment would be undermined. According to Article 840 § 1 CCP, a debtor may bring an action to limit or cancel the enforceability of an enforcement title in whole or in part if:

- 1) s/he denies the facts on the basis of which a writ of enforcement was issued, and, in particular, if s/he questions the existence of an obligation ascertained by an enforcement order other than a court order, or if s/he questions the transfer of an obligation despite the existence of formal evidence of such transfer;
- 2) an event takes place following the issuance of an enforcement order, as a result of which, an obligation expires or may no longer be enforced; if the order has been issued by a judicial authority, the debtor may also base his/her action on events which occurred following the closure of hearing, and on satisfaction of obligation if such allegation was prohibited by Law; as well as on the plea of set-off;
- 3) a spouse against whom the court issued a writ of enforcement, pursuant to Article 787 CCP, demonstrates that the creditor is not entitled to the payment, except that the spouse may not only raise allegations concerning his or her own rights, but also those which his/her spouse was previously unable to raise.

The subject of dispute in actions brought under Article 840 of the Polish Code of Civil Procedure is the enforceability of the writ of execution. A judgment depriving the writ of execution of enforceability (in whole or in part) prevents (accordingly) enforcement based on such a writ. The purpose of the opposition lawsuit is not to verify the correctness of a final court judgment, which – absent any special provisions – binds the court examining the lawsuit. The opposition action provided for in Article 840 CCP does not lead to a re-examination on the merits of a case already concluded by a final or immediately enforceable court judgment³⁴. The basis of such an action is not, therefore, the defectiveness of a court ruling (which would be characteristic of an appeal), even though that ruling constitutes part of the enforceable title³⁵. Consequently, under Article 840 CCP, a substantive alteration of a previously issued final judgment is not permissible. A final court judgment may be challenged only through an extraordinary legal remedy. Under no circumstances does a judgment upholding an action to deprive an enforceable title of its enforceability alter the content of the court judgment that forms part of the enforceable title. By bringing an action under Article 840 CCP, one cannot seek to modify or annul enforcement measures in order to ensure that enforcement proceedings comply with the provisions of the Code of Civil Procedure governing enforcement proceedings. The debtor's formal and substantive defence are clearly distinguished.

In particular, it should be noted that a distinction must be drawn between the debtor's opposition action and a complaint against the court's order granting an enforcement clause to an enforceable title. The

³³ Resolution of the Supreme Court of Poland of 25 November 2010, III CZP 91/10, OSNC 2011/6/68.

³⁴ Judgement of the Supreme Court of Poland of 12 December 1972, II PR 372/72, OSPiKA 1973/11/; Judgement of the Appellate Court in Kraków of 15 January 2021, I ACa 226/19, Legalis No. 2570710.

³⁵ Judgement of the Supreme Court of Poland of 12 December 1972, II PR 372/72, OSPiKA 1973/11/; Judgement of the Appellate Court in Kraków of 15 January 2021, I ACa 226/19, Legalis No. 2570710.

opposition action does not substitute for a complaint against the order granting the enforcement clause. A complaint may be lodged against the court's order granting an enforcement clause (Article 759 § 2 CCP). According to the Supreme Court resolution of 17 April 1985³⁶, a procedural defect committed by the court during proceedings concerning the granting of an enforcement clause may be challenged by the debtor through an appropriate complaint. Furthermore, according to the Supreme Court judgment of 8 July 2005³⁷, the possibility of filing a complaint against an order granting an enforcement clause does not, in itself, preclude the use of the action provided for in Article 840 CCP, provided that the conditions for bringing such an action are met.

Turning to the time limit for bringing an opposition action, it should be noted that the legislator has not, in principle, introduced any restrictive regulation on this issue. The action in question may be brought after the enforceable title has been granted an enforcement clause, and only on the condition that there exists a potential possibility of enforcing the writ of execution in whole or in part³⁸. The debtor loses the right to bring an opposition action once the performance covered by the enforceable title has been fully or partially executed with respect to the portion already enforced. Therefore, the action is inadmissible to the extent that the enforceability of the writ of execution has expired as a result of its fulfilment. It should also be noted that an opposition action may be brought regardless of whether enforcement based on the given enforceable title has already been initiated or has not yet commenced³⁹.

A few words should also be devoted to the catalogue of objections that may be raised by the debtor in an opposition action. Most often, the debtor relies on the so-called second ground of the action set out in Article 840 § 1(2) CCP. Pursuant to Article 840 § 1(2) of the CCP, the debtor may invoke two categories of events: first, events resulting in the extinction of the obligation, and second, events rendering its enforcement impossible. Events resulting in the extinction of the obligation include, for example: performance of the obligation (Article 450 CC⁴⁰), *datio in solutum* (Article 453 CC), impossibility of performance resulting from circumstances for which the debtor is not responsible (Article 475 CC), novation (Article 506 CC), set-off (Article 498 CC), and release of the debtor from the debt by the creditor (Article 508 CC). The events that render an obligation unenforceable include, above all, the limitation (prescription) of a claim confirmed by an enforceable title (Article 117 § 2 CC), the assumption of debt by another entity (Article 509 CC), instalment arrangement by the creditor⁴¹, as well as constitutive court judgments⁴².

³⁶ III CZP 14/85, OSNC 1985/12/192. See also Judgement of the Appellate Court in Poznań of 13 December 2012, I ACa 1016/12, Legalis No. 742242.

³⁷ II CK 206/05, Legalis No. 107604. See also Judgement of the Supreme Court of 26 July 2012, II CSK 760/11, Legalis No. 544303; OSOWY, Piotr (2021). Powództwa przeciwegzekucyjne. In: *Postępowanie zabezpieczające i egzekucyjne. System Postępowania Cywilnego*. FLAGA-GIERUSZYŃSKA, Kinga (ed.), Warsaw, p. 824.

³⁸ Judgement of the Supreme Court of Poland of 28 January 2010, I CSK 211/09, Legalis No. 338382; Judgement of the Supreme Court of Poland of 12 February 2015, IV CSK 272/14, Legalis No. 1200402.

³⁹ Ruling of the Supreme Court of Poland of 30 May 2014, II CSK 679/13, Legalis No. 1003005; Judgement of the Appellate Court in Białystok of 18 February 2016, I ACa 926/15, Legalis No. 1428016.

KULSKI, Robert (2020). In: *Kodeks postępowania cywilnego. Tom IV. Komentarz. Art. 730-1095¹*. MARCINIAK, Andrzej (ed.), Warsaw, p. 755.

⁴⁰ Act of 23 April 1964 – Civil Code. *Journal of Laws* of 2025.1071, consolidated text – hereinafter referred to as CC.

⁴¹ See Judgement of the Supreme Court of Poland of 10 October 2000, V CKN 110/00, Legalis No. 108776.

⁴² KULSKI, Robert (2020). In: *Kodeks postępowania cywilnego. Tom IV. Komentarz. Art. 730-1095¹*. MARCINIAK, Andrzej (ed.), Warsaw, p. 765.

Proceedings initiated by an opposition action are characterized by the so-called preclusion of objections. A statement of claim should raise all allegations which may be raised, failing which the claimant shall lose his/her right to raise them at a later date (Article 843 § 3 CCP). The upholding of an opposition action results in the mandatory discontinuance of the enforcement proceedings *ex officio* (Article 824 § 1(5) CCP).

4. Measures of Defence of the Debtor from Enforcement in Lithuanian Law and Case Law

In Lithuania, both the doctrine and the court practice uphold the position that all disputed facts, as well as any objections raised by the debtor to the creditor's claim, are established and assessed in the investigative process in a substantive sense. No new disputes regarding these facts are possible during the enforcement proceeding. At this stage of the proceedings, the court does not examine the parties' dispute over the Law, as it has already been resolved by a final court judgment, for which an enforcement order is requested. It is recognised that the legal force of a final court judgement established in the Constitution and laws presupposes its constancy and the stability of the legal relations arising on the basis of the court judgement⁴³. The principle of *res judicata* also includes the obligation of the court hearing the case to ensure that the force of a final judgment is not negated and that no conflicting judgments arise⁴⁴. The legal force of a final court judgment cannot be revoked other than by applying the institute of renewal of proceedings, and only in cases where grounds for renewal of proceedings are established⁴⁵.

In Lithuania, neither substantive law nor procedural law directly provides for a debtor's defences analogous to Article 840 of the Polish Code of Civil Procedure. That should be regarded as a *lacuna legis* in the legal framework of Lithuania. According to the doctrine, it is recognised that legal gaps arise from both objective and subjective factors. Objective factors include those related to the emergence of new social relationships and the legislature's failure to regulate those new relationships promptly; in other words, the legislature is unable to respond on time to changed realities and new needs of society. Subjective factors are related to poor-quality lawmaking, the legislature's lack of understanding of the actual situation, and its errors⁴⁶. Legal gaps that arise – whether accidental or not – always signify the imperfection of legal regulation, *lex imperfecta*⁴⁷. Presumably, in this case, the legislature relied on the traditional distinction between judicial and enforcement proceedings and did not predict that situations might arise in practice where a debtor would have to challenge enforcement proceedings initiated against him/her. This also creates uncertainty in the court practice (for example, we may enquire whether the court has the right to rule on a reduction in the interest rate agreed upon by the parties and approved by the court during enforcement proceedings)⁴⁸.

⁴³ Ruling of the Supreme Court of Lithuania of 31 July 2024 in civil case No. e3K-3-159-781/2024.

⁴⁴ Ruling of the Supreme Court of Lithuania of 12 December 2024 in civil case No. e3K-3-241-469/2024.

⁴⁵ Ruling of the Supreme Court of Lithuania of 2 November 2009 in civil case No. 3K-3-467/2009.

⁴⁶ SINKEVIČIUS, Vytautas (2017). *Legislatyvinė omisija Konstitucinio Teismo nutarimuose: kai kurie diskusiniai klausimai. Jurisprudencija*, 24(2), pp. 238–255.

⁴⁷ MASNEVAITĖ, Elena, MILIUVIENĖ, Jolita (2023) *Kai kurie legislatyvinės omisijos konstitucingumo kontrolės aspektai*. In: *Konstitucinė justicija Lietuvoje: trys veiklos dešimtmečiai: recenzuotų mokslinių straipsnių rinkinys*. pp. 352–369.

⁴⁸ Ruling of the Supreme Court of Lithuania of 25 June 2025 in civil case No. e3K-3-80-823/2025; Ruling of the Supreme Court Lithuania of 23 of December 2020 in civil case No. e3K-3-356-684/2020.

However, in the court practice, such possibilities for the debtor are recognised in exceptional cases. Recognition or fulfilment of a monetary claim is possible when the court decides on the issuance of a writ of execution or in the enforcement process (for example, by submitting evidence of the fulfilment of a monetary obligation to the bailiff, when the bailiff performs a reconciliation of the amounts to be recovered (Article 687 of the CCP). However, it should be noted that the bailiff's competence in this area is limited. Within the limits of their competence, bailiffs may decide on the settlement of court judgments only in the presence of indisputable facts (confirmation by the creditor that the settlement has taken place, the debtor's submission of data on payments made during the enforcement proceedings, etc.). Claims for recognition of court judgements and writs of execution issued on their basis as fulfilled may be decided in independent civil proceedings only in exceptional cases⁴⁹. In such cases, a new civil case is brought, in which, after establishing the legally relevant facts, it is found that the obligation specified in the writ of execution has been fulfilled in whole or in part, and that such fulfilment is not the result of the enforcement proceedings. In another civil case, the creditor's acquisition of the claim (transfer of the claim) may also be challenged. This may also affect the enforcement proceedings, as the new creditor is recognised as having no claim against the debtor. If the court in another civil case finds that the object of compulsory enforcement, i.e., the monetary obligation, has been fulfilled, the enforcement proceedings under the previously issued enforcement document can no longer continue. In such a case, the basis for the enforcement proceedings disappears (by a court judgment in another case or by terminating the proceedings, the court judgment on the basis of which the writ of execution was issued is revoked. Pursuant to Article 629(1)(5) of the Code of Civil Procedure, upon revocation of the enforcement documents that were the basis for enforcement, the enforcement proceedings are terminated.

It should be noted that the situations established in Article 840 of the Polish Code of Civil Procedure as grounds for the debtor's claim are regulated by other means in Lithuanian Law. Joint and several liability of spouses does not arise if one spouse, without the consent of the other spouse, takes out a loan or purchases goods on credit when this is not necessary to meet the common needs of the family (Article 3.109(3) of the Civil Code). Article 3.109(1) of the Civil Code provides a non-exhaustive list of obligations enforceable against the joint property of spouses. Only a court may determine the nature of such obligations and the possibility of recovery from joint property. In the absence of a court judgment concerning the other spouse, a bailiff may not issue an order for recovery from joint property, as this would amount to a change in the court judgment⁵⁰.

When accepting an enforcement document for execution, the bailiff shall verify whether, after the death of the creditor or the debtor, there has been a transfer of rights and obligations; whether there has been a transfer of the rights and obligations of a legal person; if there has been an assignment of a right or a transfer of a debt, whether there has been a transfer of rights and obligations (Article 651(1)(5)–(7) of the Lithuanian CCP). However, the bailiff's competence in substantive meaning is limited. The debtor may contest the basis for the transfer of claims (contract, etc.) in separate civil proceedings.

⁴⁹ Ruling of the Court of Appeal of Lithuania 28 March 2024 in civil case No. e2A-161-516/2024.

⁵⁰ Ruling of The Supreme Court of Lithuania of 20 May 2010 in civil case No. 3K-P-186/2010.

Conclusions

1. Polish procedural law, following the German legal tradition, allows the debtor to raise substantive defences against enforcement after the enforcement title has been constituted. The debtor is entitled to bring an independent action before the trial court, rather than before the enforcement authority, in order to challenge the lack of substantive grounds for the creditor's claim. The debtor's enforcement opposition action under Polish Law extends to both defences directed against the creditor's claim and objections pertaining to the substantive unlawfulness of the granting of the enforcement clause.
2. Independently of the enforcement opposition action, the debtor is also entitled to avail themselves of remedies aimed at challenging the formal lawfulness of actions undertaken by enforcement authorities. The enforcement opposition action does not stand in competition with the remedy of reopening proceedings. While the enforcement opposition action may be based on events arising after the formation of the enforcement title that result in the extinction or unenforceability of the obligation, the reopening of proceedings concerns circumstances that existed during the original proceedings. Accordingly, the respective grounds for these remedies are mutually exclusive.
3. Lithuanian civil procedure law does not provide any substantive measures by which a debtor can challenge the basis of enforcement proceedings once they have already been initiated. This should be regarded as a legal gap (*lacuna legis*) in the Lithuanian legal system. The gap in legal regulation creates legal uncertainty in the Lithuanian enforcement proceedings. However, the debtor has the right to request the renewal of the proceedings, or, as is recognised in case law, in exceptional circumstances, the basis for the enforcement proceedings may be challenged in a separate case.
4. The debtor's ability to challenge the basis of the enforcement proceedings must be limited in terms of both the subject matter and time. Such proceedings cannot seek to re-examine facts already established by the courts. The debtor may only exercise this right until the enforcement document has been enforced.

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Joanna Derlatka is an assistant professor at the Faculty of Law and Social Sciences of Jan Kochanowski University in Kielce (Poland), attorney-at-law, permanent court mediator and an expert of the National Centre for Research and Development in Warsaw. She is a member of the Polish Civil Procedure Scholars Association in Kraków. Her research interests focus on civil procedure, particularly enforcement proceedings, with special emphasis on comparative studies of enforcement law.

Joanna Derlatka yra Jan Kochanowski universiteto Teisės ir socialinių mokslų fakulteto docentė (Kelcai, Lenkija), advokatė, nuolatinė teismo mediatorė ir Varšuvos Nacionalinio mokslinių tyrimų ir plėtros centro ekspertė. Ji yra Krokuvoje veikiančios Lenkijos civilinio proceso mokslininkų asociacijos narė. Jos mokslinių tyrimų interesai sutelkti į civilinį procesą, ypač vykdymo procesą, didžiausią dėmesį skiriant vykdymo teisės lyginamiesiems tyrimams.

Egidija Tamošiūnienė is a professor of practice at the Department of Private Law of the Faculty of Law at Vilnius University. She holds a Ph.D. in Social Sciences, and is a judge in the Civil Division of the Supreme Court of Lithuania. She is a long-standing member of the Supervisory Committee for the Civil Procedure Code, a lecturer at the Judicial Training Center, and has been included in working groups tasked with drafting amendments to the Civil Procedure Code, the Law on Bailiffs, and the Instructions on the Enforcement of Judgments. Her main areas of academic interest include civil procedure, the specifics of exercising the right to judicial defense in certain categories of cases, and the enforcement of court judgments.

Egidija Tamošiūnienė yra Vilniaus universiteto Teisės fakulteto Privatinės teisės katedros partnerystės profesorė, socialinių mokslų daktarė, Lietuvos Aukščiausiojo Teismo Civilinių bylų skyriaus teisėja. Ji yra ilgametė Civilinio proceso kodekso priežiūros komiteto narė, Teisėjų mokymo centro lektorė, buvo įtraukta į darbo grupes Civilinio proceso kodekso, Antstolių įstatymo, Sprendimų vykdymo instrukcijos pakeitimams parengti. Pagrindinės mokslinių interesų sritys – civilinis procesas, teisės į teisminę gynybą įgyvendinimo atskirų kategorijų bylose ypatumai, teismo sprendimų vykdymas.