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Order for Payment Proceedings in bulgarian Civil Procedure Law

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Abstract: This paper wishes to speak about the general aspects of the proceedings the contain orders for payment in bulgarian Civil Procedure.

Keywords: Bulgarian Civil Procedure. Order of payment proceedings.

I. Order for payment proceedings are especial proceedings for defence-sanction in cases of unlawful development of the civil legal relationship, namely when the requested receivable foreseen in Art. 410 of the CCP (para. II) is not fulfilled, when the money receivable laid down in a document under Art. 417 of the CCP is not fulfilled either (*see* para. X). The aim of this type of proceedings is to create grounds for execution (Art. 404, item '1' of the CCP) when the receivable is not fulfilled although not being contested. The order for payment proceedings do not aim at ascertainment of the receivable but at establishing that it is not contested. In these proceedings the court does not verify the existence of the receivable.

Since the enforcement order is enforcement grounds, the receivable should be due and individualized (Ruling № 744 of 28 October 2010 on com. c. № 731/2010, II-Com. Ch. of the SSC; Ruling № 385 of 13 May 2010 on com. c. № 337/2010, I-Com. Ch. of the SSC; Ruling № 677 of 22 July 2010 on com. c. № 536/2010 I-Com. Ch. of the SSC; Ruling № 704 of 14 October 2010 on com. c. № 662/2010, II-Com. Ch. of the SSC).

The order for payment proceedings are regulated in Part Five: Enforcement Proceedings, Title One: General Dispositions, Chapter Thirty Seven: Order for Payment Proceedings. They are functionally related to the enforcement procedure, being proceedings for creating legal grounds for enforcement (Art. 404, item '1' of the CCP), for issuing a writ of execution and then to be followed by enforcement proceedings. They are functionally related to adversary procedure and aim at creating grounds for enforcement when the receivable is not contested, so that the long and expensive adversary procedure could be avoided. However, when the receivable is contested, the creditor is made to file a positive ascertainment claim under Art. 415 of the CCP.

The legislator termed the parties in the order for payment proceedings 'applicant' and 'debtor'.

The order for payment proceedings are facultative. When the debtor does not contest the receivable, the applicant is not obliged to use the order for payment proceedings. He/she can use the adversary procedure. In the adversary procedure when the receivable is not contest, depending on the defendant's behaviour the debtor can achieve a court agreement (Art. 415 of the CCP), a decision upon acknowledgement of the claim (Art. 237 of the CCP) or a decision by default (Art. 238 of the CCP).

Another characteristic feature of the order for payment proceedings is that when a contest is filed under Art. 414 of the CCP (*see* para. VI), the case does transform *ex officio* into adversary proceedings. Art. 415 of the CCP specifies a one month preclusive term for the creditor to file an ascertainment claim (*see* para. VII). It is a pity that the legislator did not adopt the model of transforming the order for payment proceedings into adversary ones, if the debtor does not file an objection against the enforcement order.

It is typical of the order for payment proceedings that they are strongly dependent on the written form. On the grounds of Art. 425(1) of the CCP Regulation No6/2008 of the Ministry of Justice has been adopted. It specifies the standard forms of an enforcement order, an application for issuing an enforcement order and the other papers in connection with the order

for payment proceeding (since 1 March 2008, SG No22 of 28 February 2008, am. SG 52 of 10 July 2010).

It is typical of the order for payment proceedings that security proceedings are not foreseen to develop within the former. Probably because the term set for court's pronouncing is short. However, this term is regarded by the courts as instructive and they do not meet it pronouncing within months instead within three days. The legislator should have taken into account the actual course of the cases and foreseen a possibility for security measures in these proceedings. It is also assumed that security measures are not foreseen due to their principle incompatibility with this type of proceedings. If the request is under Art. 410 of the CCP, then it is grounded only on unverified allegations, that have not been supported by written evidence. That will bring the court into a situation of requesting a guarantee as a condition for admitting a security measure. Moreover, the proceedings aim at acquiring more – an enforcement act for indubitable receivable. If the creditor is not sure in the certainty of his/her request, he/she should not opt for this procedure. He/she should request security of a future claim which he/she will file to have the dispute with the debtor settled. In the case of a request for an order for immediate enforcement under Art. 418 of the CCP, the receivable should be supported by written evidence. The creditor has the writ of execution issued in the very proceedings to which the debtor is not subpoenaed. Consequently, upon issuing the writ of execution, he/she can right away impose measures such as preparation for the enforcement in the course of the very proceedings, at the same time (even before that) when the debtor learns about the order.

The order for payment proceedings are regulated in the new CCP as a substituent of the out-of-court enforcement grounds (*see* para. X). The specific feature of the procedure law is that the enforcement order does not replace the writ of execution. It is judicial grounds for its issuing. The significant difference between the Bulgarian and other legal systems, the old Bulgarian Code of Civil Procedure, inclusive. In the Bulgarian systems the enforcement order is grounds for commencing the very enforcement proceedings, equally and even instead of a writ of execution.

The order for payment proceedings regulated in the new CCP are classified provisionally into two different order for payment proceedings (Art. 410 and Art. 418 of the CCP in connection with Art. 417 of the CCP). The following facts are the basis of the classification: a) Some of their prerequisites are different (compare Art. 410 and Art. 417 of the CCP); b) in the hypothesis of Art. 410 of the CCP the writ of execution is issued when the enforcement order takes effect, while in the hypothesis of Art. 418 of the CPP in connection with Art. 417 of the CCP it is issued simultaneously with the enforcement order. However, most rules are the same. The rules for considering the application, the nonappealability of the order, except of its part on the costs; the contest of the receivable under Art. 414 of the CCP; the necessity to file a claim under Art. 415 of the CCP, when an objection has been filed under Art. 410 of the CCP, etc. Only provisionally, the proceedings under Art. 410 of the CCP could be defined as general, classical, including general rules, while those under Art. 418 of the CCP in connection with Art. 417 of the CCP are defined as specific ones. There is no obstacle for the applicant under the conditions of eventuality to request in his/her application issuing of an enforcement order under Art. 410 of the CCP, if his/her request for immediate enforcement has not been upheld (Ruling No 352 of 4 June 2009 on com. c. No360/2009 II-Com. Ch. of the SCC). If a request for issuing an order for immediate enforcement under Art. 418 of the CCP, in connection with Art. 417 of the CCP, has been filed and the court finds the request groundless since the document presented does not belong to the category of those enumerated in Art. 417 of the CCP, it cannot issue an enforcement order under Art. 410 of the CCP. Such pronouncing is in conflict with the disposition principle and is inadmissible. The opposite is also true – it is inadmissible to issue an enforcement order under Art. 417 of the CCP, if the application for issuing of enforcement order under Art. 410 of the CCP has as an enclosure a document belonging to the grounds under Art. 417 of the CCP. The reason is that the request for issuing of enforcement order is under Art. 410 of the CCP, and not under Art. 417 of the CCP (Ruling No17 of 12 January 2010 on com. c. No734/2009 II-Com. Ch. of the SCC; Ruling No487 of 30 June 2010 on com. c. No171/2010 II-Com. Ch. of the SCC).

II. Receivables to which order for payment proceeding are applicable under Art. 410 of the CCP

Art. 410 of the CCP specifies that the applicant may request issuing of an enforcement order: for receivables of sums of money or of fungible chattels, where the claim is under the regional court jurisdiction (item '1'); for the delivery of a movable chattel which the debtor has received with an obligation to return the said chattel or which is encumbered by a pledge or has been transferred to the debtor with an obligation to surrender possession, where the action is under the regional court jurisdiction (item '2').

The applicant should individualize[1] precisely his/her receivable according to its grounds and amount (The practice of the SCC in this implication *see* Ruling No 431 of 9 December 2008 on com. c. No414/2008 II-Com. Ch. of the SCC; Ruling No 484 of 30 December 2008 on com. c. No293/2008 II-Com. Ch. of the SCC; Ruling No 30 of 16 January 2009 on com. c. No351/2008 I-Com. Ch. of the SCC; Ruling No485 of 30 December 2008 on com. c. No506/2008 II-Com. Ch. of the SCC; Ruling No346 of 30 November 2008 on com. c. No294/2008 II-Com. Ch. of the SCC). I share the practice concerning obligation for entire individualization of the receivable, but I do not share the standpoint that in the case it is not necessary to give instructions for amendment of the application due to the inapplicability of Art. 101 of the CCP. The receivable should be individualized precisely in the enforcement order. Otherwise the debtor will not be able to orientate what receivable is claimed against him/her, so that he/she could be able to decide whether to execute it voluntary or to contest it lodging an objection against the order under Art. 414 of the CCP. Besides, if he/she does not contest the receivable, the enforcement order is issued. As it is impossible to request voluntary execution of the receivable which is not individualized, it is less grounded to have enforced execution of the said receivable. Last but not least, although when the receivable is contested, the case is not transformed automatically or *ex officio* into adversary proceedings, if the applicant lodges a claim under Art. 422 of the CCP. The claim will be considered lodged with regard to the extinguishing limitations and the classification of the proceedings as pending, since the moment of filing with the court the

application for issuing an enforcement order. It cannot happen, if the receivable has not been individualized in the application.

The receivable should be executable since the order for payment proceedings are for creating grounds for execution. The lack of an explicit requirement for the receivable's executability in Art. 410(1) of the CCP is probably due to an involuntary legislative omission. When the receivable is not executable the creditor cannot require voluntary execution. He/she has lesser grounds to request enforced execution. It is inadmissible to issue an enforcement order for a non-executable receivable. If such an order is issued, the debtor can defend himself/herself by an objection under Art. 414 of the CCP.

Two categories of receivables are foreseen in Art. 401(1) of the CCP:

1. Money receivables

The legal grounds and the legal qualification of the receivable do not matter.[2] The subject matter of the order for payment proceedings under Art. 401(1) of the CCP can be either receivables originating from contract grounds or from unlawful damage, unjust enrichment, alimony, etc. Following the amendment of Art. 104, item '4' of the CCP, concerning the generic jurisdiction on commercial cases in the sense of Art. 365 of the CCP, a subject matter to the order for payment proceedings could also be money receivables originating from a trade deal, a privatization contract, a public procurement contract or a concession agreement, as well as debtor's receivables for which an insolvency procedure is opened, or are included in the insolvency mass. Following the amendment mentioned, the question whether the claim on such a receivable should be considered according to the general or to adversary procedure became irrelevant.

2. Receivable for delivery of fungible movable chattels[3]

It is not important whether these receivables are obligation, trade or legal pretences for chattels delivery.

3. Receivable for delivery of a specified individually movable chattel

According to Art. 410(1), item'2' of the CCP the applicant is entitled to request issuing of an enforcement order for the delivery of a movable chattel which the debtor has received with an obligation to return the said chattel or which is encumbered by a pledge or has been transferred to the debtor with an obligation to surrender possession, when the claim is under the regional court jurisdiction.

The regulation cited foresees three categories of receivables. Here the legal grounds for the receivables under item '1' is not irrelevant. In both cases the matter concerns receivables for delivery of a specified individually movable chattel.

a. receivables for transfer of a movable chattel which the debtor has obtained by a contract (rent, loan) with the obligation to return it;

b. receivables for transfer of a movable chattel which is encumbered by a pledge.

The matter is about a pledged movable chattel following the execution of the obligation secured by the pledge. The pledge contract is a real contract and pledging the chattel is an element of its conclusion (Art. 156 of the OCA). Therefore when the obligation is executed, extinguished, respectively, by withholding, transfer instead of a payment or by any other lawful mode, the pledgee should return the chattel.

c. Receivable for delivery of a specified individually movable chattel which has been transferred to the debtor with an obligation to surrender possession. Those are the cases when the delivery of the chattel was postponed and did not occur simultaneously with the surrender of possession.

The following exception has been established in § 51 of the TCP of the CCP. It was foreseen in Art. 46(2) of the PA that on the basis of an effective resolution of the General Meeting under Art. 45 of the PA, the manager or the chairman of the managing council could request issuance of an enforcement order for evicting an owner from the building according to Art. 410 (1) of the CCP.

4. A characteristic element uniting all hypothesises of Art. 410 of the CCP is the lack of a requirement for presenting evidence as well as for bringing such for the alleged receivable.

5. Another common characteristic element of all hypothesises of Art. 410 of the CCP is that the receivable should be lodged by a claim and that the claim should be under the jurisdiction of the regional court.

The cases which cost of claim does not exceed 25 000 BGN are under the jurisdiction of the regional courts (arg. Art. 104, item '4' of the CCP).[4]

5.1. Sometimes literature points that doubtlessly the claimed receivable should be liquid, since the order for payment proceedings do not allow procedural actions aimed at ascertaining its grounds and/or its amount, at determining a dispute in the sense, ether. The order for payment proceedings are not adversary proceedings and no legal dispute is considered in them. The order for payment proceedings aim at establishing that the receivable is not contested by the debtor and therefore to issue enforcement grounds so that the compulsory execution according to the CCP procedure could be used sooner. It is not by chance that in Art. 410 of the CCP the legislator has not specified that the receivable should be liquid. It is not only because of the great variety of opinions regarding the requirement for liquidity or ascertainment according to grounds and amount. In contrast to the hypothesis of Art. 417 of the CCP, the legislator does not require evidence for admitting the application for issuing an enforcement order and for its very issuing under Art. 410 of the CCP. Moreover, he does not even require bringing in evidence. The necessary and sufficient condition for issuing such an order is the receivables being fixed. The necessary and sufficient conditions for the enforcement order to take effect under Art. 410 of the CCP are: its transformation into grounds for execution and issuing a writ of execution on its grounds under Art. 410 of the CCP; and that the debtor does not lodge an objection under Art. 414 of the CCP. A necessary condition is the precise individualization and not its liquidity. Individualization and liquidity are not equivalent notions.

5.2. The necessary and sufficient condition for the receivable is its being a money receivable. It could be both in Bulgarian and in foreign currency. The utterly practical problem of calculating the state tax in BGN cannot be an obstacle for its admissibility as the normative ban for negotiating money loans in foreign currency has been lifted for years. Here I will simply

mention that when lodging the application, the calculation should take into account the rate exchange of the Bulgarian National Bank.

The legal public receivables which are also money receivables cannot be subject matter of the order for payment proceedings. (The legal definition of the notion public receivables is given in Art. 162(2) of the Tax-Insurance Procedure Code (TIPC)). The aim of the order for payment proceedings is to create juridical enforcement grounds for issuing a writ of execution for performing a compulsory execution according to the CCP procedure. There is no doubt in theory and practice about their purpose for satisfying civil receivables in the wide sense. There is no need and it is inadmissible to issue an enforcement order for a public receivable, when on the grounds of Art. 458 of the CCP in connection with Art. 190 of the SSC, the receivable is satisfied according to the executive procedure of the CCP which has started as satisfying of a private receivable. It is not necessary to have a writ of execution issued for the joinder mentioned. It is necessary and sufficient to provide the executive magistrate with the respective certificate prior to preparation of the allocation balance. Besides, if the debtor with his/her objection on the grounds of Art. 414 of the CCP has contested the receivable for which an enforcement order is requested, the applicant should on the grounds of Art. 414 of the CCP lodge a claim for his/her receivable within a one month preclusive term. However, the ascertainment of public receivables does not follow the adversary procedure under the CCP. The ascertainment of public receivables is performed following the procedure and by the body specified in the respective especial law. If the law does not foresee a procedure for ascertainment of a public receivable, it is ascertained on the grounds and amount by an act for a public receivable, issued according to the procedure for issuing an administrative act foreseen in APC. If the respective law does not specify the body that should issue the act, it is specified by the mayor, by the head of the respective administration, respectively (Art. 166(1) and (2) of the APC).

5.3. The provision in Art. 410(1), item'1' of the CCP is 'receivables for fungible chattels' without specifying whether the matter is about movable chattels. Most probably, it is because in the new CCP the word 'property' is used instead of 'immovable property' as it was assumed

in literature and practice. There is no doubt that the matter concerns receivables for delivery of movable chattels, being genetically defined, because only they could be fungible.

5.4.The legislator has foreseen many exceptions from that requirement in the TCP of the CCP. They include hypothesises in which out-of-court grounds were foreseen in especial laws. They have not been foreseen in Art. 417 of the CCP as grounds for issuing an order for immediate enforcement:

a)Art. 37 of the CCP was amended by §10 of the TCP of the CCP and it has been foreseen that in respect of their receivables arising from unrecovered remuneration and expenses, an attorney-at-law can request the issuance of an enforcement order under Article 410 (1) of the CCP regardless of the amount of the said receivables;

b)Some amendments of the Energy Act were made by §22 of the TCP of the CCP which stipulates:

aa. in Art. 107 of the EA: 'The public provider, the electricity system operator, the public suppliers, the suppliers of last resort, the transmission company and the distribution companies can request the issuance of an enforcement order under Article 410 (1) of the CCP for the receivables thereof for electricity provided or transmitted, as well as for the services provided thereby under this Act, regardless of the amount of the said receivables.'

bb. in Art. 154 of the EA: 'In respect of the liabilities of any customers, who are defaulting payers, and of the association referred to in Article 151 (1) herein to the heat transmission company, an enforcement order may be issued under Article 410 (1) of the CCP, regardless of the amount of the said liabilities. An equalizing bill for the respective year for which the liability applies must have been prepared in respect of the liabilities of any customer – a defaulting payer – according to a share distribution system.'

cc. in Art. 184 of the EA, the words 'may collect the receivables thereof for natural gas from defaulting payers according to of Art. 237 the CCP, item 'j' on the basis of the account statements' are replaced with 'can request the issuance of an enforcement order under Art.

410 (1) of the CCP for the receivables thereof for supply of natural gas regardless of the amount of the said receivables".

c) The Act of Notaries and Notarial Activity was amended by § 37 of the TCP of the CCP which stipulates:

aa. in Art. 61 of the ANNA: 'In respect of the sums due, the Notary Chamber of Bulgaria acting on a resolution of the General Meeting, can request issuance of an enforcement order under Art. 410(1) of the CCP, regardless of the amount of the said sums.'

bb. in Art. 89(3) the ANNA: 'In respect of any unpaid notarial fees, the notary can request issuance of an enforcement order under Art. 410(1) of the CCP, regardless of the amount of the said fees.'

d) Art. 54 of the Irrigation Associations Act (prom. No. 34/2001; amen. No. 108/2001, No. 30/2006) was amended by §50 of the TCP of the CCP as follows: 'In respect of the receivables thereof, the associations can request the issuance of an enforcement order under Art. 410(1) of the CCP regardless of the amount of the said receivables."

e) The PEMA was amended by §57 of the TCP of the CCP.

aa. Art. 54 of the PEMA was amended as follows: 'In respect of the due sums, under a resolution of the General Meeting, the Chamber can request the issuance of an enforcement order under Art. 410(1) of the CCP, regardless of the amount of the said sums.

bb. Art. 79(3) of the PEMA was amended as follows: 'In respect of any due fees and costs that have not been paid, the private executive magistrate can request the issuance of an enforcement order under Art. 410(1) of the CCP, regardless of the amount of the said fees and costs."

f) Art. 708 of the C. Code was amended by §57 of the TCP of the CCP. The provision is that on the grounds of the plan approved by the court, the creditor can request the issuance of an enforcement order under Art. 410(1) of the CCP, regardless of the the amount of the said transformed receivable. Fortunately, as a result of the positive efforts of law theory and

practice, the legislator was convinced to restore the former solution and to amend again Art. 708 of the C. Code by an AA of the C. Code (SG No101 of 28 December 2010). He stipulated that on the grounds of the plan approved by the court, the creditor can request the issuance of a writ of execution following the procedure of Art.405 of the CCP for execution of the transformed receivable regardless of its amount. The current legislative solution is in accordance with the recovery plan approved by a decision that has taken effect. Nowadays the recovery plan approved by a decision that has taken effect has the same importance as a sentencing decision with regard to the transformed receivables viewing the possibilities for issuing a writ of execution.

III. The application is lodged with the regional court where the permanent address or the seat of the debtor is. The generic jurisdiction is in connection with the requirement in Art. 410 of the CCP, that the claim should be under the jurisdiction of the regional court. The regional court where the permanent address or the seat of the debtor is has the venue competence (Art. 411(1) of the CCP). Since the application is considered in a closed session without subpoenaing the parties, the court has to observe both the generic and venue jurisdiction.

The application contains the request for issuing a writ of execution and should meet the requirements of Art. 127(1) and (3) and Art. 128(1) and (2) of the CCP. The application should be lodged in the standard form specified in Annex 1 to Ordinance No6/2008. Keeping the standard form is a condition for the validity of the request for issuing a writ of execution. When the applicant has not used a standard form or has used a wrong standard form, the court shall attach the relevant standard form to the written instruction for curing the non-conformity (Art. 425(2) of the CCP).

The question of court's powers when non-conformity of the application is in the lack of sufficient individualization of the receivable has been raised in practice. At first two Commercial Chamber panels of the SSC assumed that in a case of non-conformity of the application for issuing an enforcement order it should be left without progress. In 2010 the practice of the

Commercial Chamber panels of the SSC became uniform. The opinion adopted was the dominating one stating that in the order for payment proceedings it is inadmissible to give instructions for curing the non-conformity of the application for issuing an enforcement order when it lacks sufficient individualization of the receivable (Ruling No 431 of 9 December 2008 on com. c. No414/2008 II-Com. Ch. of the SCC; Ruling No484 of 30 December 2008 on com. c. No293/2008 I-Com. Ch. of the SCC; Ruling No485 of 30 December 2008 on com. c. No506/2008 II-Com. Ch. of the SCC; Ruling No346 of 30 November 2008 on com. c. No294/2008 II-Com. Ch. of the SCC). It is assumed that Art. 101 of the CCP is inapplicable to the order for payment proceedings. It has been pointed that the obligation of the court conducting order for payment proceedings is to observe only the non-conformity of the application for issuing an enforcement order foreseen in Art. 425(2) of the CCP. In the rest cases of non-conformity of the application for issuing an enforcement order caused by its failure to meet the requirements of Art. 127(1) and (3) and Art. 128(1) and (3) of the CCP, the court should give instructions for its curing. In general the considerations are about the lack of powers foreseen explicitly in Art. 410 and 418 of the CCP, as it has been foreseen about the statement of claim in Art. 129 of the CCP, and in Art. 426(3) of the CCP concerning the application for instituting enforcement proceedings. The emphasis is put upon the strictly formal character of the order for payment proceedings. It is manifested by the regulation of Art. 411(2) item '1' of the CCP introducing as an external feature the regularity of the application as an absolute prerequisite for issuing an enforcement order. (Ruling No 704 of 14 October 2010 on com. c. No662/2010). The practice of the Com. C. of the SSC can hardly be shared. Art. 101 specifying the *ex officio* obligation of the court to control the regularity of the procedural actions and give instructions and set a term for their remedy is in Part One: General Rules. Therefore it is applicable to all procedural actions of the parties and in all kinds of proceedings, regulated in the CCP, the order for payment proceedings, inclusive. Moreover, it seems that the SSC forgets about a merely practical reason for the necessity the first-instance courts to give instructions for curing the statement of claim, namely about the prepaid fee. The referral of the statement of claim does not lead to its reimbursed. The same reason is faced by the order for payment proceedings. The difference is

in the fees amount – it is 4% in the adversary proceedings while in the order for payment proceedings it is 2%. If that has no importance for the SCC, for the applicant it does.

IV. The court considers the application in a closed session without subpoenaing the parties. It should pronounce on the application for issueing an enforcement order within three days following its service (Art. 411(2) of the CCP). Unfortunately, the courts often fail to meet the deadline. The court issues an enforcement order, except when: (1) the request does not comply with the requirements covered under Article 410 of the CCP; (2) the request is in conflict with the law or with good morals; (3) the debtor does not have a permanent address or a registered office within the territory of the Republic of Bulgaria; (4) the debtor does not have a habitual residence or a place of business within the territory of the Republic of Bulgaria (Art. 411(2) of the CCP).

In the order for payment proceedings the court does not have the right to verify the existence of the receivable. When the application for issuing an enforcement order is not upheld, the court pronounces with a writ (Art.413(2) of the CCP). The writ should be motivated. There is a standard form approved by the Minister of Justice in Regulation No6/2008 establishing the standard forms of an enforcement order, an application for issuing an enforcement order and the other papers in connection with the order for payment proceeding. The writ disallowing the application entirely or partially is appealable by the applicant by a private appeal (Art. 413(2) in connection with Art. 279 and 274(1) of the CCP). The ruling of the intermediate appellative court that the private appeal against the writ for refusing issuance of an enforcement order is subject to cassation appeal by a private appeal before the SSC provided that the prerequisites in Art. 280(1) of the CCP (Art. 274(3), item '2' of the CCP) exist.

V. When the application is upheld, the court issues an enforcement order and the debtor is serviced with a copy of it (Art. 411(3) of the CCP).

The enforcement order is not motivated. It is issued in the standard form established in Regulation No6/2008, Annex No2 (for money payment), Annex No3 (for delivery of moveable chattels), respectively, and contains (Art. 412 of the CCP): the indication 'Enforcement Order' (item '1'); date and place of rendition (item '2'); a reference to the court and the name of the judge who rendered the order (item '3'); the forenames, patronyms and surnames, and addresses of the parties (item '4'); the case on which the order is issued (item '5'); the obligation wherewith the debtor must comply, and the costs which the debtor must pay (item '6'); an invitation to the debtor to comply within two weeks after service of the order (item '7'); an instruction that the debtor can lodge an objection within the term under item '7' (item '8'); an instruction that if the debtor fails to lodge objection to the issuer of the order or to comply, the enforcement order will take effect and coercive enforcement will be proceeded with (item '9'); the extent of appealability, before which court and within what time limit (item '10'); signature of the judge (item '11'). The contents under items '7', '8' and '9' is of crucial importance for the debtor's defence. He/she should be aware of the consequences of his/her non-compliance and of his/her failure to object the order. It is not foreseen to instruct the debtor on the preclusion connected with Art. 424(2) of the CCP, when he/she does not lodge an objection within the two week term foreseen in Art. 414 of the CCP. Due to the impossibility to lodge a negative ascertainment claim based on facts which have occurred by the expiry of the term under Art. 414 of the CCP (arg. Art. 424(2) of the CCP, *see* para. XXI), *de lege ferenda* it would be appropriate to foresee such an instruction.

The debtor is serviced with a duplicate of the very enforcement order immediately upon its issuing. He/she is serviced with a duplicate of the enforcement order because as we shall see further on the writ of execution is issued on its grounds and a note is put down on the original as well as on each document being grounds for execution. Therefore the original of the grounds for execution should be available in the proceedings for issuing a writ of execution. When the enforcement order is issued on the grounds of Art. 410 of the CCP, the debtor is serviced with its duplicate by the court official who delivers the court notices and papers under Art. 42 of the CCP. The duplicate of the order for immediate enforcement under Art. 418 of the CCP issued

on any of the grounds under Art. 417 of the CCP with a note for issuing a writ of execution is serviced by the executive magistrate (Art. 418(5) of the CCP).

VI. The debtor can object in writing the enforcement order or a part of it. The objection should be lodged within two weeks after service of the order, and the said term is preclusive and cannot be extended (Art. 414(2) of the CCP).

Justification of the objection is not required (Art. 414(2) of the CCP). Therefore it is irrelevant whether the debtor contests the obligation or its executability, or whether he/she resorts on his/her own objections that exclude a right, terminate a right and extinguish facts. It is not required to present facts supporting the objection. That is in accordance with the lack of a requirement in Art. 414(2) of the CCP to bring in and present facts in support of the request for issuing an enforcement order. Item '3' of Standard Form No7 gives instructions to the debtor that he/she can optionally give reasons for his/her contesting the receivable.

The objection is lodged in a standard form according to Annex No7. Art. 625 of the CCP does not specify this standard form as a condition for the validity of the objection. Art. 425 of the CCP does not specify the objection as a mandatory standardized application (only the petitions and the court acts are stated). Regarding the applicant the standardization aims at unburdening the court, which act is also standardized, and should be 'repeated', even though when a technical device is available, the court should directly 'reproduce' it in the enforcement order, if the application is upheld. The debtor's statement is not reproduced anywhere. The opposing party is not serviced with it. The aim of the 'standard form' of the objection in Regulation No6 is to facilitate realization of the debtor's right to objection, since this form is included as a mandatory enclosure to the order. The form contains the phrase 'I do not owe execution'. Thus the debtor is facilitated in his/her realization of the right to objection. It is enough that he/she fulfils the instructions in the standard form, puts his/her signature and sends it to the court that rendered the enforcement order. But debtor's using the standard form is not obligatory. So that the legal consequences from the objection could occur, in case it

was made on time, it would be enough to submit it in writing and express explicitly the will to contest the receivable.

The content of the petition is not regulated explicitly in the CCP. The lack of necessity to give grounds for the objection against the enforcement order established in Art. 414 of the CCP makes it significantly different from the objections of the defendant in adversary proceedings, where they should be proven with regard to the burden of proof. However, with this objection the defence intensity is great. For that reason the enforcement order under Art. 410 of the CCP does not take effect and the applicant should bring in an ascertainment claim under Art. 415 of the CCP. The debtor's failure to lodge an objection under Art. 414 of the CCP in the due term causes a heavy preclusion for him/her. He/she is unable to lodge a negative ascertainment claim based on facts which have occurred by the expiry of the said term, only if he/she did not know or could not have known about them. If the debtor does not object the enforcement order, the receivable is considered acknowledged.

Due to the reasons mentioned, the practice imposed the opinion that it is admissible to search the petition for objection in any written document submitted by the debtor within the term for submitting an objection (Ruling No 274 of 26 March 2010 on com.c. No159/2010, I - Com. Ch. of the SCC).

An objection may be lodged only against a part of the enforcement order when the receivable in the rest part is acknowledged. However, there should be an explicit acknowledgment of the receivable. It is also provided that when a part of the receivable is acknowledged, it should be specified explicitly (item '4' of Standard Form No 7).

VII. When the objection is lodged in the due term, the court instructs the applicant that he/she can lodge an ascertainment claim for his/her receivable within a one month term, paying the due state fee (Art. 415(1) of the CCP). Art. 415(2) of the CCP provides that when the applicant fails to present evidence that he/she has brought the action within the due term, the court invalidates the enforcement order in part or in whole, as well as the writ of execution

issued under Art. 418 of the CCP. Doubtless this text refers to an enforcement order issued under Art. 418 of the CCP, as well as to the one issued under Art. 410 of the CCP. It is true that the enforcement order issued under Art. 410 of the CCP has not taken effect, i.e. it has not caused its effect, hence there is no need to invalidate it. However, it is necessary to render an explicit act of its invalidation because although having not taken effect, the enforcement order exists in the legal world as an explicit court act. Therefore, if the claimant fails to lodge a positive ascertainment claim under Art. 415 of the CCP within the one month term, the court should invalidate by an explicit act the enforcement order issued under Art. 418 of the CCP, as well as the one issued under Art. 410 of the CCP. This act is a writ since it is analogous to the writ for a refusal to issue an enforcement order. The necessity to issue this act is also determined by the desire the intermediate appellate instance to control the invalidation of the enforcement order as a writ barring the defence. The creditor might have lodged the claim, but due to circumstances that do not depend on him/her, he/she has not informed the court about it (For instance, the claim was lodged by post on the last day of the term.) The regional court might have judged inappropriately the range of the debtor's objection and to have given instructions for lodging a claim. The creditor might have not agreed with the instructions but was not able to appeal directly, so he/she was waiting for the appealable terminating act to be rendered. (For instance, the enforcement order was issued against jointly responsible debtors, but only one of them submitted an objection under Art. 414 of the CCP and the court gave instructions for lodging the claim against all the debtors. Thus, when the claim was not lodged, the order was entirely invalidated.) Giving instructions to lodge the claim under Art. 415 of the CCP might be due to the inappropriately treating of a petition as an objection when it is not such, or to taking into account the consequences of an objection, when the order has been stabilized because of the expired term under Art. 414 of the CCP. If in this hypothesis we make the creditor bring the claim only because he/she has been instructed, then there will be costs on a court phase to be covered by a party which has not contested and has not intended to inflict.

VIII. The provision of Art. 416 of the CCP is that when an objection has not been lodged in due time or has been withdrawn, or the court decision for ascertainment of the receivable has taken effect, the enforcement order enters into effect. On the basis of the said order, the court issues a writ of execution and puts a note on the order.

The request for issuing an enforcement order under Art. 410 of the CCP is a request for issuing a writ of execution (Art. 410(2) of the CCP). But in the hypothesis of Art. 410 of the CCP the writ of execution is issued only after the enforcement order has taken effect. The enforcement arises after the order has taken effect. When a claim is lodged under Art. 415 of the CCP, the order takes effect much later, only when after a decision on an upheld ascertainment claim under Art. 415 of the CCP has taken effect. As seen from Art. 416, sentence II, of the CCP, due to the explicit will of the legislator the enforcement order remains the bearer of the enforcement effect. The decision on an upheld ascertainment claim that has taken effect has only a *res judicata* effect, and not an enforcement effect. However, since the decision on an upheld ascertainment claim that has taken effect is a procedural legal consequence for the arising of the enforcement effect of the enforcement order (being the bearer of the ascertainment act, too), it should be mentioned explicitly in the writ of execution, that it is being issued on the grounds both of the enforcement order and of the said decision. It is clear from Art. 416, sentence II, of the CCP, that the writ of execution should be issued by the court that has issued the enforcement order, the ascertainment decision of the intermediate appellate court that has taken effect, inclusive (Art. 269 of the CCP), or of the SCC (Art. 293(2) of the CCP, in connection with Arts. 293(3) and 295(2) of the CCP).

The very adversary proceedings under Art. 415 of the CCP follow the rules of the adversary procedure. The fact, that there is an enforcement order issued, although it has not taken effect, does not turn the procedure into a specific one. The requirements for lodging a claim under Arts. 127 and 128 of the CCP should be met.[1] The difference is that in this case an additional state fee should be paid. According to Art. 131(1) of the CCP the court should send the defendant a copy of the statement of claim. He/she has the right established by Art. 131(2) of the CCP to submit a reply to the statement of claim. It is so, because as already mentioned,

the enforcement order is issued without bringing evidence in the application, without the need of presenting written evidence, respectively. If the claim is a subject to consideration under the general adversary procedure, the rule of the general adversary procedure will apply. If the claim is a subject to consideration under a special adversary procedure (such as the proceeding for considering commercial disputes), it should be considered following that procedure.

When an ascertainment claim under Art. 415 of the CCP is upheld by a decision that has taken effect, the enforcement order and the decision that has taken effect are two acts providing defence-sanction in the civil procedure. The enforcement order is the bearer of the enforcement effect, while the decision that has taken effect by which the creditor's ascertainment claim is upheld is the bearer of *res judicata* effect. This is also a specific feature of the Bulgarian legislative solution on the correlation between the order for payment proceedings and the adversary proceedings. This correlation is notable in another aspect. On the grounds of Art. 404, item '1' of the CCP the sentencing decisions of the intermediate appellate courts that have not taken effect, are enforcement grounds. The intermediate appellate court decision upholding an ascertainment claim under Art. 415 of the CCP that has not taken effect does not have an enforcement effect (arg. Art. 416, sentence II, of the CCP).

Moreover, it is foreseen explicitly in Art. 416 of the CCP that a note for issuing a writ of execution is also put down on enforcement order. Regarded strictly, on one hand that means issuing a writ of execution is not put down on the ascertainment decision. On the other hand, the legislator finds, that a writ of execution cannot be issued only on grounds of the ascertainment decision, namely because it is not a bearer of the enforcement effect. Besides, the two proceedings progress in two independent cases, possibly in two independent courts (because of the different generic and venue jurisdiction). Putting a note on the enforcement order aims at preventing issuance of another original writ of execution on the same grounds.

Nothing is mentioned in the CCP about the hypothesis when the claim under Art. 415 of the CCP is disallowed by a decision that has taken effect. Under the argument of Art. 415(2) of the CCP the enforcement order should be invalidated by an explicit act of the court that has

issued it. The courts practice is in the same sense since the matter is about failed order for payment proceedings.

1. It is true that the prevailing courts practice is to require and apply the entire order for payment proceedings to the adversary proceedings, because this is the only way to judge precisely both the regularity and admissibility of the positive ascertainment claim, as well as the debtor's relevant objections lodged within the term under Art. 414(1) of the CCP, the relevance of the latter to the procedural possibilities opened to the defendant in the adversary proceedings (Art. 131 in connection with Art.133 of the CCP). For instance, it was assumed in Decision No 111 of 8 October 2010 on com. c. No1968/2009, I - Com. Ch. of the SCC that the explicitly lodged objection to extinguishing the receivable due to liquidity of the objection under Art. 414 of the CCP, should be taken into account by the court considering the adversary proceedings, even though a reply under Art.131 of the CCP has not been submitted.

IX. The hypothesis of Arts. 417 and 418 of the CCP is called special, although it is the more common in practice. It is called 'order for immediate enforcement'. In fact a writ of execution is issued simultaneously with this order without hesitating for its taking effect. Moreover, the legislator included the documents which under Art. 237 of the CCP, repealed, used to be out-of-court enforcement grounds in this particular hypothesis. Thus the regime of issuing a writ of execution preserved some of the elements of the former regime of issuing a writ of execution on out-of-court enforcement grounds. The difference in the case is that nowadays two acts of different regimes are issued simultaneously and overlapping, though one of them is the grounds for issuing the other, even before the grounds have taken effect. In Art. 404, item '1' of the CCP this order gives rise to an enforcement effect immediately upon its issuance.

The irrelevance of the amount of the receivable (Art. 417 of the CCP) is also typical for this hypothesis. Besides, the order for immediate enforcement could be issued only on the

grounds of a document admitted as grounds for its issuance (Art. 417 of the CCP). (Ruling No 672 of 24 November 2009 on com. c. No 677/2009, I - Com. Ch. of the SCC; Ruling No 22 of 14 January 2009 on com. c. No 263/2008, I - Com. Ch. of the SCC). Nowadays the grounds listed in Art. 417 of the CCP seem thorough. There is not a text as it used to be in Art. 237, item 'k' of the CCP, repealed, foreseeing that the enforcement could start on the grounds of other documents on which grounds the law allows issuing a writ of execution. However, as we shall see further on, many special laws refer to Art. 418 of the CCP, which is applicable to the hypotheses of Art. 417 of the CCP. Thus the legislator multiplied the grounds for issuance of an order for immediate enforcement.

The receivable should be executable in the hypothesis of Art. 417 of the CCP as well.

The order for payment proceedings are facultative in the hypothesis of Art. 417 of the CCP as well. The creditor who has any of the grounds under Art. 417 of the CCP, should not request issuance of an order for immediate enforcement and may prefer the adversary procedure.

X. The documents which are grounds for issuing an order for immediate enforcement are listed in Art. 417 of the CCP. They are almost a copy of those out-of-court enforcement grounds foreseen in the CCP, repealed.

Firstly referred is an act of an administrative authority according to which the admission of the enforcement is assigned to the civil courts.[1]

a)The text of Art. 417, item '1' of the CCP which is a copy of Art. 237, item 'd' of the CCP, repealed.

At the time of the CCP, repealed, in different periods of its validity, there used to be a lot of administrative acts which were enforcement of rulings. Until 1999, Art. 79(2) of the CCP, repealed, used to foresee a possibility to determine disputes between business subjects, under the head of one and the same institution. They used to be determined following an administrative procedure by an intraistitutional arbitrage. The legislative solution was repealed

when the new Constitution took effect as it was in conflict with it. Hence, nowadays Art. 418, item '1' of the CCP is also not related to administrative acts with which a legal dispute is determined.

Art. 417, item '1' of the CCP does not refer to public receivables in the sense of Art. 162(2) of the TIPC. The public receivables (Art. 162(2) of the TIPC) are ascertained in the respective ascertainment administrative acts (Art. 166(1) of the TIPC). Their enforcement is according to the procedure of TIPC (Art. 163(1) of the TIPC). When the public receivable on the grounds of Art. 358 of the CCP in connection with Art. 191 of the TIPC is not adjudged for satisfaction in the enforcement procedure under the CCP, there is no need of a writ of execution nor of an enforcement order either. The necessary and sufficient condition is to have the respective certificate from the National Revenue Agency. Art. 417, item '1' of the CCP does not refer to the administrative legal pretence rights. The administrative acts ascertaining administrative legal pretence rights are the enforcement grounds for following the procedure of the APA and not of the CCP. For this enforcement there is no need of issuing a writ of execution, nor an enforcement order either, even when that is of the competence of an executive magistrate. The enforcement grounds under APA are the following acts that have taken effect or are subject of preliminary execution: individual or joint administrative acts; decisions, rulings or orders of the administrative courts; agreements before the administrative authorities or before a court (Art. 268 of the APA).

Now the existence of receivables for compensations for saleable lots according to yard regulation plans is no more possible. By the TDA, the automatic expropriation effect of those plans (which they used to have under TURDA) was terminated according to § 6 of the TDA. The TDA does not allow expropriation of private property, but of sites which are public state or municipality property (Arts. 205 and 209 of the TDA). The regulation boundaries of the lots in the detailed regulation plan become boundaries of the properties (Art. 14(3) of the TDA). That means the former parcels cannot be 'retailored' by adding parts of them to neighbouring ones. However, there are acts under the TDA which ascertain money receivables – Arts. 196(6) of the TDA, Art. 210(6) of the TDA, Art. 225(5) of the TDA, etc. The texts concerning the execution of

those acts were not changed following the CCP's taking effect and still refer to Art. 237, item 'k' of the CCP, repealed. This involuntary legislative omission should be eliminated as soon as possible.

b) The adoption of Art. 418, item '1' of the CCP is connected with the repeal of Art. 6(12) of the Law of Compensation of Owners of Nationalized Properties (LCON. In fact in the last decades when the CCP, repealed, was valid most of the writs of execution on the grounds of an administrative act were issued under Art. 6(12) of the LCONP. Those are decisions under Art. 6 of the LCONP of the minister or of the institution's head, who exercises the rights of the state in trading companies whose assets include properties under the said law; of the district governors – in all the rest cases – which uphold the requests of the owners or legal successors of property owners nationalized under the laws and in the ways provided in Arts. 1 and 2 of the Restitution of Nationalized Real Estate Act (RNREA), which could not be restored really because the property has been become public or property of the state or of the municipality, acquired in good faith from third persons, or there have been constructions or other changes in accordance with the actual legislation, which do not allow the real restoration of the property. Those are also decisions for compensations of those properties in a way specified in Art. 2 of the LCONP and chosen by the owners with regard to the quotas and valuations indicated in the acts of the said authorities. The administrative act under Art. 6 of the LCONP has a constitutive effect, which is transformed into sole property or gives rise to rights to shares or to a share in trading company (Arts. 1 and 2 of the LCONP). When under Art. 2 of the LCONP there is no voluntary execution by the person who is affected by Art. 6 of the LCONP, then there could be enforcement. Since following the repeal of the Art. 6 of the 2000 LCONP (rep. SG No9/2000) he/she is not a subject in the administrative proceedings, neither in the court proceedings for appeal of the said act, nor is legitimate to appeal, it was assumed in ID No6 of 10 May 2006 that the dispute on the acquired rights can and should be determined by adversary proceedings. It was also assumed that since the person was not a party to administrative proceedings according Art. 2 of the LCONP and could not appeal the act, he/she is not bound to that act and

the matter of its lawfulness can be considered in adversary proceedings within the frames of the indirect legal control on a pre-jurisdiction level.

Nowadays, in accordance with this position, it is possible on the grounds of Art. 414 of the CCP to have issued an order for immediate enforcement and a writ of execution against a third person (being a debtor in the order for payment proceedings) in whose legal sphere the administrative act that has taken effect causes changes like those under Art. 6 of the LCONP. The said third person can lodge an objection under Art. 414 of the CCP. Then, the beneficiary of the constitutive effect of the administrative act being an applicant to the order for payment proceedings should lodge a claim under Art. 414 of the CCP. Viewing the considerations on the reasons for the current legislative solution, the latter should be valid regarding not only the administrative act but the court decision on the appeal against it, if the person under Art. 2 of the LCONP has not been constituted as a party to the case. Since LCONP dates of 1999, Art. 6(1) of the LCONP sets a preclusive term for lodging the requests under Art. 2 of the LCONP. In fact, that law has been already losing its field of application except for the pending cases.

c) The receivables specified in Art. 269(2) of the APA should be considered when discussing the range of Art. 417, item '1' of the CCP.

The provision of Art. 269(2) of the APA is that the private receivables of the State and the municipalities, the receivables for detriment resulting from unlawful administrative acts and from coercive enforcement and the other private monetary receivables arising from or certified by enforcement grounds under Art. 268 of the APA, as well as any receivables for costs incidental to enforcement, are enforced according to the procedure established by the CCP. The order for payment procedure is the procedure of the CCP. It is not a particular reference to Art. 418 of the CCP. And it is not by chance.

The enforcement grounds under Art. 268 of the APA are of another nature. Those are individual or general administrative acts (item '1'); decisions, rulings and orders of the administrative courts (item '2'); agreements reached before the administrative authorities or before the court (item '3') that have taken effect or are subjects to preliminary execution. Art. 417, item '1' of the CCP could be applicable to writs of execution under Art. 268 item '1' of the

APA. A writ of execution under Art. 404 item '1' of the CCP should be issued on the enforcement grounds of Art. 268 items '2' and '3'of the APA. There is no use to go through order for payment proceedings because the matter concerns court decisions and rulings, agreements reached before the administrative courts. Besides, if the administrative act has taken effect, the objection under Art. 414 of the CCP should be inadmissible but when the enforcement is on the grounds of Art. 6(1) of the LCONP against the person in whose legal sphere the change has occurred.

aa) Private receivables of the State and the municipalities arising from the enforcement grounds under Art. 268 of the APA.

One could think about the application of Art. 417, item '1' of the CCP when the writ of execution is under Art. 268 item '1' of the APA, i.e. an administrative act. However, the administrative act ascertaining a private receivable of the State and the municipality that has taken effect is foreseen as grounds for issuing an order for immediate enforcement under Art. 417, item '7' of the CCP.

A writ of execution under Art. 404 item '1' of the CCP should be issued on the enforcement grounds of Art. 268 items '2' and '3'of the APA. There is no use to go through order for payment proceedings because the matter concerns court decisions and rulings, agreements reached before the administrative courts, respectively.

bb) Receivables for detriment resulting from unlawful administrative acts are the receivables of different legal subjects, who have contested successfully the respective administrative act which was recognized as void or reversed as an unlawful one. In those cases when a compensation was also adjudged under Part III, Chapter XI of the APA simultaneously with the contestation of the act or in independent administrative proceedings (Art. 204(2) of the APA), it should be executed according to the procedure of CCP. Since the matter concerns decisions of the administrative courts, the writ of execution should be issued on the grounds of Art. 404 item '1' of the CCP and one should not go through order for payment proceedings. That deals with the competence in the adversary proceeding on claims for compensations for

detriment resulting from unlawful administrative acts. That is not a reason to treat the decisions of the administrative courts in a way different from treating the general ones.

cc) Receivables for detriment resulting from coercive enforcement. Those are receivables under Art. 299 of the APA, established in the procedure of APA, according to Art. 300 of the APA.

The decision of the administrative court on the claim under Art. 300 in connection with Art. 299 of the APA being a court decision is grounds for issuing a writ of execution under Art. 404 item '1' of the CCP, as are the decisions rendered in adversary proceedings by the general courts.

dd) Private monetary receivables arising from or certified by enforcement grounds under Art. 268 of the APA.

Such are the receivables under Art. 6 of the LCONP.

The general wording of Art. 417, item '1' of the CCP for using the administrative acts as grounds for issuing an order for immediate enforcement in the remaining cases is in conflict with the application of Art. 414 and 415 of the CCP since the matter concerns an administrative act that has taken effect. The general regime of the APA differs considerably from the legislative solution under Art. 6 of the LCONP. According to Art. 26(1) of the APA the known interested citizens and organizations but the applicant are informed about the commencement of the proceedings. According to Art. 153(1) of the APA parties to the case on contesting the administrative act are the contestant, the authority that issued the act as well as all interested persons. The court constitutes the parties *ex officio* (Art. 153(1) of the APA). The decision with which the contested act is declared null, is reversed or modified is effective *erga omnes*. (Art. 183 of the APA). It is true that according to Art. 124(2) of the APA anyone interested is entitled to lodge a claim, to ascertain the existence or absence of an administrative right or legal relationship, but only when he/she has no other means of defence. Moreover, on the grounds of Art. 128(1) of the APA that claim is under the jurisdiction of the administrative courts. Unlike the situation in Art. 128(2) of the APA the objection under Art. 414 of the CCP and the claim

under Art. 415 of the CCP have a subject of the order for payment proceedings as a subject of receivable.

The administrative acts that have taken effect were foreseen as enforcement grounds parallel with the court decisions in Art. 237, item 'a' of the CCP, repealed. They were qualified as out-of court grounds only by the formal characteristic of being acts which were not issued by the court. As far as the stability of the enforcement and the impossibility to contest the receivable under the procedure of Art. 250 of the CCP, repealed, are concerned, they were equalized to the court decisions which have taken effect. Therefore the wiser legislative solution would be to foresee those acts in Art. 401, item '1' of the CCP as grounds for issuing a writ of execution. Regarding the administrative acts for ascertaining private receivables that have taken effect, besides the presented considerations, I find the legislative solution not to be in accordance with Art. 14 of the CCP, wherein it is specified explicitly that all civil cases are under the jurisdiction of courts. The Article is a projection of Art. 119 of the Constitution according to which justice is administrated only by the courts. On the other hand, until the current CCP took effect, the enforcement grounds under Art. 268 of the APA were treated in literature and practice as direct enforcement grounds, i.e. there was no need to issue a writ of execution for the enforcement. The only exception used to be the receivable for the costs adjudged by a decision on the appeal against the administrative act, as well as the one for compensations adjudged by a decision that has taken effect.

My opinion based on the presented considerations is that the general regulation of Art. 417, item '1' of the CCP is not appropriate. Its putting ahead of all is even less appropriate. However, as the current Art. 417, item '1' of the CCP is preserved, one could expect especial laws which similarly to Art. 6 of the LCONP will foresee deviations from the cited above APA general rules for constituting interested parties and for inclusion of the administrative acts issued with regard to the said rules into the application field of the order for payment proceedings. This approach would be much closer to the approach in connection with the application field of Art. 410 of the CCP and with the plenty especial norms created in this connection by means of TCP (*see* para. II).

d) According to Art. 78 of the AVSA when a compensation has been adjudged, the enforcement of a sanction provision is admissible upon the request of the person having the right to compensation under Art. 418 of the CCP. Art. 78 of the AVSA is the general **reference** norm valid for all sanction provisions, for which the possibility to have compensations adjudged on their grounds has been foreseen. The sanction provisions for fines or money compensations in favour of the State are enforced according to the procedure for state receivables (Art. 79(2) of the AVSA). Prior to the issuance of a sanction provision the victim may file a claim to the relevant penalising authorities for compensation of damages inflicted to him/ her in the amount of up to 2,000 BGN, unless the relevant law or decree has provided an option for claiming damages in a large amount before the same penalising authority (Art. 45(1) of the AVSA). However, the fine by a sanction provision is public legal receivable in the sense of Art. 162(2) of the FPPA and its enforcement is performed following the procedure of the FPPA. According to Art. 79(2) of the AVSA when sanction provisions are adjudged in favour of state-owned enterprises, co-operatives, or other public organisations or individuals, they are executed following the procedure referred to in the CCP. It should be assumed in connection with Art. 79(2) of the AVSA that sanction provisions are grounds for issuing an enforcement order under Art. 418 of the CCP. The sanction provisions under the AVSA do not belong to the notion 'administrative acts' in the sense of Art. 269(2) of the APA. The sanction provisions are state administration acts but have a sanctioning nature. They do not overlap with the contents of the notion 'administrative acts' in the sense of Art. 21 of the APA. The collection of the adjudged compensations ascertained by sanction provisions following the procedure of Art. 418 of the CCP is performed on the grounds of the explicit reference to that procedure, envisaged in Arts. 78 and 79 of the AVSA, and not on the grounds of Art. 269(2) of the APA. The sanction provision issued by the municipality mayor on the grounds of Art. 20(5) of the FPPA (at the time of the CCP, repealed, that used be direct enforcement grounds) also belongs to the field of applying the norm of Art. 78 of the AVSA, with reference to Art. 418 of the CCP.

It seems with the amendment of Art. 78(1) of the AVSA the legislator had intended to open the possibility for adjudging compensation with a sanction provision, for issuing an

enforcement order on its grounds, respectively. But the legislator also provided the person against whom the sanction provision was issued with the chance to contest the receivable with an objection under Art. 414 of the CCP, that will cause the need of ascertaining the receivable by an adversary procedure under Art. 414 of the CCP. Thus the admittance of a faster enforcement of those private receivables, which have been ascertained in an administrative act by the possibility of utilizing the order for payment proceedings in its special type of an order for immediate enforcement was combined by the legislator with the possibility for the debtor to contest the receivable with an objection under Art. 414 of the CCP. However, that means the appealability of the compensation adjudged by a sanction provision foreseen in Art. 59(2) of the AVSA should have been cancelled.

e) It has been assumed that Art. 417, item '1' of the CCP is valid for acts of public authorities which are not government authorities (for instance the Barristers Council) which used to be out-of-court enforcement grounds. The Barristers Council (as well as the Notaries Chamber and the Chamber of Private Executive Magistrates) is a non-government organization and it does not issue administrative acts in the sense of Arts. 21 and 65 of the APA. The matter concerns receivables which are not public in the sense of Art. 162(2) of the SSC but they are not private being a means of disciplinary sanction – fine. Their enforced satisfaction is under the CCP procedure. Those acts were foreseen in the TCP of the CCP thus replacing the out-of-court enforcement grounds for that kind of receivables. Art. 145 of the AB was amended in §10 the TCP of the CCP, foreseeing the enforcement of the decision for a disciplinary sanction fine to be admitted by a request of the Barristers Council under Art. 418 of the CCP. Besides, when the due cost are not paid by the sanctioned barrister in a one month term following the decision's taking effect, the enforcement on the part of the costs is admitted by a request of the Barristers Council or the disciplinary court under Art. 418 of the CCP.

However, the legislator does not treat the same way the acts of the Notaries Chamber and those of the Chamber of Private Executive Magistrates when fining the private executive magistrates, although those authorities are analogous to the Barristers Council. Art. 61 of the ANNA was amended in §37 of the TCP of the CCP. It foresees a possibility for the Notaries

Chamber upon a resolution of its GM to request an enforcement order issuance for the due sums under Art. 401(1) of the CCP, regardless of their amount. Art. 54 of the PEMA was amended in §57 of the TCP of the CCP. It foresees a possibility for the Chamber of Private Executive Magistrates upon a resolution of its GM to request enforcement order issuance for the due sums under Art. 401(1) of the CCP, regardless of their amount.

2. A document or a statement from account books ascertaining the receivables of the state establishments, municipalities and banks.

These grounds for issuing an order for immediate enforcement are valid only for the subjects mentioned. A condition for using the account books as grounds for issuing an order for immediate enforcement is the regularity of their entries. The statements are valid for money receivables arising from a contract. Entries from the account books cannot be used for receivables for damages or for ungrounded enrichment.

In connection with above text the following amendments of the CCP were made with TCP into special laws:

a) Art.53(2) of LNBB foresees that NBB can request issuance of an order for immediate enforcement following the procedure of Art. 418 of the CCP on the grounds of statements from account books ascertaining arrears, including any interest due.

b) Art.111(2) of the Health Insurance Act foresees that RHIF can request issuance of an order for immediate enforcement under Art. 418 of the CCP on the grounds of statements from account books. Those are receivables for the resources paid by the NHIF on treatment of any diseases caused by deliberate injury to a person's own health, the health of other persons in a premeditated criminal offence, as well as for injury to the health of third parties committed in a state of alcoholic intoxication or use of narcotic or anaesthetic substances, which are restored to the National Health Insurance Fund by the injurer with due interest and with the expenses incurred on the recovery.

c) It was foreseen in Art. 60 of the of the CIA that when a loan or individual instalments thereof are not paid on the agreed payment dates as well as in the cases where the loan is

subject to accelerated payment due to default on one or more instalments on the loan, the bank can request the issuance of an order for immediate enforcement according to the procedure of Art. 418 of the CCP on the grounds of a statement from account books. The statement is from the account of the borrower.

d. It was foreseen in Art. 59(5) of the LBI that when the loan is not paid on the agreed payment date, the syndic can request the issuance of an order for immediate enforcement according to the procedure of Art. 418 of the CCP on the grounds of a statement from account books.

e. It was foreseen in Art. 260(4) of the Law on Defence and Armed Forces of the Republic of Bulgaria (LDAF) that the sum under Art. 260(1) and (3) of the LDAF is deducted totally from the compensation and the other receivables, which the indebted person has the right to receive, and if the owed sum cannot be collected this way and in the cases under Art. 260(2) of the LDAF, the receivable is collected as provided by the CCP on the grounds of a statement from account books. Having also in mind § 41 of the TCP with which amendments were made in analogous provisions of the LDAF, repealed, it should be assumed that it is possible to have issued an order for immediate enforcement on the grounds of those account books. The military servicemen, whose contracts for regular military service have been terminated on the grounds of Arts. 163, 165 and 166 earlier than the expiry of the term according to Art. 142(5), Art.143(1) and Art. 144(3), and those on an extended term under Art. 145(1), owe reimbursement of the expenses for support, training and qualification and/or re-qualification, proportionally to the term of the non fulfilment (Art. 260(1) of the LDFA). The students, discharged from education following a procedure, determined by the Rules of the higher military schools or those who left on their will during the education, reimburse the expenses for support and education for the period, when they were educated (Art. 260(2) of the LDFA). The cadets discharged from education in a procedure, determined by the Rules of the professional colleges or those who have left by their own will during the education, reimburse the expenses for support and education for the period, when they were educated (Art. 260(3) of the LDFA).

f. It was foreseen in Art. 67(4), sentence II, of the Law on Patents and Utility Model Registration that the Patent Office is entitled to request issuance of an order for immediate enforcement under Art. 481 of the CCP for the sums owed for preparing the necessary copies of documents on the grounds of the statement from the account books because payment failure is not a reason to terminate the application procedure.

g. It was foreseen in Art. 27(2) of the Farmers Support Act that the Agriculture State Fund is entitled to request issuance of an order for immediate enforcement under Art. 481 of the CCP on the grounds of the statement from the account books for its receivables from legal entities and individuals for unduly paid and overpaid sums for schemes and measures. The receivables are collected by NRA.

h. It was foreseen in § 11b of the Privatization and Post-privatization Control Act (PPCA) that the Agency for Post-Privatization Control and the authorities under Art. 4(2) of the PPCA are entitled to request issuance of an order for immediate enforcement under Art. 481 of the CCP on the grounds of the statement from the account books for due installments for covering the cost on privatization contracts.

i. It was foreseen in Art. 57(2) of the Roads Act (RA) that when the requirements under Art. 57(1) of the RA are not met, the consequences are remedied by the administration managing the road on the offender's account. For its receivables from the offender the administration can request issuance of an order for immediate enforcement pursuant to the provisions of Art. 418 of the CCP on the grounds of the statement from the account books.

In practice the order for payment procedure under Art. 417 item '2' of the CCP is used mostly by the banks. Overcome are the attempts of some banks to present a document entitled "Account Statement" containing description of the account with allegations typical of the statement of claim, instead of a proper statement of the borrower's account. Overcome was also the practice of some courts to require not an account statement but the tracking of the entire activity of the account. The account statement should contain the exact data about the particular client of the bank, the bank loan contract, the amount of money owed by the borrower, the principle, interests, executability (Ruling No 430 of 16 July 2009 on a com.c. No

346/2009, I-Com. Ch. of the SCC; Ruling No 134 of 29 January 2010 on a com.c. No 52/2010, I-Com. Ch. of the SCC; Ruling No 426 of 16 July 2009 on a com.c. No 322/2009, I-Com. Ch. of the SCC; Ruling No 430 of 16 July 2009 on a com.c. No 346/2009, I-Com. Ch. of the SCC; Ruling No 461 of 28 June 2010 on a com.c. No 272/2010, II-Com. Ch. of the SCC; Ruling No 746 of 3 November 2010 on a com.c. No 409/2009, Com. Ch. of the SCC). Due to the wording of Art. 417, item '2' of the CCP 'a document or a statement from account books' there is no obstacle to present the loan contract with the statement from account books (Ruling No 118 of 24 February 2009 on a com.c. No 25/2009, II-Com. Ch. of the SCC; Ruling No 264 of 7 May 2009 on a com.c. No 210/2009, I-Com. Ch. of the SCC). It is possible to have issued an order for immediate enforcement only on the grounds of a statement from account books, if the said statement certifies all allegations of the creditor (Ruling No 430 of 16 July 2009 on a com.c. No 346/2009, I-Com. Ch. of the SCC; Ruling No 134 of 29 January 2010 on a com.c. No 52/2010, I-Com. Ch. of the SCC; Ruling No 426 of 16 July 2009 on a com.c. No 322/2009, I-Com. Ch. of the SCC). However, it is not enough to present only the loan contract. Besides, the executability of the receivable should be also put down in the statement from account books. As seen from the phrase 'a document or a statement from account books', in the cases of pre-term executability of the loan the loan contract and a document certifying the circumstance - grounds for pre-term executability - should also be presented. (Ruling No 641 of 16 November 2009 on a com.c. No 656/2009, I-Com. Ch. of the SCC; Ruling No 331 of 28 November 2008 on a com.c. No 306/2008, I-Com. Ch. of the SCC; Ruling No 543 of 25 September 2009 on a com.c. No 465/2009, II-Com. Ch. of the SCC; Ruling No 231 of 23 March 2010 on a com.c. No 115/2010, II-Com. Ch. of the SCC).

3. A notarial act, an agreement or another contract bearing notarized signatures with regard to the obligations contained therein to pay sums of money or other fungible things, as well as obligations to deliver particular chattels.

The said documents cannot serve as grounds for issuing an order for immediate enforcement for other pretence rights, although certifying those rights.

During the verification under Art. 418(1) of the CCP the court cannot verify the genuineness of the deeds and testimonies that the documents under Art. 417 item '3' of the CCP contain. The verification is only on the formal regularity of the document. The court has to check whether the type of document meets the standards and norms for its issuance. In connection with the range of the verification under Art. 418(1) of the CCP in the order for payment proceedings in the hypothesis of Art. 417 item '3' of the CCP the court cannot verify the authenticity of notarially certified signatures put on the agreement protocol presented by the applicant, as well as whether there is a breach of the regulation under Art. 582 of the CCP. The verification should be performed within the frames of the adversary proceedings following the procedure of Art. 422 of the CCP for ascertaining the existence of the very receivable. The parties should exhaust all their arguments and objections concerning the disputed receivable, the document Art. 417 of the CCP, inclusive. (Ruling No 143 of 23 February 2010 on a com.c. No 912/2009, II-Com. Ch. of the SCC).

Since the court performs the verification examining the formal character of the document, the claimed receivable of the applicant should be supported by the contents of the document on which grounds he/she can request issuance of an order for immediate enforcement and a writ of execution. When the request for issuance of an order for immediate enforcement under Art. 417 item '3' of the CCP is on the grounds of a notarial act for a receivable for a forfeit for faulty failure to perform, the court does not ascertain the obligation of paying a money sum, as a due receivable in the sense of Art. 418(1) of the CCP. It is because the executability of the forfeit depends on debtor's failure to fulfil his/her obligation to build the sites within the agreed term. The judgement is whether there was a failure to fulfil. Those are facts beyond the grounds under Art. 417 item '3' of the CCP for issuing an order for immediate enforcement which are not attested by that document and cannot be discussed in the proceedings under Art. 418 of the CCP. The occurrence of the fact which determines the executability of the receivable for a forfeit in the notarial act, depends on the occurrence of another circumstance. According to Art. 418(3) of the CCP that occurrence of a circumstance should be attested by an official document or a document originating from the debtor. That

document should be presented together with the application for issuing an order for immediate enforcement (Ruling No 321 of 3 May 2010 on a com.c. No 286/2010, II-Com. Ch. of the SCC; Ruling No 508 of 6 July 2010 on a com.c. No 281/2010, II-Com. Ch. of the SCC).

4. A statement of the registered pledges registry on a recorded security interest and on commencement of foreclosure: in respect of the delivery of pledged chattels as grounds for issuing an order for immediate enforcement under Art. 417 item '4' of the CCP.

The text corresponds to Art. 35(1) of the RPA in its wording prior to passing the CCP, current (SG No.59/2007 in force since 1 March 2008) until the last amendment of Art. 35 of the RPA (SG No.101/2010).[1] It does not take into account the actual text of Art. 35(1) of the RPA following its amendment. Its provision is that when the pledgor does not cooperate duly for the execution upon the pledged property or its keeping, the pledgee on the grounds of a statement of the registered pledges registry and on commencement of the execution, can request form the executive magistrate delivery of the pledged property according to the procedure of Art. 521 of the CCP. Thus a statement of a registered security and on commencement of the execution was again established by the legislator as direct grounds for execution, as it used to be prior to passing the CCP, current. In its present wording Art. 35(1) of the RPA is a law newer than Art. 417 item '4' of the CCP. For that reason Art. 35(1) of the RPA should be applied and the said entry should be used as direct grounds for execution. That means Art. 417 item '4' of the CCP has lost its effect and on the grounds of the said entry an order for immediate enforcement and a writ of execution should not be issued. The possibility for the legislator to establish the respective grounds for execution has been explicitly stated in Art. 426(1) of the CCP.

The current legal meaning of the said entry as direct grounds for execution under Art. 35(1) of the RPA is corresponding better to Art. 36(2) of the RPA. With passing the CCP, current, yet it was foreseen that in the enforcement proceedings the pledgor may contest the receivable or the security right under the procedure of Art. 439 of the CCP, i.e. by a claim, and not by an objection under Art. 414 of the CCP. However, it should be kept in mind that neither the receivable nor the right of pledge are ascertained in the proceedings during which the court

trial is held, therefore they have not been ascertained by *res judicata* and Art. 439 of the CCP is not applicable.

The legislator should repeal Art. 417 item '4' of the CCP as soon as possible to avoid the contradictory court practice.

5. A statement of the registered pledges registry on an entry of a contract for a sale with retention of title until payment of the purchase price or a lease contract: in respect of the return of corporeal things sold or leased.

6. A contract of pledge or a mortgage deed under Arts. 160 and 173 (3) of the OCA.

According to Art. 160 of the OCA when a secured receivable is money or liquidated damages in cash have been agreed for it, if the pledge is created by a contract in writing or is provided by operation of law for securing receivables which arise from a contract in writing, on the grounds of the said contract the creditor may request issuance of an order for immediate enforcement under Art. 418 of the CCP. According to Art. 165 of the OCA a creditor who has a pledge on a receivable may request issuance of an order for immediate enforcement under Art. 418 of the CCP pursuant to the terms and procedures set forth in Article 160, and is satisfied preferentially in accordance with the procedure for reversal of execution on a receivable. According to Art. 173(3) of the OCA, if a claim is for a specific sum of money, or if liquidated damages in cash have been agreed for it, the creditor may request issuance of an order for immediate enforcement under Art. 418 of the CCP (Ruling No 490 of 2 July 2010 on com. c. No 298/2010 II – Com.Ch. of the SCC).

Art. 417 item '6' of the CCP is grounds for issuance of an order for immediate enforcement against the debtor who has pledged or mortgaged his/her chattel for securing his/her own obligation. Art. 417 item '6' of the CCP is also grounds for issuance of an order for immediate enforcement against a third person who has a pledge or mortgage for securing an obligation of somebody else. This is the text saving the creditor when the principal debtor is insolvent, because under the argument of Art. 638 of the CC neither an order for immediate enforcement nor can a writ of execution be issued against him/her. Under the argument of

Arts. 637 and 638 of the CC neither order for payment proceedings nor proceedings for issuance of a writ of execution are admissible against the debtor for whom insolvency proceedings are instituted. Under the argument of Arts. 637(3), item '3' of the CC an order for immediate enforcement and writ of execution under Art. 417 items '3' and '6' of the CCP in connection with Art. 418 of the CCP, can be issued against a third person who has a pledge or mortgage for securing the debtor's obligations both when the said debtor has insolvency proceedings instituted and when he/she has not such proceedings instituted. In practice some courts refuse to issue an order for immediate enforcement against a third person who has pledged or mortgage his/her property for securing an obligation of somebody else because the words 'it sentences' are both in the standard form of the order specified in the Annexes to Regulation No6 and in the traditional wording of the disposition. Due to the obstacle of this sentencing disposition set by the standard form and the tradition in sentencing the disposition of the writ of execution, the courts hesitate to make the easy legal step – to write down the ascertainment that the third person is responsible for the debt of the principal debtor by his/her property which was pledged or mortgaged. Fortunately, under the CCP, current, this lawful practice becomes more often (Ruling No 378 of 10 February 2010 on com. c. No 1481/2009 Com. Ch. of the Varna District Court; Ruling No 551 of 7 July 2010 on com. c. No 537/2010 I – Com.Ch. of the SCC). Art. 412 of the CCP does not foresee a sentencing disposition of the enforcement order. Regulation No 6 is a sub-law normative act. It is not necessary for the writ of execution to be with a sentencing disposition.[2]

7. An effective act for ascertainment of a State or municipal receivable, where its enforcement is performed according to the procedure established by the CCP.[3]

It was foreseen in Art. 14b(2) of the Law for Social Support that the compulsory execution of the order referred under Art. 14a(3) is admissible upon request of the Social Support Directorate pursuant to the provisions of Art. 418 of the CCP. In case of a bad faith the Director of the Social Support Directorate issues a motivated order for returning the received social aid together with the statutory interest. The legislator treats that state receivable as private on the level of ungrounded enrichment.

We do not face the hypothesis of Art. 417, item '7' of the CCP in the case under Art. 152 of the FC (am.- SG No.100/2010 in force 21.12.2010) the state pays c/o the municipality the support adjudged to an underage Bulgarian citizen on the account of the indecorous debtor. The amount of support is determined in a court decision but does not exceed the maximum set annually by the State Budget Act of the Republic of Bulgaria under the conditions foreseen in Art. 152 of the FC and in the Regulation for its application. It is subrogated into the rights of the satisfied creditor on the receivable for child support as well as into the rights under the writ of execution. Therefore the hypothesis does need neither an enforcement order nor a writ of execution. The State is regarded a joint claimant for a private state receivable for the support paid by the municipality with the interest on an enforcement case under Art. 152 of the FC (new - SG No.100/2010 in force since 21 December 2010).

8. Act of deficiency

Art. 27(4) of the Public Financial Inspection Act (PFIA) was amended by a TCP of the CCP foreseeing issuance of an order for immediate enforcement under Art. 418 of the CCP on the grounds of an act of deficiency. Meanwhile, Art. 51 of the RAPFIA was also amended, foreseeing that the inspected organization sends the act of deficiency to the respective court for issuance of an order for immediate enforcement under Art. 418 of the CCP. The amendment was also in connection with the lack of especial adversary proceedings for financial deficiencies what used to exist in the CCP, repealed.[4] The provision of Art. 22(2) of the PFIA is that factual findings in the act of deficiency are regarded true until proven false. In the hypothesis of Art. 417, item '8' despite of the binding evidence effect of the deficiency act, the debtor can by his/her objection under Art. 414 of the CCP object the enforcement order, to contest the receivable, inclusive, without having to ground his/her objection. This solution is not in accordance with the binding evidential effect of the deficiency act, established in the PFIA. The lodged objection causes the necessity the creditor to the act of deficiency (the damaged legal entity, inspected organization in the sense Art. 4 of the PFIA and Art. 5 of the RAPFIA) to lodge a positive ascertainment claim under Art. 415 of the CCP for ascertainment of the receivable subject of the deficiency act. There are not especial adversary proceedings for financial

deficiencies in the CCP, current. For that reason the procedure follows the rules of general adversary proceedings. However, the rule of Art. 22(2) of the PFIA establishing the compulsory evidential effect of the act of deficiency should be applied in the adversary proceedings under Art. 415 of the CCP. Moreover, lodging the objection under Art. 414 of the CCP it does not lead to suspending the enforcement. It can be suspended only under the conditions of Art. 420 of the CCP. It is foreseen in the text that the court should suspend the enforcement, if the debtor furnishes due security according to Art. 420(1) of the CCP. The court judges on suspending the enforcement on the grounds of convincing written evidence (Art. 420(1) of the CCP) and in connection with the binding evidential effect of the act of deficiency.

9. A promissory note, a bill of exchange or another negotiable security payable to order which is equivalent thereto, as well as a bond or coupons attached thereto.

In order to have an order for immediate enforcement on the grounds of those documents, they should be composed in the due legal form and have the requisites specified by the law (Arts. 455 and 533 of the C. Code; ID No. 1-2005-GMCC of the SCC). Those are enforcement grounds against the drawer even when the document for a protest made (Arts. 498 and 537 of the C. Code) is added, except in the case of Art. 500 of the C. Code.

The promissory note and the bill of exchange, though being the most used grounds for issuing an order for immediate enforcement, are at the end of the list (Art. 417, item '9' of the CCP) because the regime of their order for payment proceedings are more specific (*compare* Art. 420 of the CCP).

1. Regarding the cited Art. 417, item '4' of the CCP and Art. 35 of the RPA the legislator demonstrated remarkable inconsistency. With a TCP of the CCP (SG No.59/2007 in force since 1 March 2008) it was foreseen in Art. 35(1) of the RPA that when the pledgor does not cooperate duly for the execution upon the pledged property or its keeping, the pledgee on the grounds of a statement of the registered pledges registry and on commencement of the execution, can request issuing of an order for immediate enforcement under Art. 418 of the CCP. The delivery of the pledged property is performed according to the procedure of Art. 521 of the CCP. Under

the CCP, repealed, there used to be direct grounds for enforcement. There did not use to be a need of issuing a writ of execution.

2. Some courts by the analogy of the sentencing disposition of the enforcement order in the standard form and of the writ of execution render an enforcement order against a third person who has a pledge or a mortgage, although even the fifth year law students are aware that that person is not a debtor, regardless of being called mortgage or pledge debtor. The person is only responsible for the obligation of somebody else with his/her property in a way that enforcement could be performed on the said property in order to satisfy the debtor. Fortunately this practice is isolated.

3. For the first time this kind of act was established as enforcement grounds with the amendment of the 2002 CPP, repealed, in connection with Art. 87(2) of the CSRA. However, after all it was repealed by § 34 of the transitional and concluding provisions of the AA of the CTSIP (SG, No.12 of 13 February 2009, am. SG, No.32/2009, in force of 1 January 2010). The private receivables of the state are collected according to the procedure of CCP and not to that of the CTSIP. In this aspect the legislator has taken into account the Decision of the Constitutional Court No.2/2000 (SG No.29//2009) where the Constitutional Court proclaimed unlawful: a) Art. 14(2) of CTP (later replace by CTSIP) in its part foreseeing the collection of the private receivables of the state to be carried out following the procedure for the public ones, where it has been foreseen explicitly by a law; Art. 87(3) and (4) of the CSRA, according to which the private receivables of the state under Art. 87(2) of the CSRA are satisfied following the CTP. Later CTP was repealed and CTSIP was adopted taking into account the Decision of the Constitutional Court No.2/2000. According to Art. 87(1) of the CSRA the state receivables under the Code of the Settlement of Non-Performing Loans, Contracted by 31st December 1990, acquired following the procedure of § 46 of the Amendment Act of the Banking Act (SG, No. 54/1999), as well as the receivables of the closed down State Fund for Reconstruction and Development and State Fund for Energy Recourses are ascertained by an act for ascertainment of a private state receivable issued by the Executive Director of the Agency for State Receivables. The contradiction was avoided very elusively, foreseeing in Art. 87(2) of the CSRA

that when the debtor contests the receivable, he/she can file a claim before the competent court in a 14 day term following the service of the act for ascertainment of the private state receivable. The cases under this paragraph used to be considered under Chapter XX, item 'a' of the CCP, repealed. Art. 87(1) and (2) of the CSRA and Art. 237, item 'i' of the CCP, repealed, were not attacked before the Constitutional Court. The contradiction with the Constitution was avoided very elusively, foreseeing in Art. 87(2) of the CSRA a possibility for the debtor to lodge a negative ascertainment claim for contesting the receivable.

Art. 87(2) of the CSRA was amended by TCP of the CCP, current. It was foreseen the receivables under Art. 87(1) of the CSRA, but those under item '5', to be ascertained by an act for ascertainment of a private state receivable issued by the Executive Director of the Agency for State Receivables. On the grounds of an act for ascertainment of a private state receivable the agency can request issuance of an enforcement order according to the procedure of Art. 418 of the CCP. Art. 87(2) of the CSRA does not require the act to have taken effect. But it is foreseen in Art. 417 item '7' of the CCP that it is necessary to have an administrative act for ascertainment of a private state receivable that has taken effect. Besides, the possibility for the debtor, if he/she contests the receivable, to file a claim before the competent court within 14 days following the service of the act for ascertainment of a private state receivable foreseen in Art. 87(2) of the CSRA has been repealed. In fact, it was replaced by the possibility to contest the receivable by an objection under Art. 414 of the CCP. It is true that this possibility is rather eased because no grounding of the objection is required. On the other hand, the enforcement that has started on the grounds of the enforcement order and the writ of execution issued on its grounds is hard to cease only under the conditions of Art. 420 of the CCP. The CTSIP and Art. 87(2) of the CSRA, inclusive, have been repealed by § 34 of the TCP of the AA of the CTSIP (SG, No.12 of 13 February 2009, am. SG, No.32/2009, in force of 1 January 2010). Hence, the hypothesis because of which the grounds under Art. 417, item '7' of the CCP were created does not exist anymore.

4. The especial adversary proceedings for financial deficiencies in the CCP, repealed, used to commence when the act of deficiency was sent *ex officio* to the court by the controlling

authority with a cover letter without writing a statement of claim. The act of deficiency and the cover letter used to possess all necessary attributes of a statement of claim. This faster and simplified defence used to start regardless of the will of the damaged person. Under the CCP, current, the damaged legal entity (inspected organization in the sense Art. 4 of the PFIA and Art. 5 of the RAPFIA) is legitimized to file an application for issuance of an enforcement order, i.e. that depends on its will. However, the legal entity is an abstraction. It does not have will. That is the will of the person managing the legal entity. Often that is the person against whom the act of deficiency has been issued. That person has no interest in realizing his own responsibility for the property. However, in this conflict of interests the court is not entitled to appoint a special representative, because there is not a pending case. The same is the situation when the claim is lodged under Art. 415 of the CCP, if the debtor has lodged an objection under Art. 414 of the CCP, as well as when enforcement proceedings have been instituted. For those circumstances the order for payment proceedings in the hypothesis of Art. 414, item '8' of the CCP have almost no practical application. In this situation it will be appropriate, if the legislator reconsiders his concept viewing the specific damages of the public interests in the cases of an act of deficiency.

XI. The specifics of the order for payment proceedings on the grounds of the documents listed in Art. 417 of the CCP are that the creditor requests the court's issuing an enforcement order and a meanwhile issuing of a writ of execution. With the application he/she presents a document under Art. 417 of the CCP as grounds for the receivable.

The requirement for individualization of the receivable and its executability are also applicable in this type of proceedings. Unlike in the case under Art. 410 of the CCP it is not enough to allege the receivable. To have an enforcement order issued one should file a written standard application according to Annex No4 (Art. 5 of Regulation No6/2008) which contains the request for issuance of an enforcement order and issuance of a writ of execution, upon presenting a document under Art. 417 of the CCP. Filing the application in the standard form is a condition for its validity. When the applicant has not used a standard form or has used a

wrong one, the court gives him/her instructions for curing the irregularity enclosing to the written instruction the relevant standard form (Art. 425(2) of the CCP). If the applicant does not cure the irregularities within the set term, the application should be disallowed. The writ disallowing the application is appealable by the applicant by a private appeal (Art. 279 of the CCP in connection with 274(1) item '1' of the CCP). The ruling of the intermediate appellative court with which the private appeal is not upheld is subject to cassation appeal by a private appeal before the SAC provided that the prerequisites in Art. 280 of the CCP (Art. 274(3), item '2' of the CCP in connection with Art. 279 of the CCP) exist.

The application for issuance of an order for immediate enforcement is considered in a closed court session without subpoenaing the parties. In this case the rules of Art. 411 of the CCP apply.

XII. The writ disallowing entirely or partially the application for issuance of an enforcement order is appealable by the applicant by a private appeal which copy is not presented for servicing the opposing party with it (Art. 413(2) of the CCP). The writ disallowing entirely or partially the application for issuance of a writ of execution is appealable by the applicant by a private appeal within a one week term. A copy of the appeal is not presented for servicing the opposing party with it (Art. 418(4) of the CCP). As the enforcement order and writ of execution overlap and proceed simultaneously, the same way overlap the two refusals to issue the two functionally interrelated acts. Therefore the appeals against the writ disallowing the application for issuance of an enforcement order and that disallowing the application for issuance a writ of execution proceed simultaneously. It is assumed in practice in connection with Art. 278 of the CCP that determining the dispute on the merits in the order for payment proceedings is exhausted by verifying the existence of the grounds for issuing enforcement order. If the grounds exist, then the court renders a ruling for issuance of the enforcement order as well as of the writ of execution. In other words, it is assumed that if the intermediate appellative court, the cassation court, respectively, upholds the appeal, it does not issue the very order for immediate enforcement and the writ of execution on its grounds. When the

intermediate appellative court or the cassation court find that the application for issuance of the enforcement order has been disallowed wrongfully, they pronounce on the merits ruling *the issuance* of an order for immediate enforcement on the respective grounds under Art. 417(1) of the CCP, individualized according to the application and with the issuance of writ of execution. The case is returned to the first instance court *only for the preparation* of the enforcement order and the writ of execution. (For instance, Ruling No 327 of 4 May 2010 on com. c. No 881/2009 II – Com.Ch. of the SCC; Ruling No 461 of 28 June 2010 on com. c. No 272/2010 II – Com.Ch. of the SCC; Ruling No 130 of 27 January 2010 on com. c. No 415/2009 I – Com.Ch. of the SCC; Ruling No 641 of 16 November 2009 on com. c. No 656/2010 I – Com.Ch. of the SCC; Ruling No 134 of 18 March 2009 on a com.c. No 120/2009, I-Com. Ch. of the SCC; Ruling No 134 of 29 January 2010 on a com.c. No 52/2010, I-Com. Ch. of the SCC). This practice finds its excuse in the technical complications that might occur in the order for payment proceedings in connection with the application of Arts. 420, 415, etc. Of the CCP, if the intermediate appellative court, the cassation court, respectively, issue the enforcement order and the writ of execution.

It was adopted by ID No. 1-2001-GMCC of the SCC that the ruling of the intermediate appellative court for disallowing the appeal against the refusal of the court to issue an enforcement order is not a subject to cassation appeal. This ID is not applicable with regard to the ruling which allows the appeal against the writ for refusal of the court to issue an enforcement order. That is a matter of independent proceedings that did not use to exist in the CCP, repealed. The said ID is particular for issuance of enforcement grounds and aims at avoiding the adversary proceedings. Therefore the hypothesis belongs to the application field of Art. 274(3), item '2' of the CCP (Ruling No 274 of 29 May 2009 on c. c. No 2/2009 III – C.Ch. of the SCC; Ruling No 641 of 16 November 2009 on com. c. No 656/2010 I – Com.Ch. of the SCC; Ruling No 134 of 18 March 2009 on a com.c. No 120/2009, I-Com. Ch. of the SCC; Ruling No 134 of 29 January 2010 on a com.c. No 52/2010, I-Com. Ch. of the SCC). Due to the above relation between the order for immediate enforcement and the writ for immediate enforcement, connected with the issuance of a writ of execution, the appeal against the refusal of the court

to issue an order for immediate enforcement is also an appeal against the writ for immediate enforcement, connected with the issuance of a writ of execution. During the last year the practice of the Commercial College of the SCC was unified and *is no more* controversial regarding the procedural means of defence in the order for payment proceedings concerning the field of rulings of the intermediate appellative courts that are subject to appeal before the SCC. The ruling will be subject to a cassation appeal (Art. 274(3), item '2' of the CCP) only when the intermediate appellative court has confirmed the writ of the enforcement court for an entire or partial refusal of the court to issue an order under Arts. 410 and 417 of the CCP. In case of a reversal of the writ for immediate enforcement, the intermediate appellative court will doubtlessly invalidate the writ of execution already issued. It has been assumed in the practice of the Commercial College of the SCC that this ruling of the intermediate appellative court is not subject to appeal before the SCC (Ruling No 422 of 18 June 2010 on a com.c. No 406/2010, II-Com. Ch. of the SCC; Ruling No 721 of 22 October 2010 on a com.c. No 689/2010, II-Com. Ch. of the SCC; Ruling No 872 of 9 December 2010 on a com.c. No 944/2010, II-Com. Ch. of the SCC; Ruling No 18 of 10 January 2011 on a com.c. No 130/2010, II-Com. Ch. of the SCC; Ruling No 872 of 9 December 2010 on a com.c. No 944/2010, II-Com. Ch. of the SCC; Ruling No 887 of 14 December 2010 on a com.c. No 910/2010, II-Com. Ch. of the SCC; Ruling No 17 of 12 January 2011 on a com.c. No 695/2010, I-Com. Ch. of the SCC; Ruling No 21 of 12 January 2011 on a com.c. No 684/2010, I-Com. Ch. of the SCC). The writ of the enforcement court with which the application for issuance of an order for immediate enforcement is upheld is a subject to independent intermediate appeal according to the procedure foreseen in Art. 419 of the CCP. But the ruling of the intermediate appellative court is not subject to appeal before the SCC (Ruling No 743 of 13 October 2010 on a com.c. No 617/2010, I-Com. Ch. of the SCC).

In my opinion, the legislator's concept and will are demonstrated explicitly and definitely in Art. 274(3), item '2' of the CCP. The proceedings for issuance of a writ of execution are independent proceedings, although being functionally related to the enforcement ones. The latter proceedings comprise the specific for the Bulgarian enforcement proceedings absolute procedural prerequisite - the writ of execution. The text of Art. 274(3), item '2' of the

CCP was adopted in order to overcome the practice of ID No. 1-2001-GMCC of the SCC in this aspect. That is why this ID should be considered obsolete under the CCP, current, with regard to the ruling of the intermediate appellative court with which the appeal against the writ for issuance of a writ of execution is disallowed. The practice is controversial but during the last year the practice opposite to my opinion became dominant in the Commercial College of the SCC.

XIII. It is characteristic of the proceedings under Art. 418 of the CCP that the writ of execution is issued *simultaneously* with the enforcement order, which as seen from Art. 404, item '1' is its enforcement grounds, although it has not taken effect yet. That is why the enforcement order under Art. 418 in of the CCP, in connection with Art. 417 of the CCP is called 'order for immediate enforcement'. That means the writ of execution is issued immediately without waiting for its taking effect. The specific in the case is the overlapping of two acts. The order for immediate enforcement is the grounds for issuing a writ of execution immediately upon its issuance prior to its taking effect. Moreover when issuing a writ of execution the court puts down a due note only on the enforcement order as well as on the document presented under Art. 417 of the CCP (Art. 418, sentence I of the CCP).

The provision of Art. 418(2) of the CCP is that the writ of execution is issued after the court has verified the *prima facie* conformity of the document and has ascertained the enforcement receivable against the debtor.

Viewing the outlined specific relation between the order for immediate enforcement and the writ for issuing a writ of execution, I find that the court should perform the verification under Art. 418(2) of the CCP yet while deciding whether to issue an order for immediate enforcement, because the prerequisites specified in Art. 418(2) of the CCP are grounds for issuing both the writ of execution and the order for immediate enforcement under Art. 418 of the CCP. Art. 418(2) of the CCP is a reproduction of Art. 243(1), item '1' of the CCP, repealed. That is why the achievements of the procedural theory and practice under Art. 243(1), item '1' of the CCP, repealed, can be used when applying Art. 418(2) of the CCP.

When a request for issuing an enforcement order under Art. 418 of the CCP, in connection with Art. 417 of the CCP, is made and the court finds that there are no grounds for issuing an order under Art. 417 of the CCP, it cannot issue an enforcement order under Art. 410 of the CCP, because the applicant does not require issuing whatever order. His/her request is for an order under Art. 418 in of the CCP. Such a pronouncing is in conflict with the dispositive principle, hence it is inadmissible. Theoretically, since the matter is about procedural actions, there is no obstacle the applicant himself/herself to merge the two requests under the conditions of eventuality. However, that is assumed in practice as inadmissible. The considerations are the following: the standard forms for the applications under Arts. 418 and 410 of the CCP are different and it is technically impossible to make an eventual request for an order under 410 of the CCP using the standard application form under Art. 418 of the CCP; two fees should be paid, if making the two requests; while appealing the writ for disallowing of the principal application, the order under Art. 410 of the CCP, issued upon eventual request, will take effect. In my opinion, only the latter consideration is serious. Under the argument of Art. 415 of the CCP, Art. 72(2) of the CCP should be applied regarding the fees. The difference in the applications under Art. 418 of the CCP is that by the second one immediate enforcement is requested. This difference could not be an obstacle for the admissibility of eventual merging the two applications.

The court should verify whether the document attached to the application belongs in nature to those foreseen in Art. 417 of the CCP as well as whether it meets as such the legal requirements for a form and contents (ID No. 1-2005-GMCC of the SCC for a promissory note, which preserved its actuality under the CCP, current, since the promissory note which under the CCP, repealed, used to be out-of-court enforcement grounds, now is grounds for issuing an order for immediate enforcement under Art. 417 of the CCP (Art. 417, item '9' of the CCP; Ruling No 672 of 24 November 2009 on com. c. No 677/2009, I - Com. Ch. of the SCC; Ruling No 22 of 14 January 2009 on com. c. No 263/2008, I - Com. Ch. of the SCC; Ruling No 264 of 7 May 2009 on com. c. No 210/2009, I - Com. Ch. of the SCC)).

Under the argument of Art. 418(2) of the CCP it is necessary to present the original of the document under Art. 417 of the CCP for issuing the order for immediate enforcement (Ruling No 550 of 28 September 2009 on com. c. No 447/2009, II - Com. Ch. of the SCC). The document should directly attest the receivables alleged (Ruling No 423 of 25 June 2009 on com. c. No 437/2009, II - Com. Ch. of the SCC). All invisible grounds for invalidity of the document are not verified in the order for payment proceedings (Ruling No 370 of 11 June 2009 on com. c. No 398/2009, II - Com. Ch. of the SCC). The verification of the document's *prima facie* conformity and its ascertainment of the due enforcement receivables against the debtor does not include assessment of its authenticity, of the validity of the actions performed by other authorities or persons in connection with this document either. The assessment could be performed only in the adversary proceedings under Art. 422 of the CCP (Ruling No 143 of 23 February 2010 on com. c. No 912/2009, II - Com. Ch. of the SCC).

In the order for payment proceedings the verification under Art. 422(2), item '2' of the CCP should be also performed. The verification concerns claims grounded on rights and obligations which are in conflict with the legal order and the public interest, as contained in Art. 117 of the PILC and in Art. 34 of the Council *Regulation (EC)* No *44/2001*.

Having performed the verification of the formal character of the document, the court verifies whether the document's contents attest a pretence right suitable for execution. If the contents reveal that such a right is not attested, the court should refuse issuing both an enforcement order and a writ of execution. In the order for payment proceedings the court is not entitled to verify whether the receivable exists and is executable. The document under Art. 417 of the CCP has evidential effect for the proceedings under Art. 418 of the CCP regarding the executable right it certifies. Data not comprised by the document under Art. 417 of the CCP can be used only under the conditions of Art. 418(3) of the CCP and only with regard to the executability of the receivable. Otherwise the data about the executability should be in the very document, for instance the set term of execution (Ruling No 48 of 14 January 2010 on com. c. No 672/2009, I - Com. Ch. of the SCC).

When according to the document presented the executability of the receivable is dependent on the performance of a counter obligation or on the occurrence of another fact, the performance of the obligation or the occurrence of the fact has to be ascertained by an official document or the debtor's outgoing document (Art. 418(3) of the CCP). This is a hypothesis wherein the creditor should present additional evidence ascertaining the executability of the receivable but the document under Art. 417, item '3' of the CCP (Ruling No 274 of 29 May 2009 on com. c. No 2/2009, III - Com. Ch. of the SCC).

XIV. When the application for issuance of an enforcement order under Art. 418 of the CCP is upheld, the court issues an enforcement order under Art. 417 of the CCP in a standard form according to Annex No5 (for money receivable), Annex No6 (for delivery of a chattel) of Regulation No6/2008 in connection with Art. 425 of the CCP. There is not an explicit text about the contents of the order for immediate enforcement in the CCP in its part on the order for payment proceedings under Art. 418 of the CCP. In this aspect Art. 412 of the CCP has been taken into account in the above Annexes as well as the difference between enforcement order under Art. 410 of the CCP and that under Art. 418 of the CCP, in connection with Art. 417 of the CCP. The difference is in the contents under Art. 412, item '9' of the CCP because, as I have already emphasized, in the order for payment proceedings under Art. 418 of the CCP, it is not necessary the enforcement order to have taken effect, in order to issue a writ of execution. For that reason it is specified explicitly in item '3' of the standard form that the enforcement order is subject to immediate enforcement and that a writ of execution has been issued on its grounds. Moreover, it specified explicitly in the standard form that if an objection has been filed within a two week term, the creditor can lodge a claim for the receivable against the debtor (item '2' of the standard form in connection with item '1' of the standard form). Another dissimilarity with the enforcement order under Art. 410 of the CCP has also been taken into account. It is giving explicit instructions to the debtor that the enforcement is suspended, if he/she furnishes a due security before the court following the procedure of Arts. 180 and 181 of the OCA. It has also been taken into account that the court can suspend the enforcement, if

in the set term for lodging an objection, the debtor presents convincing written evidence that he/she has no obligation to perform (item '5' of the standard form). The document presented by the creditor on which grounds the enforcement order has been issued should be specified explicitly, as well as the verification circle performed by the court – whether it conforms *prima facie* and ascertains the adjudged receivable (item '6' of the standard form). A copy of the document is enclosed to the enforcement order (item '6' of the standard form).

According to Art. 418(5) of the CCP the enforcement order issued under Art. 418 of the CCP with the note of the issued writ of execution is serviced by the executive magistrate.[1] In fact, the executive magistrate services a duplicate of the enforcement order issued with the said note, not its original. However, the Regulation shows that when an enforcement order is issued under Art. 418 of the CCP, the debtor learns about it only when an enforcement proceedings have been instituted against him/her. The legislator adopted such an approach considering that the ascertainment of the documents listed in Art. 417 of the CCP proves their authenticity to a great extent.

1. In the general hypothesis the enforcement order issued under Art. 410 of the CCP is serviced by the court and not by the executive magistrate because it is advanced to enforcement not only on the grounds of the order. In the hypothesis under Art. 417 of the CCP there is no need to present evidence of servicing the debtor with the order before the court, although the order has not taken effect yet. On its grounds the court has already issued the writ of execution. It is important whether the order has been duly serviced only viewing the defence of the debtor under Art. 410 of the CCP.

XV. The enforcement order under Art. 418 of the CCP is not subject to appeal, but in the part regarding the costs. (Art. 413(1) of the CCP). The debtor's defence is by the objection under Art. 414 of the CCP, and later by the objection under Art. 423 of the CCP.

However, the writ with which the application for immediate enforcement is upheld can be appealed by a private appeal in a two weeks term following the servicing of the enforcement order Art. 419(1) of the CCP.

It is assumed in the practice under the argument of Arts. 419(1) and 418(1) of the CCP that three acts are issued in the enforcement order proceedings which uphold the appeal under Art. 418 of the CCP: an enforcement order; a writ for admitting immediate enforcement; a writ for issuance of a writ of execution. In the case of the order for immediate enforcement all the three acts are issued or refused issuance. The writ for immediate enforcement is regarded as an analogue of the admission of preliminary enforcement of a first-instance court decision that has not taken effect in an adversary procedure (Art. 242 of the CCP). Regarded strictly, this practice corresponds to Arts. 419(2) and 418(1) of the CCP. If the legislator has had such a will, in my opinion, he has allowed unduly procedural profligacy of piling three acts. In my opinion, a writ for admission of immediate enforcement is equivalent to the writ for issuance of a writ of execution simultaneously with the order under Art. 418 of the CCP. The hypothesis of Art. 418 of the CCP is analogous not to Art. 242 of the CCP, but to the foreseen executablity of the sentencing decision of the intermediate appellative court (Art. 404, item '1' of the CCP) that has not taken effect, where the enforcement effect occurs with rendering a decision, without the explicit act for admission of preliminary enforcement, as it is in the hypothesis of Art. 242 of the CCP for a sentencing decision of the first-instance court that has not taken effect.

The statement of private appeal against the writ for immediate enforcement is lodged together with the objection against the enforcement order and may be grounded only on facts taken from the acts under Art. 417 (Art. 419(2)) of the CCP. As it is in the proceedings under Art. 418 of the CCP, the court verifies only the prerequisites under Art. 418 of the CCP, the complains in the statement of appeal against the writ which the application for immediate enforcement is upheld, can be grounded only on allegations of wrongfulness of the writ regarding the *prima facie* conformity of the document under Art. 418 of the CCP and its ascertainment of the due executable receivable. The latter should be duly individualized and executable. In the statement of appeal the debtor can also refer to violations under Art. 411 of

the CCP. The debtor cannot object that he/she has paid, compensated, that the deed from which the executable right originates is faulty because of faults in the will or when it was concluded he/she was not duly represented. If the statement of appeal contains such allegations, they should be admitted as an objection under Art. 414 of the CCP.

The matter is about two means of defence against independent functionally related acts – where the first is the grounds for issuing the second. The means of defence against the enforcement order under Art. 418 of the CPP is the objection under Art. 414 of the CCP lodged at the court that has issued the order. Its consequence is connected with the necessity of debtor's filing a positive ascertainment claim within the preclusive term under Art. 415 of the CCP. That has not a consequence for suspending the enforcement. The creditor's failure to meet the deadline under Art. 415 of the CCP is grounds for invalidation of the enforcement order and of the writ of execution issued on its grounds. The statement of private appeal is against the writ for immediate enforcement and is lodged with the district court (Art. 279 of the CCP in connection with Art. 274(1), item '2' of the CCP). The text of the law reveals that the debtor must use both means of defence simultaneously and that he/she cannot appeal the writ for immediate enforcement without lodging an objection against the enforcement order meanwhile. The legislator has found it irrelevant to appeal the writ for immediate enforcement, if its existence or executability is not contested, as well as that such a procedural behaviour of the debtor would be in conflict with the requirement for conducting the proceedings in good faith (Art. 3 of the CCP). In order to exclude any possibilities for bad faith, the legislator has also foreseen practically in Art. 419(2) of the CCP, that filing the objection under Art. 414 of the CCP is a procedural prerequisite for admissibility of the statement of appeal under Art. 419(2) of the CCP. That is why it is a right court practice to assume that the statement which means contesting the receivable, although contained in the appeal under Art. 419(2) of the CCP, should be considered as an objection under Art. 414 of the CCP.

The writ of the court conducting the order for payment proceedings with which the appeal for immediate enforcement is upheld, is subject to appeal before the intermediate appellative court according to the procedure foreseen in Art. 419 of the CCP (Ruling No 743 of

13 October 2010 on a com.c. No 617/2010, I-Com. Ch. of the SCC). It is assumed in the consistent practice of the Commercial College of the SCC that the ruling of the intermediate appellative court with which the appeal under Art. 419(1) of the CCP is disallowed is not subject to appeal before the SCC. The arguments are the following: According to the SCC the intermediate appellate decision does not determine a dispute on the merits in independent proceedings in the sense of Art. 274(2), item'2' of the CCP. That decision does not bar the further progress of the case in the sense of Art. 274(3), item'1' of the CCP. The debtor has the only possibility to defend himself/herself in the adversary proceedings under Art. 422 of the CCP, evoked by his/her filing an objection under Art. 414 of the CCP and by his/her request for suspension of the enforcement proceedings under Art. 420 of the CCP. After a successful defence in the adversary proceedings he/she can achieve disallowance of the claim with a decision that has taken effect, which is grounds for invalidation of the enforcement order and of the writ of execution. By the suspension under Art. 420 of the CCP he/she can avoid the enforcement. It is also assumed that only the writ, the ruling, respectively, of the intermediate appellate court with which the appeal is not admitted is subject to appeal before the SCC. The appeal is on the grounds of Art. 274(1), item'1' of the CCP. Where the writ for immediate enforcement is reversed, the intermediate appellate court will also invalidate the writ of execution already issued. In the last year it has been assumed in the consistent practice of the Commercial College of the SCC that this ruling of the intermediate appellative court is not subject to appeal before the SCC. (Ruling No 422 of 18 June 2010 on a com.c. No 406/2010, II-Com. Ch. of the SCC; Ruling No 721 of 22 October 2010 on a com.c. No 689/2010, II-Com. Ch. of the SCC; Ruling No 872 of 9 December 2010 on a com.c. No 944/2010, II-Com. Ch. of the SCC; Ruling No 18 of 10 January 2011 on a com.c. No 130/2010, II-Com. Ch. of the SCC; Ruling No 872 of 9 December 2010 on a com.c. No 944/2010, II-Com. Ch. of the SCC; Ruling No 887 of 14 December 2010 on a com.c. No 910/2010, II-Com. Ch. of the SCC; Ruling No 17 of 12 January 2011 on a com.c. No 695/2010, I-Com. Ch. of the SCC; Ruling No 21 of 12 January 2011 on a com.c. No 684/2010, I-Com. Ch. of the SCC). The main point here is that this ruling does not provide a decision on the merits in independent proceedings in the sense of Art. 274(3), item'2' of the CCP, since in the case the claimant will defend himself/herself by the claim under Art.

415 of the CCP. Moreover, for the reason that filing an objection under Art. 419(1) of the CCP the debtor has set a claim obligatory.

In my opinion, in the objection under Art. 419(1) of the CCP the defence is sought in independent order for payment proceedings. That is why there are independent proceedings in the sense of Art. 274(3), item'2' of the CCP in the hypothesis discussed. Their functional relation to enforcement and adversary proceedings does not rescind this characteristic feature of theirs. The proceedings under Art. 418 of the CCP are conducted especially to have a writ of execution as a result of enforcement grounds created in these particular proceedings (*see* Art. 410(2) of the CCP).

The objection under Art. 414 of the CCP does not suspend the enforcement but in the cases of Art. 417, item '9' of the CCP (arg. Art. 420 of the CCP). The appeal of the writ of immediate enforcement does not suspend the enforcement (Art. 419(3) of the CCP). The matter concerns whether the court with which the appeal was filed can suspend the court practice enforcement on the grounds of Art. 438 of the CCP. When answering the question one should have in mind Art. 420 of the CCP which is an especial article regarding Art. 438 of the CCP and sets other prerequisites for suspending the enforcement. It is suspended obligatory, only if the debtor furnishes duly the security under Arts. 180 and 181 of the OCA, which means practically to furnish a pledge against the sum claimed against him/her. When convincing evidence is presented, the court is not obliged but it can suspend the enforcement. The especial rule of Art. 420 of the CCP is connected with a special competence – the court that issued the order. When solving the set problem one should take into account the fact that the contestation under Art. 414 of the CCP (Art. 419(2) of the CCP) must be made when an objection under Art. 419 of the CCP has been filed. If a parallel application of Arts. 438 and 420 of the CCP is admitted, then a double competence will be admitted. Hence, one of the courts might refuse suspending, while the other might render the enforcement, etc. Besides, as seen from Art. 419(2) of the CCP, when appealing under Art. 419(1) of the CCP the debtor can present convincing written evidence supporting the contestation of the receivable (Art. 420(2) of the CCP), because his/her statement of appeal can be grounded only on complains limited

within the range of the verification under Art. 418(2) of the CCP mentioned above. On the basis of the said already, I find that the intermediate appellative court which considers the appeal under Art. 419 of the CCP cannot suspend the enforcement according to the procedure of Art. 438 of the CCP. That should be done by the court dealing with the order of payment proceedings when the prerequisites of Art. 420(1) and (2) of the CCP exist (*see also* Ruling No 700 of 19 December 2009 on a com.c. No 713/2009, II-Com. Ch. of the SCC).

XVI. In the cases under Art. 419 of the CCP the debtor is serviced with the order after the order for payment proceedings have been instituted against him/her. He/she is serviced with the order by the executive magistrate. Art. 420 of the CCP foresees especial grounds for suspending the order for payment proceedings, when they are on a writ of execution issued on the grounds of an enforcement order under Art. 418 of the CCP. The grounds for suspending are not enumerated limitatively in Art. 432 of the CCP. There is a possibility foreseen explicitly in Art. 432, item '5' of the CCP that other cases different from those in Art. 432 of the CCP can be foreseen in the law (Ruling No 454 of 29 December 2008 on a c.c. No 2260/2008, III-C. Ch. of the SCC; Ruling No 38 of 14 January 2010 on a com.c. No 543/2009, IV-Com. Ch. of the SCC).

The objection against the enforcement order does not suspend the enforcement in the cases of Art. 417, items '1' to '8' of the CCP, but:

1. When the debtor has furnished duly the security for the debtor following the procedure of Arts. 180 and 181 of the OCA.

The debtor will use the defence under Art. 417(1) of the CCP, in connection with Arts. 180 and 181 of the OCA, when he/she does not possess convincing written evidence. Thus he/she can evoke suspending the enforcement by furnishing a duly security, so that the claimant is satisfied. The security has another function despite of furnishing satisfaction of the claimant. That is an indication of the objection's seriousness and of the destabilization the evidential effect of the document under Art. 417 of the CCP used as grounds.

According to Art. 420(1) of the CCP the security is furnished following the procedure of Arts. 180 and 181 of the OCA. It should be due, i.e. it should cover the entire receivable plus the interests, and create a doubtless right of preferable satisfaction for the claimant. When the receivable is furnished by one of several debtors, the enforcement is suspended only against him/her (Art. 421(1) of the CCP). When the security does not cover fully the receivable, the suspending is limited to the amount of the security (Art. 421(2) of the CCP). When a receivable secured by a pledge or mortgage is contested, a security should be also furnished under Art. 420 of the CCP in order to suspend the enforcement (Ruling No 453 of 25 June 2010 on com. c. No 478/2010, II - Com. Ch. of the SCC). Otherwise the enforcement suspending would be only on the grounds of a mere contest. The pledge under Arts. 180 and 181 of the OCA makes the creditor privileged regarding the pledged sum which he/she could receive. The pledge is a certain indication that the contest of the receivable is serious. Besides, the security is such, so that it guarantees the rights of the creditor. Therefore it is worth sharing the court practice wherein it is assumed that suspending the enforcement proceedings on the grounds of a security under Arts. 180 and 181 of the OCA furnished duly in favour of the claimant is not bound to a term (Ruling No 454 of 29 December 2008 on a c.c. No 2260/2008, III-C. Ch. of the SCC). However, in those cases the objection under Art. 414 of the CCP should be lodged in the foreseen term. The debtor is the defendant in the adversary proceedings on the positive ascertainment claim of the creditor under Art. 415 of the CCP. Therefore in case of a duly furnished security the court conducting the order of payment proceedings can render suspending of the enforcement proceedings on the grounds of Art. 420(1) of the CCP, in connection with Arts. 180 and 181 of the OCA, while the adversary proceedings under Art. 415 of the CCP are pending.

The text of Art. 420(1) of the CCP in connection with the security under Art. 180 of the OCA is analogous to Art. 250 of the CCP, repealed. It used to foresee a possibility for suspending the enforcement proceedings when the writ of execution was issued on out-of-court grounds. Then the objection had to be supported by convincing written evidence, proving that the

adjudged amount is not due, or within the same term a due security had to be furnished to the creditor in accordance with the procedure under Arts. 180 and 181 of the OCA.

Now the legislator has clearly and explicitly demonstrated his will that suspension of the enforcement proceedings is obligatory in the case of a furnished due security under Arts. 180 and 181 of the OCA. The matter concerns an imperatively set condition for suspending. When it exists the court must suspend the enforcement. The court has to judge on the appropriateness of the security under Arts. 180 and 181 of the OCA.

I do not share the concept supported in some court decisions (Ruling No 454 of 29 December 2008 on a c.c. No 2260/2008, III-C. Ch. of the SCC) that in the case of Art. 420(1) of the CCP in connection Art. 417, items '1'-'8' of the CPP, the furnished due security according to the procedure under Arts. 180 and 181 of the OCA deals with suspending a right. I do not embrace the idea of suspending the enforcement proceedings by law. The enforcement procedure as a kind of civil procedure is a chain of procedural actions. Neither its terminating nor its suspending can occur automatically by law, with the occurrence of the respective fact. A particular act is necessary for its suspending. In the case of Art. 420(1) of the CCP, in connection Art. 417, items '1'-'8' of the CPP, the suspending should be rendered by the court that has issued the order for immediate enforcement because: a) the order for payment proceedings are before that court; b) the objection under Art. 414 of the CCP is lodged with that court; c) the legislator has qualified the security as a security before a court. The fact that the court is not entitled to make a judgement, as it is under Art. 420(2) of the CCP, does not mean that suspending comes as a rule. That means in the case of Art. 420(1) of the CCP, in connection with Arts. 180 and 181 of the OCA, the legislator has established imperatively grounds for suspending the enforcement proceedings which the court must suspend, if the debtor has furnished a due security under Arts. 180 and 181 of the OCA.

2. When a request for suspending the enforcement supported by convincing written evidence is filed within the term for objection, the court that has rendered an order for immediate enforcement can suspend it (Art. 420 of the CCP).

An objection under Art. 414 of the CCP should be also lodged. The request for suspending the enforcement should be grounded on objections supported by convincing written evidence that the enforcement right does not exist. As the execution has started by a writ of execution on the grounds of an order for immediate enforcement that has not taken effect, the enforcement right is not established by *res judicata* effect. That is why the debtor can contest the enforcement right by any objections that he/she could oppose to a sentencing claim of the claimant which has turned pointless due to out-of-court grounds. The evidential effect of the document on which grounds the order for immediate enforcement has been issued can be destabilized only by convincing written evidence which can justify the suspending. The court judges whether the presented evidence is convincing, so that it proves the nonexistence of the receivable. The court is not obliged to suspend the enforcement. The practice raises the question whether it is possible to instruct the debtor to furnish a due security, if the court does not find the evidence convincing enough as it used to be under Art. 250 of the CCP, repealed. Nowadays the instruction on this possibility is in item '5' of Standard Form No 5 for an order for immediate enforcement and in Standard Form No 6.

The court that has issued the order for immediate enforcement is competent to render suspending of the enforcement under Art. 420(2) of the CCP. Within the term for objection the debtor should file with that court an application for suspending the enforcement. The legislator has demonstrated his explicit will on the matter the in Art. 420(2) of the CCP. The term is preclusive. It cannot be extended. However, after the deadline the debtor can request the court to suspend the enforcement under Art. 420(1) of the CCP by furnishing a due security under Arts. 180 and 181 of the OCA.

3. As seen from the wording of Art. 420(1) of the CCP there is an exception from the rules for suspending the enforcement under Art. 420 of the CCP. It deals with the hypothesis of Art. 417, item '9' of the CCP when the order for immediate enforcement is on the grounds of a promissory note. Then an objection filed under Art. 414 of the CCP is enough.

In such cases Prof. Stalev assumed that the matter concerns suspending, termination, respectively, of the enforcement proceedings by virtue of law. He assumed also that in those

cases the act for suspending the proceedings only ascertains and announces the suspending which occurred by virtue of law. Under the CCP, repealed, there used to be explicitly provided acts for termination, suspending, respectively, of the enforcement proceedings. On the grounds of that statement some regional and intermediate appellative courts find it unnecessary, even inadmissible, to issue an explicit act. This practice omits something, which Prof. Stalev used to point at in connection with the suspending, termination, respectively, of the enforcement proceedings by virtue of law. Namely, that the act only ascertains the suspending, termination, respectively, of the enforcement proceedings, but the court should pronounce with an explicit ruling and announce the suspending occurring by virtue of law (Ruling No 188 of 5 March 2010 on a com.c. No 50/2010, II-Com. Ch. of the SCC; Ruling No 27 of 18 January 2010 on a com.c. No 486/2009, II-Com. Ch. of the SCC; Ruling No 454 of 29 December 2008 on a c.c. No 2260/2008, III-C. Ch. of the SCC; Ruling No 518 of 14 September 2009 on a com.c. No 107/2009, II-Com. Ch. of the SCC; Ruling No 415 of 15 July 2009 on a com.c. No 357/2009, I-Com. Ch. of the SCC; Ruling No 72 of 1 February 2010 on a com.c. No 797/2009, II-Com. Ch. of the SCC). The hypothesis is supported by the following: The suspending of the enforcement proceedings in the hypothesis of Art. 420(1) of the CCP in connection with Art. 417, item '9' of the CCP is by virtue of law and arises with the fact of filing an objection under Art. 414 of the CCP. Regardless of the fact that the suspending of the enforcement proceedings occurs by virtue of law with filing an objection within the due term, the debtor cannot prove that before the executive magistrate without an act of the court. Therefore there should be a ruling with which the suspending of the enforcement proceedings is pronounced, where the judgement is exhausted solely by the ascertainment of the objection filed within the due term. Without such an act the executive magistrate should obey the writ of execution issued by the court. In order to suspend the enforcement effect of the writ of execution issued by the court, the debtor cannot prove the realization of the respective grounds. He/she should present the act of the court which pronounces the suspending. There is not a term to request such a ruling. It can be requested and granted at any time. Some of the rulings quoted show that the obligation of the court to render an explicit ruling is grounded on considerations for fairness and procedural economy. It is reasonable in those cases with the possibility to issue a legal act to make it clear and specify

explicitly that enforcement is impossible on the grounds of the enforcement order, instead of instituting erroneously enforcement proceedings and reversal of the actions of the executive magistrate because the grounds for suspending the enforcement proceedings exist (Ruling No 415 of 15 July 2009 on a com.c. No 357/2009, I-Com. Ch. of the SCC).

In my opinion, in the hypothesis of Art. 420(1) of the CCP in connection with Art. 417, item '9' of the CCP the court should doubtlessly render an explicit ruling for suspending the enforcement proceedings. It is so not because a suspending by virtue of law exists, and not because to ascertain the occurrence of a suspending by virtue of law, but because there is a formulated imperative rule in the writ of Art. 420(1) of the CCP. In the hypothesis of Art. 417, item '9' of the CCP the enforcement proceedings should be suspended, if an objection under Art. 414 of the CCP has been filed. I do not share the thesis of suspending, terminating, respectively, by virtue of law, in the sense of automatic occurrence of a consequence by virtue of law, if the legally relevant fact has occurred. The enforcement procedure being a part of the civil procedure is a chain of procedural actions. It can be neither suspended nor terminated automatically by virtue of law, with the occurrence of the respective fact. This suspending should be rendered by an explicit act. In the case of Art. 420(1) of the CCP, in connection with Art. 417, item '9' of the CCP, the particular court that has rendered the order for immediate enforcement should render the suspending because the objection under Art. 414 of the CCP has been filed with it. The fact that the court is not entitled to make judgements, as it is under Art. 420(2) of the CCP, that does not mean the suspending occurs by rule. Because the objection is filed with the court that has issued the enforcement order, it is the authority entitled to issue an explicit act for suspending the enforcement. The court should do this right away, if there is an objection filed under Art. 420(2) of the CCP in the hypothesis of Art. 417, item '9' of the CCP. These powers of the court do not rescind the right of the debtor who has filed an objection under Art. 414 of the CCP with a request for suspending the enforcement.

XVII. Appeal. According to Art. 420(3) of the CCP the ruling on the request for suspending the enforcement is appealable by a private appeal.

There is a debate in court practice whether the ruling of the intermediate appellative court against the ruling of the regional court under Art. 420 of the CCP is subject to cassation appeal. Most of the panels at the SCC do not consider this ruling to be subject to cassation appeal (Ruling No 552 of 12 July 2010 on a com.c. No 599/2009, II-Com. Ch. of the SCC; Ruling No 614 of 9 November 2009 on a com.c. No 589/2009, I-Com. Ch. of the SCC; Ruling No 372 of 27 May 2010 on a com.c. No 378/2010, II-Com. Ch. of the SCC; Ruling No 509 of 9 October 2009 on a com.c. No 448/2009, I-Com. Ch. of the SCC; Ruling No 652 of 18 November 2009 on a com.c. No 543/2009, I-Com. Ch. of the SCC; Ruling No 395 of 18 May 2010 on a com.c. No 295/2010, I-Com. Ch. of the SCC; Ruling No 394 of 18 May 2010 on a com.c. No 363/2010, I-Com. Ch. of the SCC; Ruling No 478 of 17 June 2010 on a com.c. No 442/2010, I-Com. Ch. of the SCC; Ruling No 747 of 23 December 2009 on a com.c. No 635/2009, I-Com. Ch. of the SCC; Ruling No 515 of 24 June 2010 on a com.c. No 418/2010, I-Com. Ch. of the SCC; Ruling No 71 of 19 January 2010 on a com.c. No 767/2009, I-Com. Ch. of the SCC; Ruling No 464 of 16 June 2010 on a com.c. No 374/2010, I-Com. Ch. of the SCC; Ruling No 340 of 26 April 2010 on a com.c. No 261/2010, I-Com. Ch. of the SCC; Ruling No 163 of 9 February 2010 on a com.c. No 9/2010, I-Com. Ch. of the SCC; Ruling No 654 of 19 November 2009 on a com.c. No 700/2009, I-Com. Ch. of the SCC; Ruling No 306 of 27 April 2010 on a com.c. No 257/2010, II-Com. Ch. of the SCC; Ruling No 498 of 5 July 2010 on a com.c. No 288/2010, II-Com. Ch. of the SCC). Since 2010 this assumption has been featured as established in the Commercial College of the SCC. In general the considerations are the following: A substantive law dispute is not determined by the ruling under Art. 420 of the CCP. The ruling has not a barring effect upon the progress of the proceedings in order to be admissible for cassation appeal on the grounds of Art. 274(3), item '1' of the CCP. Pronouncing on the debtor's request for suspending the enforcement, the court renders a court act with a temporary effect that is bound to the further defence of the parties on the realization of the receivable subject of the enforcement order issued under Art. 410 of the CCP, under Art. 417 of the CCP, respectively, in the course of the order for payment proceedings. Due to the fact that the ruling under Art. 420(2) of the CCP is relative to the executability of the receivable and does not determine a substantive law dispute on its existence, the appeallability of the said ruling cannot be derived from the regulation of Art.

274(3), item '1' of the CCP. The inadmissibility of the cassation appeal against the ruling under Art. 420 of the CCP is justified by the solution given in item '6' of ID No. 1-2001-GMCC of the SCC in connection with the appeallability of the rulings under Art. 250 of the CCP, repealed. It is assumed that this solution is still valid under the CCP, current, because the legal regulation for suspending the enforcement according to the procedure of Art. 420 of the CCP is analogous to the one under Art. 250 of the CCP, repealed, while according to item '6' of ID No. 1-2001-GMCC of the SCC, instance control on the lawfulness of the ruling for suspending the enforcement is exhausted by the pronouncing of the intermediate appellative court.

This practice is in conflict with Art. 274(3), item '2' of the CCP, current. It is determined by the effort to preserve the effect of the ID on the cassation appeal rendered at the time of the CCP, repealed, despite of the existence of a new CCP and explicit and definitive solutions in it. Under the CCP, current, item '6' of ID No. 1-2001-GMCC of the SCC is ineffective. The legislator's will is demonstrated explicitly, clearly and definitely in Art. 274(3), item '2' of the CCP and aims particularly at inflicting a new court practice on the subject. Each act rendered in certain proceedings for defending a certain legal interest is subject to cassation appeal. The functional relation with the other proceedings does not alter their character. The adversary proceedings are also related functionally to the executive proceedings but that does lead to losing their character of independent proceedings. The sentencing claims are the most often ones. They aim not only at determining the legal dispute, but also at achieving a sentencing decision, in order to obtain defence in the executive proceedings. The proceedings under Art. 420 of the CCP for suspending the execution develop in a functional relation with the order for payment proceedings and the enforcement ones. The aim is to suspend the executive proceedings, so that the enforcement would not result into unjust enrichment because the order for immediate enforcement does not ascertain the claimed receivable, as well as because the debtor has contested it. These proceedings aim at the defence of a particular legal interest, namely to prevent unlawful substantive law enforcement, despite of the non-existence of a receivable. This interest is of a significant importance because the executive magistrate, if obeying the writ of execution, is entitled to sell a property and satisfy a non-existent receivable.

There is another reason for the inapplicability of item '6' of ID No. 1-2001-GMCC of the SCC in the hypothesis of Art. 420 of the CCP. It is true that the defence under Art. 420 of the CCP is analogous to the one under Art. 250 of the CCP, repealed. But it is not identical to it. At the time of the CCP, repealed, if the request for suspending the executive proceedings was disallowed, the debtor could file a claim under Art. 254 of the CCP, repealed. Being a claimant in the adversary procedure he/she could request security for his/her negative ascertainment claim by suspending the enforcement of the receivable he/she had contested. Nowadays the debtor has not a possibility to file a negative ascertainment claim. He/she is a debtor in the proceedings on the positive ascertainment claim under Art. 415 of the CCP, hence, he/she cannot request a security. Therefore he/she can undergo enforcement, although the claim under Art. 415 of the CCP might be disallowed by a decision that has taken effect. Therefore it is worth sharing the practice of SCC panels which assumes that the ruling under Art. 420 of the CCP is subject to cassation appeal on the grounds of Art. 274(3), item '2' of the CCP, provided the grounds for admitting a cassation appeal under Art. 280 of the CCP exist (Ruling No 453 of 25 June 2010 on com. c. No 478/2010, II - Com. Ch. of the SCC; Ruling No 329 of 28 May 2009 on com. c. No 334/2009, II - Com. Ch. of the SCC; Ruling № 292 of 13 May 2010 on com. c. № 67/2010, IV-Com. Ch. of the SSC; Ruling № 236 of 11 May 2010 on com. c. № 238/2010, III-Com. Ch. of the SSC; Ruling No 467 of 30 June 2010 on com. c. No 834/2010 II-Com. Ch. of the SCC; Ruling No 518 of 14 September 2009 on a com.c. No 107/2009, II-Com. Ch. of the SCC; Ruling No 188 of 5 March 2010 on a com.c. No 50/2010, II-Com. Ch. of the SCC; Ruling No 27 of 18 January 2010 on a com.c. No 486/2009, II-Com. Ch. of the SCC; Ruling No 454 of 29 December 2008 on a c.c. No 2260/2008, III-C. Ch. of the SCC; Ruling No 415 of 15 June 2009 on com. c. No 375/2009, I - Com. Ch. of the SCC).

If the debtor fails to submit a reply to the statement of claim within the due term and does not object the facts presented in it, in the proceedings on the claim under Art. 422 of the CCP, in connection with Art. 415 of the CCP, he/she suffers the consequences under Art. 133 of the CCP, in connection with Art. 146(3) of the CCP (Decision No 45 of 8 July 2009 on app.c.c. 42/2009 of the Gabrovo DC).

The procedure for considering the dispute is determined according to the creditor's receivable. It is possible the especial character of the receivable to determine the application of the special rules for commercial disputes or those for fast court proceedings.

It used to be assumed regarding Art. 415(2) of the CCP that for preserving the effect of the enforcement order it was enough only to file a statement of claim for ascertaining the receivable within the due term under Art. 415(1) of the CCP (Ruling No 247 of 18 May 2009 on a com.c. No 166/2009, IV-Com. Ch. of the SCC; Ruling No 691 of 13 November 2009 on a com.c. No 636/2009, II-Com. Ch. of the SCC). However, the established practice nowadays is that under Art. 415 of the CCP the applicant should not only have filed the claim, but he/she should have also presented evidence on the pretence (Ruling No 124 of 27 January 2010 on a com.c. No 20/2010, I-Com. Ch. of the SCC; Ruling No 360 of 19 May 2010 on a com.c. No 282/2010, II-Com. Ch. of the SCC; Ruling No 490 of 21 June 2010 on a com.c. No 254/2010, I-Com. Ch. of the SCC; Ruling No 456 of 25 June 2010 on a com.c. No 311/2010, II-Com. Ch. of the SCC; Ruling No 494 of 2 July 2010 on a com.c. No 403/2010, II-Com. Ch. of the SCC; Ruling No 687 of 11 November 2010 on a com.c. No 623/2010, II-Com. Ch. of the SCC; Ruling No 724 of 25 October 2010 on a com.c. No 640/2010, II-Com. Ch. of the SCC). Proving the fact that a positive ascertainment claim has been filed and meeting the deadline is a burden for the applicant. In the sense of Art. 415(2) of the CCP the applicant should not only inform the respective court conducting the order for payment proceedings that the ascertainment claim has been legally lodged, but he/she should also present a copy of the statement of claim with the data about its filing with the office or to present a certificate issued by the court whereat the adversary proceedings under Art. 415 of the CCP have been instituted. Lodging the claim with the preclusive term foreseen by the legislator is not enough to admit that the requirements under Art. 415(2) of the CCP have been met. The court is not obliged to verify *ex officio* whether the claim under Art. 414 of the CCP has been lodged. When the term under Art. 415 of the CCP expires and no evidence is presented before the court, the court conducting the order for payment proceedings should invalidate the enforcement order. If after the expiry of the term under Art. 415 of the CCP, the applicant presents evidence that he/she has lodged the claim,

the enforcement order should be invalidated, although the claim under Art. 415 of the CCP has been lodged within the term under Art. 415(1) of the CCP. The reason is in the impossibility54 to renew his/her right for preserving the effect of the enforcement order which has been already precluded. However, in my opinion, the debtor should acknowledge the legal interest of amending the claim under the conditions of Art. 212 of the CCP from ascertainment into a sentencing claim. It is due to the understanding of the SSC on the invalidation of the enforcement order also in the case when the claim is lodged within the term under Art. 415(1) of the CCP but the evidence for doing so has been presented before the court conducting the order for payment proceedings after the expiry of the said term. Moreover, in such a situation it should be also assumed that the consequences of Art. 422(1) of the CCP will be preserved, i.e. the sentencing claim should be also considered as lodged since the moment the application for issuing a writ of execution is filed. Otherwise it will be an extremely severe and unjustified sanction for the creditor who failed to submit on time the evidence on having lodged his/her claim within the due term. The rule of Art. 422(1) of the CCP is of great importance for suspending and terminating the acquittal limitation.

If the claim has not been lodged, the court applies the consequences of Art. 422(1) of the CCP, regardless of the proceedings stage (Ruling No 200 of 12 April 2010 on a com.c. No 148/2010, III-Com. Ch. of the SCC). The same is valid when the evidence for lodging the claim has not been presented before the court dealing with the order for payment proceedings within the term under Art. 415(1) of the CCP (*see* the court practice quoted above).

1. The claim under Art. 415 of the CCP in connection with Art. 422(1) of the CCP is a positive ascertainment claim. It is obvious from the title of Art. 422 of the CCP 'Claim for Ascertainment of the Recievable'. The aim is to ascertain by *res judicata* effect against the opposing party the existence of the receivable subject of the enforcement order issued. In the hypotheses of Art. 417 of the CCP the ascertainment character of the claim is determined by the fact that applicant in the order for payment proceedings, the claimant under Art. 422 of the CCP, respectively, has a writ of execution for his/her receivable issued against the debtor. It depends on the outcome of the adversary proceedings whether the writ of execution will be

suspended or the claimant will collect his/her money under the said writ. The sentencing claim is inadmissible because then the claimant will have simultaneously two writs of execution for one and the same receivable which is admissible. In the hypothesis of Art. 410 of the CCP the legislator's concept on the ascertainment character of the claim under Art. 415 of the CCP in connection with Art. 422(1) of the CCP is clearly demonstrated by Art. 410 of the CCP (am. SG No.46/2009), wherein it is provided that when the decision on ascertainment of the receivable takes effect, the enforcement order takes effect as well. On its grounds the court issues the writ of execution and makes a note on it, i.e. the enforcement order is the source of enforcement effect. In those cases the very law determines the character of the adversary defence (on the ascertainment character of the claim under Art. 415(1) of the CCP in connection with Art. 422(1) of the CCP *see* Decision No 102 of 9 July 2010 on com. c. No 767/2010, I – Com.Ch. of the SCC; Ruling No 377 of 15 June 2009 on com. c. No 191/2009, II - Com. Ch. of the SCC; Ruling No 324 of 8 June 2009 on com. c. No 160/2009, I - Com. Ch. of the SCC; Ruling No 340 of 2 June 2009 on com. c. No 276/2009, II - Com. Ch. of the SCC; Ruling No 200 of 12 April 2010 on a com.c. No 148/2010, III-Com. Ch. of the SCC; Ruling No 152 of 3 February 2010 on a com.c. No 2/2010, I-Com. Ch. of the SCC; Ruling No 143 of 5 May 2009, II-Com. Ch. of the SCC).

The regulation of Art. 422(1) of the CCP is a special procedural norm related to the order for payment proceedings, which provides the creditor with the right to lodge an ascertainment claim on the existence of the receivable. The creditor should not give grounds for the legal interest since this claim is a means of defence for a receivable recognized in the order for payment proceedings and its prerequisites for its lodging are established by a norm. It is pointless to prove the interest of the ascertainment claim when the matter goes about the ascertainment claims foreseen by the law. The legal interest arises from the objection under Art. 414 of the CCP and there is no need to prove separately the legal interest. The regulation of Art. 422(1) of the CCP is general. It concerns both types of order for payment proceedings (*see* on the legal interest in lodging the claim under Art. 415(1) of the CCP in connection with Art. 422 of the CCP (Ruling No 271 of 7 May 2009 on a com.c. No 308/2009, II-Com. Ch. of the SCC; Ruling No 290 of 1 April 2010 on a com.c. No 244/2010, I-Com. Ch. of the SCC; Ruling No 258 of

18 March 2010 on a com.c. No 68/2010, I-Com. Ch. of the SCC; Ruling No 377 of 15 June 2009 on com. c. No 191/2009, II - Com. Ch. of the SCC; Ruling No 383 of 15 June 2009 on com. c. No 150/2009, II - Com. Ch. of the SCC ; Ruling No 359 of 17 June 2009 on com. c. No 228/2009, I - Com. Ch. of the SCC).

2. The claim for ascertainment of the receivable is considered lodged since the moment of filing the application for issuance of enforcement order within the term under Art. 415(1) of the CCP (Art. 422(1) of the CCP).[1] The limitation is also considered suspended since the moment of filing the application for issuance of enforcement order (arg. Art. 116, item 'b' of the OCA in connection with Art. 422(1) of the CCP; Ruling No 390 of 22 June 2010 on com. c. No 70/2010, II - Com. Ch. of the SCC), as well the suspension of the limitation with pending proceedings (arg. Art. 116, item 'b' of the OCA in connection with Art. 422(1) of the CCP).

3. If the claim is disallowed by a decision that has taken effect, the execution is terminated (Art. 422(3) of the CCP). Under the argument of Arts. 415(2) and 416 of the CCP the enforcement order should be invalidated, in the hypothesises of both Art. 410 of the CCP and of Art. 417 of the CCP. Since there is a writ of execution issued in the second hypothesis, under the argument of Art. 415(2) of the CCP the writ of execution should be also invalidated. Moreover, the court that has rendered the decision should issue a writ of execution for the debtor against the claimant for return of the sums of money and chattels, received on the grounds of the preliminary execution of the reversed decision (Art. 423(3) of the CCP in connection with Art. 245(3), sentence II of the CCP; Ruling No 359 of 17 June 2009 on com. c. No 228/2009, I - Com. Ch. of the SCC; Ruling No 450 of 24 July 2009 on com. c. No 203/2009, I - Com. Ch. of the SCC). The counter writ of execution should be issued by the court that rendered the decision which has taken effect. The grounds for its issuance are the decision for disallowance of the claim that has taken effect and a certificate of the executive magistrate that the sum was paid, the chattels were delivered to the claimant, respectively.

1. It is provided in Art. 422(2) of the CCP that lodging a claim under Art. 422(1) of the CCP does not suspend immediately the enforcement, but in the ceases under Art. 420 of the

CCP. However, the claim under Art. 422(1) of the CCP is a positive ascertainment claim of the creditor for ascertainment of his/her receivable. The creditor has no interest in suspending the enforcement. So, the matter is not about suspending the enforcement. The case under Art. 420 of the CCP is of a debtor's request for suspending the enforcement in connection with the objection under Art. 420 of the CCP. It is a separate request addressed to the court which pronounces on it with an independent act that does not result from the lodged claim under Art. 422(1) of the CCP, in connection with Art. 415 of the CCP. In that case the defence is realized by the means not of a claim but of an objection under Art. 414 of the CCP and by a request for suspending the enforcement proceedings under Art. 420 of the CCP. Nowadays there is not a regulation for a claim of the debtor analogous to Art. 254 of the CCP, repealed, if his/her objection is not upheld, or he/she failed to lodge an objection. Presently the debtor's defence by a claim is in Art. 424 of the CCP but it is not in connection with the creditor's claim under Art. 422(1) of the CCP, in connection with Art. 415 of the CCP.

XVIII. As said already (*see* para. V) the enforcement order is not a subject to appeal (Art. 413(1) of the CCP). That is valid for both types of order for payment proceedings. That is also valid in the cases when the court has committed significant procedural breaches when rendering the enforcement order.

Instead the legislator has allowed defence before the intermediate appellative court by a written objection in the hypotheses thoroughly listed in Art. 423 of the CCP (Amended - SG no.50/2008, in effect since 1 March 2008). Prior to the amendment this defence was called 'reversal before the intermediate appellative court'.). The matter is about circumstances that prevented debtor's filing an objection under Art. 414 of the CCP. The text is very similar to Art. 20 of Regulation (EC) 1896/2006 (which in Bulgarian is called 'Review in Exceptional Cases') and is most probably borrowed from the said Regulation. The matter is about exceptional proceedings which are very close both to Art. 20 of Regulation (EC) 1896/2006 and to the reversal under Art. 303(1), item '5' of the CCP (Ruling No 313 of 3 June 2009 on com. c. No

313/2009, I - Com. Ch. of the SCC; Ruling No 596 of 5 November 2009 on com. c. No 645/2009, I - Com. Ch. of the SCC; Ruling No 119 of 17 September 2010 on com. c. No 102/2010, I - Com. Ch. of the SCC). The proceedings before the intermediate appellate court are analogous to those on the reversal of court decisions that have taken effect. Their aim is to replace the reversal and even used to be called 'reversal before the intermediate appellative court' prior to the 2008 amendment of Art. 423 of the CCP (SG no.50 of 30 May 2008). By the date the CCP, current, took effect on 1 March 2008 the legislator assigned an opposite effect to that amendment. The intermediate appellative court which under the rules of the functional competence is the district court, does not act to the rules of the intermediate appellative proceedings. The court verifies only the existence of the grounds foreseen in Art. 423(1) of the CCP.

According to Art. 423(1) of the CCP the debtor who was deprived of contesting the receivable is entitled an objection to the intermediate appellative court, when:

1. He/she has not been duly serviced with the enforcement order (item '1'). The matter concerns a significant procedural breach committed by the court in the cases under Art. 410 of the CCP, and such committed by the executive magistrate in the cases under Art. 418 of the CCP. The procedure for servicing the enforcement order is according to the general rules for servicing papers and summonses (Part One, Chapter Six of the CCP). The grounds are analogous to the hypothesis under Art. 303(1), item '5', sentence I, of the CCP.

2. The debtor has not been serviced with the enforcement order in person and on the day of the servicing the said debtor did not have a habitual residence within the territory of the Republic of Bulgaria (item '2'). The text is borrowed from Art. 20 of Regulation (EC) 1896/2006 and up to now has not been known in Bulgarian Procedural Law. The prerequisites under Art. 423(1), item '2' of the CCP are comulatively presented. The matter in the case does not deal with a procedural breach committed by the court. The enforcement order has been duly serviced but not to the debtor in person. According to the rules of servicing papers they may be serviced in person. Servicing in person may be also considered when the servicing is to a due procedural representative or a legal addressee who is entitled to receive legal papers (Since the

debtor becomes a party to the order for payment proceedings, regardless of and even against his/her will, it is hardly probable that he/she will have a due procedural representative or a legal addressee for the said proceedings.). The papers are not serviced in person when they are serviced to a person under Art. 46 of the CCP. The notion 'habitual residence' is not defined legally in the CCP. The legal definition is in Art. 48(7) of the PILC. When the debtor has a habitual residence in a member state one should take into account the definitions under Art. 59 of Council Regulation (EC) No44/2001 concerning the notion 'habitual residence' of legal persons and those under Art. 60 of Council Regulation (EC) No44/2001 concerning the notion 'habitual residence' of legal entities. In the case of a reversal under Art. 423 of the CCP the enforcement order and the writ of execution are invalidated because the case was not under the international jurisdiction of the Bulgarian courts on a general basis (*See* Art. 4, item '1' of the PILC and Art. 6 of Council Regulation (EC) No1896/2006, in connection with Art. 3 of Council Regulation (EC) No44/2001). The rule of Art. 423(1), item '2' of the CCP, in connection with Art. 411(1), item '4' of the CCP excludes the international competence of a Bulgarian court in order for payment proceedings. That is valid both for legal persons and legal entities.

3. The debtor was unable to learn of the servicing in due time because of special unforeseen circumstances (item '3'). Those are the cases when the debtor was not serviced with the enforcement order in person (Art. 46 of the CCP). Then there is not a procedural breach committed by the court.

4. The debtor was unable to lodge the objection because of special unforeseen circumstances which he/she was unable to overcome (item '4'). Those are circumstances which are beyond the debtors command both after he/she has been serviced and received the order. As seen from the comparison between items '3' and '4' in the hypothesis of Art. 423(1), item '4' of the CCP the debtor has been serviced duly with the enforcement order and he/she has learnt about it. However, he/she was unable to lodge the objection under Art. 414 of the CCP, because of special unforeseen circumstances which he/she was unable to overcome. The hypothesis is quite close to the one in Art. 303, item '5' of the CCP.

The debtor should prove under the circumstances of entire proof when he/she learnt about the enforcement order. The matter concerns the learning about the enforcement order itself, not learning about the grounds for the objection under Art. 423 of the CCP, foreseen in Art. 423(1) of the CCP.

The preclusive term for lodging an objection under Art. 423(1) of the CCP is one month and starts on the date of learning about the enforcement order (Ruling No 349 of 27 April 2010 on a com.c. No 238/2010, I-Com. Ch. of the SCC). The private appeal under Art. 419(1) of the CCP lodged with the objection on the grounds of Art. 423(1), item '2' of the CCP as well as the request for suspending the enforcement are determined by the expiry of the preclusion term (Ruling No 349 of 27 April 2010 on a com.c. No 238/2010, I-Com. Ch. of the SCC).

The grounds under Art. 423(1) of the CCP are circumstances that prevented the debtor's lodging the objection under Art. 414 of the CCP. Therefore it is stipulated that simultaneously with the objection, the debtor may exercise his/her rights under Article 413 (1) of the CCP (when appealing the enforcement order in its part on costs) and Article 419 (1) of the CCP (when appealing the writ for immediate enforcement). It is not specified explicitly that simultaneously with the objection under Art. 423(1) of the CCP, the debtor may also exercise his/her rights under Article 414 of the CCP. The reason is in the legislator's concept that the objection under Art. 423(1) of the CCP has also the role of an objection under Art. 414 of the CCP. It is obvious from the systematic place of the texts and from the title which used to be till its 2008 amendment (SG No.50 of 30 May 2008) 'Reversal due to inability to contest' which was changed to 'Objection before the intermediate appellative court.' With the regulation under Art. 423 of the CCP the legislator provided the possibility of relevating the objection under Art. 414 of the CCP, when the term under Art. 414 of the CCP was omitted due to circumstances listed thoroughly and explicitly in Art. 431(1) of the CCP (Ruling No 313 of 3 June 2009 on com. c. No 313/2009, I - Com. Ch. of the SCC; Ruling No 596 of 5 November 2009 on com. c. No 645/2009, I - Com. Ch. of the SCC; Ruling No 119 of 17 September 2010 on com. c. No 102/2010, I - Com. Ch. of the SCC). The objection under Art. 423 of the CCP admitted to be grounded in the hypothesis of Art. 410(1) of the CCP acts as an objection under Art. 414 of the

CCP (Ruling No 724 of 18 December 2009 on com. c. No 598/2009, I - Com. Ch. of the SCC; Ruling No 723 of 18 December 2009 on com. c. No 614/2009, I - Com. Ch. of the SCC). Therefore when the prerequisites under Art. 423(1) of the CCP exist and the court admits the objection, the situation that might have been, if the debtor has lodged the objection under Art. 414 of the CCP on time, is restored (Ruling No 14 of 13 January 2010 on com. c. No 653/2009, III - Com. Ch. of the SCC).

Lodging the objection before the intermediate appellative court under Art. 423(1) of the CCP does not suspend the enforcement. Upon the request of the debtor the intermediate appellative court may suspend the enforcement under Art. 282(2) of the CCP (Art. 423(2) of the CCP).

XIX. It is stipulated in Art. 423(3) of the CCP that having found that the prerequisites under Art. 423(1) of the CCP exist, the court admits the objection. If the objection is admitted, the execution of the enforcement order under Art. 410 of the CCP is suspended. When the objection is admitted, the court also considers the private appeals filed under Arts. 413(1) and 419(1) of the CCP together with the objection. When the objection is admitted because the prerequisites under Art. 411(2), items '3' and '4' of the CCP do not exist, the court invalidates *ex officio* the enforcement order as well as the writ of execution issued on its grounds.

The term 'admits the objection' is much debated in legal literature and practice. It cannot be found in other law texts. In the customary legal vocabulary the term is used in the sense of admitting the respective legal action. However, Art. 423(1) of the CCP does not imply such a meaning in the sense of upholding the objection as grounded. The legislator seems to have abandoned the term 'reversal' because upholding the objection under Art. 423(1) of the CCP is not connected with a reversal or invalidation of the enforcement order but with the possibility to take into account lodging the objection under Art. 414 of the CCP after the term foreseen in Art. 414 of the CCP. The admitted objection under Art. 423 of the CCP has the following consequences:

1. The execution of the enforcement order under Art. 410 of the CCP is suspended (Art. 423(1), sentence I, of the CCP). The suspension is necessary because: The issuance of a writ of execution on the grounds of the enforcement order under Art. 410 of the CCP, presupposes that the order has taken effect (Art. 416 of the CCP). Therefore the very executive proceedings on the said writ of execution presuppose that the order has taken effect. On the other hand, the order's taking effect is determined by the fact that no objection under Art. 414 of the CCP has been lodged. The similar situation is in the hypothesis of Art. 418 of the CCP, in connection with Art. 417, item '9' of the CCP. In its case the writ of execution is issued simultaneously with the enforcement order prior to its taking effect. The enforcement begins on the grounds of the said writ of execution, the debtor learns about the enforcement order from the Access to Information Programme. In the hypothesis of Art. 417, item '9' of the CCP the fact that an objection under Art. 414 of the CCP has been lodged is imperatively determined grounds for suspending the enforcement. Since the objection under Art. 423(1) of the CCP has also the role of an objection under Art. 414 of the CCP, the intermediate appellative court under the argument of Art. 424, sentence II of the CCP, in connection with Art. 420(1) of the CCP, should suspend the enforcement even when the debtor has not placed an explicit request for suspension. In fact, the need of an explicit act for suspending the case is being admitted, although it is due to considering clearness in the statement that the suspension in those cases is by rule (Ruling No 27 of 18 January 2010 on a com.c. No 486/2009, II-Com. Ch. of the SCC. It is assumed that in the hypothesis of Art. 423(1) of the CCP the court's refusal to pronounce on the request for suspending the enforcement is subject to appeal before the SCC on the grounds of Art. 274(2), sentence I, of the CCP, in connection with Art. 275(1), sentence I, of the CCP, provided the preclusive term under Art. 275(1), sentence I, of the CCP is met). Admitting the objection under Art. 423 of the CCP has not suspension of the enforcement order under Art. 418 of the CCP, in connection with Art. 417, items '1-8' of the CCP, as a consequence. The writ of execution is issued immediately provided there is an enforcement order issued on the grounds of a document under Art. 417, items '1-8' of the CCP without waiting for the order to take effect (Art. 418 of the CCP). Lodging an objection under Art. 414 of the CCP itself is not grounds for suspending the enforcement. Therefore, if a request for suspending the

enforcement is placed as well as in the hypothesis of an enforcement order under Art. 418 of the CCP, in connection with Art. 417 of the CCP, the debtor should request suspending the enforcement proceedings together with the objection under Art. 423(1) of the CCP. However, this request is not considered by the intermediate appellative court, even when the objection under Art. 423(1) of the CCP is 'admitted by the intermediate appellative court'. Then the case is sent to the regional court and the regional court will consider its suspending (Art. 423(4), sentence II, of the CCP). The same is valid for the suspension under Art. 420(2) of the CCP (Art. 423(4), sentence II, of the CCP), when the first instance court should judge on the existence of convincing enough written evidence about the receivable's nonexistence. The debtor is entitled with the objection under Art. 423 of the CCP to request suspending simultaneously the enforcement on the grounds of Art. 413(2) of the CCP (which is a special norm regarding Art. 420(1) of the CCP), in connection with Art. 282(2) of the CCP. When a request lodged under At. 423(2) of the CCP is furnished with a due security, the intermediate appellative court should pronounce on it immediately. If the court has not done so, there is not an obstacle to pronounce as an independent dispositive in the ruling on admitting the objection under Art. 423 of the CCP. The matter concerns imperatively determined grounds for suspending the enforcement when a due security is furnished. If a request for suspending the enforcement under Art. 420(1) of the CCP) furnished with a due security is placed after the expiry of the term under Art. 423(2) of the CCP (There is not a preclusive term for the said request - *see* para. XVI), the court conducting the order for payment proceedings is competent to pronounce on it.

2. Admitting the objection under Art. 423(1) of the CCP does not lead to invalidating the enforcement order neither under Art. 410 of the CCP, nor under Art. 418 of the CCP, n connection with Art. 417 of the CCP. The case is sent back to the regional court. The proceedings are continued with giving instructions to the applicant that he/she should file a claim under Art. 415 of the CCP Art. 423(4), sentence I of the CCP). As said above, the claim under Art. 415 of the CCP presupposes the debtor's filing an objection under Art. 414 of the CCP. For that reason it follows under the argument of Art. 423(4), sentence I of the CCP, that the objection under Art. 423(1) of the CCP has also the effect of the objection under Art. 414 of

the CCP. The rules outlined are applied to both types of order for payment proceedings (under Art. 410 of the CCP and under Art. 418 of the CCP,in connection with Art. 417 of the CCP).

After the case has been returned to the regional court, the said court resumes its consideration at the stage of the effect of the already admitted objection (Art. 415(1) of the CCP). Considering the order for payment proceedings in the hypothesis of Art. 418 of the CCP, in connection with Art. 417 of the CCP, the court considers the filed request for suspending the enforcement under Art. 420 of the CCP as well.

Since the matter is about attacking a court act, it is not specified explicitly that the objection under Art. 423(1) of the CCP should be filed with the regional court (arg. also in the term 'returns' and not 'sends' used in Art. 423(4), sentence I, of the CCP).

XX. There is not a foreseen possibility for appealing the ruling of the intermediate appellative court under Art. 423(1) of the CCP. Therefore it is assumed in the practice of the SCC that the said objection is not subject to appeal before the SCC (Ruling No 724 of 18 December 2009 on com. c. No 598/2009, I - Com. Ch. of the SCC; Ruling No 723 of 18 December 2009 on com. c. No 614/2009, I - Com. Ch. of the SCC; Ruling No 55 of 15 January 2009 on com. c. No 662/2009, I - Com. Ch. of the SCC; Ruling No 284 of 31 March 2010 on com. c. No 221/2010, I - Com. Ch. of the SCC; Ruling No 317 of 30 April 2010 on com. c. No 280/2010, II - Com. Ch. of the SCC; Ruling No 408 of 10 June 2010 on com. c. No 463/2010, I - Com. Ch. of the SCC; Ruling No 596 of 5 November 2009 on com. c. No 645/2009, I - Com. Ch. of the SCC; Ruling No 313 of 3 June 2009 on com. c. No 313/2009, I - Com. Ch. of the SCC; Ruling No 14 of 13 January 2010 on com. c. No 653/2009, III - Com. Ch. of the SCC; Ruling No 140 of 23 February 2010 on a com.c. No 65/2010, II-Com. Ch. of the SCC; Ruling No 249 of 1 April 2010 on a com.c. No 209/2010, II-Com. Ch. of the SCC; Ruling No 696 of 7 December 2009 on com. c. No 648/2009, I - Com. Ch. of the SCC; Ruling No 777 of 29 December 2009 on a com.c. No 779/2009, I-Com. Ch. of the SCC; Ruling No 428 of 3 June 2010 on com. c. No 395/2010, I - Com. Ch. of the SCC; Ruling No 179 of 17 February 2010 on a com.c. No 102/2010, I-Com. Ch. of the SCC; Ruling No 434 of 23 June 2010 on com. c. No 275/2010, II - Com. Ch. of the SCC).

In general the considerations are the following: Appeallability of those rulings has not been foreseen explicitly in the law. Although the legislator named the court 'intermediate appellative', it does not act with the powers of a true intermediate appellative instance. In this hypothesis the intermediate appellative court does not discuss the existence of the evidence on the claimed pretence. It does not pronounce on the merits of the executable right, therefore it does not act as a true intermediate appellative instance. Other proceedings (order for payment proceedings in the case) are also not determined on the merits by the ruling of intermediate appellative court under Art. 423(1) of the CCP. That is why the said ruling cannot be qualified as a ruling subject to cassation appeal on the grounds of Art. 274(3), item '2' of the CCP. The ruling of the intermediate appellative court under Art. 423(1) of the CCP is not a terminative one in the sense of Art. 274(2), item '2' of the CCP, in connection with Art. 274(1), item '1' of the CCP. The objection admitted as grounded under Art. 423 of the CCP in the hypothesis of an enforcement order under Art. 410(1) of the CCP acts as an objection under Art. 414 of the CCP. The execution of the enforcement order is suspended and the order of payment proceedings are returned to the first instance court for carrying out the procedure under Art. 415(1) of the CCP. The rulings subject to cassation control are specified in detail in Art. 274 of the CCP. The rulings of the intermediate appellative court under Art. 423(1) of the CCP are not amongst the said ones and due to the reasons mentioned above are not subject to cassation control as set in Art. 63(6) of the CSA, in connection with Art. 61(1) of the CSA. The nature of the proceedings is of an extra-instance verification of the debtor's right to participate the order for payment proceedings. As a rule, the acts rendered according to an extra-instance procedure are not subject to appeal. There is not an explicit norm foreseeing appellability of the ruling, hence what the intermediate appellative court has rendered by a court act is final. The similarity between the proceedings under Art. 623 of the CCP and those on the reversal under Art. 303 of the CCP is also brought as a support to the above statement. In the practice of the SCC, rulings of the intermediate appellative court are admitted to appeal when the objection was returned due to omitting the one month preclusive term under Art. 423(1) of the CCP, i.e. the admitted appeal is against rulings barring the progress of the extra-instance proceedings under Art. 423 of the CCP (Art. 274(1), item '1' of the CCP, Ruling No 752 of 19 October 2010 on com. c.

659/2010, I – Com. C. of the SCC; Ruling No 739 of 1 October 2010 on com. c. 637/2010, I – Com. C. of the SCC).

It is true that the proceedings before the intermediate appellative court under Art. 423 of the CCP are not an appeal. It is also true that those proceedings are analogous to the proceedings on the reversal of decisions that have taken effect under Art. 303 of the CCP, which are not an appeal. The fact is emphasized in all the quoted rulings of SCC panels, that have assumed that the act of the intermediate appellative court under Art. 423 of the CCP is not subject to appeal. Moreover, namely this similarity to the proceedings on the reversal of decisions that have taken effect under Art. 303 of the CCP, reveals definitely that the matter in the hypothesis of Art. 423 of the CCP is about special independent proceedings. It is also true that the legislator has not foreseen explicitly that the act rendered by the intermediate appellative court in these proceedings is not subject to appeal. It has been done because of the amendment of Art. 274(3), item '2' of the CCP aiming at bringing to an end the practice under item '6' of ID No. 1-2001-GMCC of the SCC. There is a detailed enumeration of the rulings subject to appeal before the SCC. This thoroughness is achieved not by references to the respective texts of the CPP but by outlining the characteristics of the act of the intermediate appellative court which is subject to appeal before the SCC. The ruling under Art. 423 of the CCP of the intermediate appellative court terminates independent proceedings. The fact that those proceedings are connected with the order for payment proceedings does not change the nature of the former. The reversal of decisions that have taken effect under Art. 303 of the CCP is also connected with the adversary proceedings, but this functional relation does not deny their nature of independent proceedings. It is true that the decision of the SCC on the procedure of the reversal under Art. 303 of the CCP is not subject to appeal. But this is not on the account of the fact that the reversal is independent proceedings. That is because the SCC is the supreme court of the Republic of Bulgaria on civil cases and there is not any other more superior court before which to appeal its decisions. In the hypothesis of Art. 423 of the CCP the legislator has chosen the competence of the intermediate appellative court, viewing the location closeness to

the regional court in order not to pile cases of order for payment proceedings on the SCC, and allowed appealability before the SCC in Art. 274(3) item '2' of the CCP.

XXI. It is specified in Art. 424(1) of the CCP that the debtor is entitled to contest the receivable by an adversary procedure, when there is newly discovered evidence or new written evidence of material relevance to the case, which he/she could not have known by the time the term for filing the objection expired, or could not procure such within the said term. The matter goes about a negative ascertainment claim as seen clearly from the text of the regulation cited. Art. 424(1) of the CCP is a special regulation, foreseeing the said claim, therefore the debtor does not need grounds of his/her legal interest in its filing. The prerequisites for filing the claim under Art. 424(1) of the CCP are identical to the grounds for the reversal of a decision that has taken effect under Art. 303 of the CCP. Due to the specifics of the order for payment proceedings and the enforcement order in the hypothesis of Art. 424(1) of the CCP, the legislator has found it more appropriate not to preclude the circumstances, the written evidence, respectively, which the debtor could not have known, could not procure, respectively, within the term under Art. 414 of the CCP. The claim under Art. 424(1) of the CCP is applicable both in the hypothesis of Art. 417 of the CCP and of Art. 410 of the CCP.

The negative ascertainment claim under Art. 424 of the CCP can be lodged while the enforcement proceedings are pending (Art. 424(1) of the CCP, in connection with Art. 439(1) of the CCP). Art. 424(1) of the CCP is a special regulation regarding Art. 439(2) of the CCP and excludes its application. The order for payment proceedings do not involve a court trial. The possibility of lodging a negative ascertainment claim on the grounds of newly discovered facts is foreseen explicitly in Art. 424(1) of the CCP. If the enforcement has been precluded, the debtor has not a legal interest in lodging a negative ascertainment claim. However, under the argument of Art. 424(1) of the CCP, the said claim can be lodged on the grounds of newly discovered facts and newly discovered written evidence.

The negative ascertainment claim under Art. 424(2) of the CCP is not connected with the claim under Art. 422(1) of the CCP when no objection under Art. 414 of the CCP, no claim under

Art. 422(1) of the CCP in connection with Art. 415 of the CCP, respectively, has been lodged. If the creditor has lodged such a claim, the debtor can present the newly discovered facts and newly discovered written evidence, respectively, being a defendant in the adversary procedure under Art. 422(1) of the CCP, in connection with Art. 415 of the CCP, taking into account the preclusions under Art. 133 of the CCP, in connection with Arts. 146(3) of the CCP (SG No.100/2010); Arts. 147 and 260(1), item '5' and 266 of the CCP. On the other hand, if there have been proceedings under Art. 422(1) of the CCP, in connection with Art. 415(1) of the CCP and the claim is disallowed by a decision that has taken effect, the debtor has not a legal interest in lodging a claim under Art. 424(1) of the CCP. If the claim of the creditor has been upheld by a decision that has taken effect, the means of the debtor's defence is under 303(1), item '1' of the CCP, i.e. by reversal of a decision that has taken effect with which the creditor's positive ascertainment claim under Art. 415(1) of the CCP, in connection with Art. 422(1) of the CCP has been upheld.

The claim under Art. 424(1) of the CCP can be lodged within a three month term following the day on which the debtor learns about a new circumstance or following the day when a new piece of written evidence is procured, but not later than an year following the extinguishing of the receivable (Art. 424(1) of the CCP). The term is preclusive.

Till the amendment of Art. 424 of the CCP (SG No. 50/2008, in force of 1 March 2008) the newly occurred facts used to be foreseen grounds for the claim under Art. 424(1) of the CCP as well. No exception for the term under Art. 424(2) of the CCP used to be foreseen for such a claim. The legislative solution regarding the term of this claim used to be criticized in procedure literature and practice. However, instead of specifying that the term does not concern the claim grounded on newly occurred facts, the legislator erased the words 'newly occurred' in Art. 424(1) of the CCP. Thus the negative ascertainment claim on the grounds of newly occurred facts is admissible on the grounds of Art. 124(1) of the CCP. Doubtlessly the debtor sued in executive proceedings on a writ of execution, issued on the grounds of an enforcement order, has a legal interest in a negative ascertainment claim under Art. 124(1) of the CCP, when new facts have occurred after the expiry of the term under Art. 415(1) of the CCP. However, if the

debtor has lodged an objection under Art. 414 of the CCP and the creditor has lodged the claim under Art. 415(1) of the CCP, in connection with Art. 422(1) of the CCP, the debtor should defend himself/herself by objections based on newly occurred facts, taking into account the preclusions under Art. 133 of the CCP, in connection with Arts. 146(3); 147 and 260(1), item '5' and 266 of the CCP.

Lodging the claim under Art. 424(1) of the CCP does not suspend the enforcement. The debtor being a claimant to this claim (to a pending adversary procedure or to a future one) having presented convincing written evidence or/and due security according to the procedure of security proceedings (Arts. 389-397 of the CCP), is entitled to request the court's admittance of a security of his/her claim and determining suspension of the enforcement (Art. 397(1), item '3' of the CCP) as a security measure.