

## Serbia: When linguistics interferes with law

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By adopting on 14 December 2017 an authentic interpretation of Article 48 of Enforcement Act, the Serbian Parliament has put an end to a year-long ban on forced collection of purchased receivables created by the Appellate Commercial Court's ill-considered interpretation of this statutory provision.

The current Enforcement Act, applicable since July 2016, states in Article 48 that a creditor who is not designated as such in the document serving as enforcement title – judgment, mortgage agreement, excerpt from a pledge register, invoice etc. – has a standing to file a motion for enforcement if it files to the court a notarized document evidencing "transfer" (*prelaz*) of the receivable.

The former Enforcement Act, which was valid until July 2016, said basically the same thing as the new one – that a new creditor has to file a notarized document evidencing "transfer" (*prelaz*) or "assignment" (*prenos*). Transfer (*prelaz*) is commonly understood as a notion broader than assignment (*prenos*). While transfer (*prelaz*) signifies the end result – that something has been moved from one place to another irrespective of the means, in assignment (*prenos*) the emphasis is on the willful act of moving something from one place to another. In legal terminology, transfer (*prelaz*) is therefore a notion that encompasses changes brought about voluntarily (by contract) as well as involuntarily (by law, inheritance, administrative action, etc.), while assignment (*prenos*) denotes changes prompted by an agreement.

Not for the Belgrade-based Appellate Commercial Court who read the word transfer (*prelaz*) in the new Enforcement Act to exclude transfers based in contract. According to the court, the fact that the legislator decided to replace the words "transfer or assignment" (*prelaz ili prenos*) with a single word "transfer" meant that the legislator wanted to deny standing in enforcement proceedings to creditors who acquired the receivable based in an enforcement title by way of a contract.

The court did not entertain at all the possibility that the legislator may have excluded the word "assignment" from Article 48 of the Enforcement Act as superfluous, given that the word "transfer" is broad enough to cover also "assignment". It also completely ignored numerous provisions of the Obligations Act that use the word "transfer" both in the context of contractual assignments and in the context of *ex lege* transfers. The frivolous interpretation put a year-long embargo on debt collections by purchasers of secured NPLs, just when the primary NPL market became alive and kicking.

This lamentable episode is now over. The Serbian Parliament has clarified, in the form of an authentic interpretation of Article 48 of the Enforcement Act, that the word "transfer" (*prelaz*) should be understood to cover "assignment and other transfer" (*prenos i drugi prelaz*). The buyers of NPLs and other monetary receivables can resume debt collection efforts.

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