

Diploma in Law

Lecture 16: Recognition & Enforcement of Judgments

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**Diploma in Law
(Malta)**

Today's lecture:

- Judgments as Executive Titles
- Requirements of judgments
- The enforcement of executive titles
- Enforcement of foreign judgments



Judgments as Executive Titles



Understanding Executive Titles

Executive Title: a legal title which assumes that the claim or issue can no longer be challenged, paving the way for the enforcement of a right.

253 COCP: *The following are executive titles:*

- a. judgments & decrees from MT courts
- b. contracts concerning a debt that is certain, liquidated, and due
- c. taxed bills of judicial fees & disbursements
- d. arbitration awards
- e. bills of exchange & promissory notes
- f. mediation agreements
- g. decisions of the Consumer Claims Tribunal
- h. decisions of the Arbiter for Financial Services
- i. decisions of the Adjudicating Panel for Private Residential Leases
- j. uniform instrument on mutual assistance for the recovery of claims

Judgments & decrees of the Courts of Justice of Malta

Final Judgment: Permanently decides on an issue between contending parties. For this to be an Executive Title, it must be *res judicata* (i.e. not appealable).

Preliminary judgments or judgments on the proceedings are as a rule not considered executive titles.

So judgments which can be appealed from (e.g. issued by the First Hall) need to wait for the appeal period to lapse to become an executive title. Appeals automatically suspend execution.

Judgments & decrees of the Courts of Justice of Malta

Decree: Any court pronouncement given pending proceedings in order to facilitate or regulate proceedings, eventually leading to final judgment.

Interlocutory Decree: regulates a point of procedure during the case. Pronounced in open court & necessary for the proceedings to continue. Can be appealed from, and the court must also give reasons for its decisions.

In camera Decree: provides for any collateral substantive matters, but not the subject-matter of the case. Pronounced in private and served on the parties. Cannot be appealed from.

Judgments & decrees of the Courts of Justice of Malta

Some decrees can be appealed from only after the definitive judgment and together with an appeal from that judgment (art. 229(1) COCP) unless special leave is granted. In other cases an appeal may be filed immediately after the decree is issued (art. 229(2) COCP).

Appeals from decrees start by an application requesting special leave to appeal or a reconsideration of the decision, filed within 6 days from the decree.

If special leave is granted or the reconsideration is rejected, the appeal is to be filed within 6 days.



Taxed Bills, Judicial Fees, Disbursements



Taxxa ufficjali tad-drittijiet u spejjeż ta' Avviz Numru: _____ fl-ismijiet * I.
deciza fil-Qorti tal-Magistrati, Malta fi
relattivi u sussegwenti. fl-atti

Rilaxxata fil-
Mahduma fil-

DATA	DETTALJI	ATTUR	KONVENUT
		€	€
21-Apr-23	Rikors	538.35	0.00
	Kopji - € 4.66	13.98	0.00
12-May-23	Risposta	0.00	320.71
	Kopji - € 4.66	0.00	4.66
02-Jun-23	Nota	21.60	0.00
02-Jun-23	Rikors	21.60	0.00
	Dritt avukat u pl	46.59	0.00
14-Jun-23	Risposta	0.00	0.00
	Dritt avukat u pl	0.00	46.59
24-Jul-23	Ingunzjoni	14.40	0.00
	Dritt avukat u pl	9.32	0.00
11-Oct-23	Ingunzjoni	28.80	0.00
	Dritt avukat u pl	9.32	0.00
08-Jul-24	Dritt registru sentenza	0.00	0.00
	Dritt avukat	432.53	432.53
	Dritt prokuratur legali	144.18	144.18
		€1,280.67	€948.67
	RIMBORS		
	TOTAL	€ 1,280.67	€ 948.67

Illum 
Melissa Galea
Deputat Registratur

N.B. Din it-taxxa trid tkun iffirmata minn Deputat Registratur biex tkun ufficjali.

€8.38
 €77.86
 €25.95
€1,060.86

When a final judgment is issued, the Registrar of the Courts will issue a **taxxa** - a taxed bill of costs, and the judgment will decree on who is to bear which costs.

This is a bill of fees incurred by each party, and constitutes an executive title.

Requirements of Judgments



Judgments & decrees of the Courts of Justice of Malta

For a judgment to be legally valid and thus an executive title which can be enforced, it must satisfy substantive internal requisites, as well as formal external requisites.

Substantial internal requisites

- **Voting** - necessary when the court is composed of more than 1 judge. Decisions must always reflect the opinion of the majority
- **Demands & Pleas** - the judgment must list the demands and pleas made to make it comprehensible
- **Grounds of Decision** - the judgment must detail the arguments it considered when pondering the facts and relevant law which led to its decision

Judgments & decrees of the Courts of Justice of Malta

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Substantial internal requisites

- **The Decision - Parti Operattiva** - the judgment must be clear as to what claims it is upholding or rejecting. This part must contain all the decisions which the court intends to be binding on either party, including any time constraints. A decision can only address what is in the sworn application (and counter-claim) and cannot be *extra or ultra petita*.
- **Costs** - the judgment must be clear on how it is dividing the costs. These can be borne entirely by the defeated party but can also be divided, equally or otherwise.

Judgments & decrees of the Courts of Justice of Malta

For a judgment to be legally valid and thus an executive title which can be enforced, it must satisfy substantive internal requisites, as well as formal external requisites.

Formal external requisites

- **Delivery** - judgement must be read out in open court (at least the Decision) by the judge who gave it. Judgment must be signed by the judge.
- **Registration** - judgment is to be recorded in the Registry upon delivery.

Enforcement of Executive Titles



Enforcing Executive Titles

General Provisions

Executive titles are enforced through executive acts, listed in art. 273 COCP (e.g. warrants, garnishee orders).

While the rest of the executive titles have particular procedures for enforcement, and require judicial intimation, such as the filing of judicial letters to register agreements or other titles, **judgments**, as the executive title par excellence, **are directly and automatically enforceable**.



Enforcing Judgments

Art. 256 COCP: The general rule is that judgments are enforceable after 2 days from the date of judgment.

The following urgent judgments are made enforceable within 24hrs:

- judgments on collateral issues / interlocutory decrees if no time is stated;
- judgments rescinding warrants of impediment of departure of ships, or seizure or garnishee of ships / merchandise;
- judgments ordering payment of maintenance;
- arbitration awards

Court has discretion to order other timeframes depending on the urgency of the judgment.



Enforcing Judgments

- Executive titles can be carried out against both movables and immovables of the debtor
- A creditor of a debtor with multiple judgments against him within the jurisdiction of the same court may seek enforcement jointly in respect of all claims due
- Payment of any part of the debt does not act as a waiver for the remaining debt
- Judgments are enforceable by the court by which they are delivered (irrespective of where execution is to take place)
- Appeals judgments are enforceable by the court of first instance
- A party may freely seek the execution of the parts of the judgment that are in their favour even if the same party is appealing the remaining parts that are against them

Periods

Executive titles are not time-barred, but different periods will trigger particular procedures for their enforcement.

Period to enforce executive titles:

15 YEARS: Judgments, taxed bills, & arbitration awards of the Superior Courts

10 YEARS: Judgments, taxed bills, & arbitration awards of the Inferior Courts

Once these periods lapse, an application must be filed before the competent court to request authorisation to enforce. Application must include confirmation on oath that the debt / claim sought is still due.

Period begins from the judgment date's date of enforceability.



Enforcing judgments against dead parties

Where the party is deceased:

Here too, an application must be filed before the competent court to request authorisation to enforce against the debtor's heirs, even if the applicable period has not lapsed.

Procedure

- Application requesting authorisation to enforce the judgment against the heirs
- If there is no known heir or the heir has not declared his intention to accept the inheritance or otherwise, a curator is appointed to represent the inheritance and appear in the proceedings
- If there are heirs, they will be informed and given a time to reply
- Court will then deliberate on whether to allow the party to enforce the judgment, and if so, against whom

Enforcing judgments by dead parties

Where the enforcing party is deceased:

The heirs of the enforcing party may by means of an application served against the debtor (or heirs) request the court to enforce the judgment in the former party's name.

Applicants must prove that:

- they are the sole heirs
- the title is still valid for what is being claimed
- the party against whom enforcement is sought is the correct party

Actio Surrogatoria - Art. 263 COCP

Enforcement by a creditor of the creditor

Scenario:

A owes money to B, who in turn owes money to C.

C can enforce B's executive title over A to collect that money that is then paid to him (C) to settle the debt between B and C.

This is the **Actio Surrogatoria**, where the creditor of the debtor/creditor steps into his shoes to exercise an action pertaining to him to collect what is due to him.

May be made by means of a sworn application which is served on both the debtor and creditor (debtor of the applicant).

Also applies when the executive title is a judgment.



Provisional Enforcement of Judgments

General Provisions - Art. 266 COCP

General rule: **only res judicata judgments are enforceable - this is an exceptional remedy!**

- It is still possible to ask for provisional enforcement of a judgment before it becomes *res judicata*. This may be sought by application of the interested third party demanding its provisional enforcement.
- The application is served on the opposite party, who has 2 days to reply, and is then heard by the court and decided with urgency.
- The court appoints the application for a hearing and expediently decides on the matter.



Provisional Enforcement of Judgments

General Provisions - Art. 266 COCP

- If the application is filed before delivery of judgment: *application is decided as soon as may be after judgment is delivered*
- if the application is filed after delivery but before an appeal is filed: *it is the court of first instance which decides*
- if the application is not decided before an appeal is lodged, *the CoA will decide*
- if the application is filed before the CoA, *this may be filed at any time before the delivery of the appeal judgment*
- if provisional enforcement is granted by the court of first instance, the appellate court may at any time vary or revoke this decision. An application to this effect must be made.

Provisional Enforcement of Judgments

General Provisions

- Provisional enforcement may be granted if the court is satisfied that a delay is likely to cause greater prejudice to the party requesting enforcement than to the other party.
- The opposite party may, if the judgment is eventually reversed or varied, be entitled to damages with interest.
- The court granting such provisional enforcement may also order the party requesting it to provide sufficient security to the opposite party.

Provisional Enforcement of Judgments

General Provisions

The following judgments are always provisionally enforceable:

- judgments on maintenance
- judgments giving redress to the breach of one's right to life, or remedies against illegal arrest or forced labour (e.g. X, claiming he has been arrested illegally by government, cannot be kept in custody pending Government's appeal)
- any interlocutory decree (as they are necessary for the proper management of a case)

Provisional Enforcement of Judgments

General Provisions

The following judgments are never provisionally enforceable:

- judgments on the registration of hypothecs in the Public Registry (to avoid confusion in the Registry)
- judgments on the ratification / cancellation of the registration of an act of civil status (e.g. registration of marriage)
- judgments on industrial patents

Provisional Enforcement of Judgments

General Provisions

Final points:

- There is no appeal from a decision on the provisional enforcement of a judgment if the request has been refused, **but** the decision can be appealed from if it was given by the court of first instance and it had accepted such provisional enforcement.





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CAMILLERI PREZIOSI
ADVOCATES

Enforcement of Foreign Judgments



Enforcement of Foreign judgments

- Governed by several international conventions and EU Regulations which generally supersede and prevail over domestic legislation regulating recognition and enforcement of foreign judgments.
- Even where international law is silent, Maltese courts still accept the enforcement of foreign judgments through Title V of the COCP - *Enforcement of judgments of tribunals of countries outside Malta*.
- Elements required:
 - the judgment is res judicata;
 - the judgment was delivered by a competent court
 - an application demanding recognition & enforcement was filed in Malta

Enforcement of Foreign judgments

Procedure (from the Brussels I Regulation, Brussels I (Recast) & Lugano Convention):

- Application to the **court of origin** for a certificate of enforceability, which contains a confirmation that the judgment is enforceable in the state of origin, and an extract of the judgment
- Certificate is served on the debtor by means of a judicial letter
- Application before the FHCC requesting recognition and enforcement, together with an authenticated copy of the judgment, a translation in MT or EN of the judgment, and the certificate of enforceability

Enforcement of Foreign judgments

Procedure not regulated by international law:

- Application before the FHCC requesting recognition and enforcement, together with an authenticated copy of the judgment, a translation in MT or EN of the judgment
- Service to the debtor, who may file a reply
- A date for hearing is appointed, where the parties may make submissions
- Judgment is given

Enforcement of Foreign judgments

Prescription:

Under Brussels & Lugano: no limitation as long as the judgment remains valid before the court of origin

Under the British Judgments Act: 12 months from the date of judgment

Under the COCP: 15 years, but application may be made after this period (NOT prescriptive)



Enforcement of Foreign judgments

Merits of judgment

- Maltese courts cannot review a foreign judgment as to its merits/substance if it meets all the formal requirements.
- However, judgments may be refused if the recognition and enforcement would be in manifest breach of public policy in Malta. The public policy defence may, in some cases, result in a review of the relevant facts.
- By way of example, in terms of the Brussels I Recast Regulation, although the Court may analyse the pertinent circumstances of the case, this does not justify a reconsideration of the merits.



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Enforcement of Foreign judgments

Jurisdiction of court of origin

Under Brussels & Lugano:

- Maltese courts are in principle precluded from reviewing the jurisdiction of the court of origin, saving for the review of special and exclusive jurisdiction as provided under Brussels I Recast Regulation.

COCP:

- Judgements enforced under the British Judgments (Reciprocal Enforcement) Act and the COCP can be challenged, inter alia, on the basis of lack of jurisdiction of the foreign court.
- This applies in the case of any action brought against any person not subject to the jurisdiction of that court by reason of domicile or residence, unless such person had voluntarily submitted to the jurisdiction thereof.

Enforcement of Foreign judgments

Judgments that cannot be enforced in Malta:

The following types of judgements cannot be enforced in Malta, given that they would be in breach of Maltese public policy (substantive or procedural):

- Cases where interest rates exceed the legally permitted rates;
- Matters that constitute a criminal offence in Malta or that constitute a breach of fundamental human rights;
- Cases where the foreign procedure is fundamentally contrary to principles of natural justice as applied in Malta;
- Cases where punitive damages are awarded.



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