

EXTENDED SUMMARY

According to the Enforcement and Bankruptcy Law (Article 80/II of the EBL), if the debtor was not present at the place where the property was located at the time of seizure and it was not possible to have the debtor present immediately, the seizure was carried out in the absence of the debtor. The execution office could enter the debtor's residence without a court order, and if the debtor was not present, the execution office could enter the residence with the help of a locksmith and carry out the attachment process. This practice, a blatant violation of both the right to privacy and the inviolability of residence protected by the Constitution, was criticised in the doctrine. On 05.04.2023, with the Law on the Amendment of the Enforcement and Bankruptcy Law and Certain Laws, which entered into force after being published in the Official Gazette on 05.04.2023, an article titled "Seizure at the Residence" was added to the Enforcement and Bankruptcy Law and it was regulated how the seizure at the residence will be made and that the seizure will only be made following a decision of the enforcement court.

Pursuant to Article 79/a of the Enforcement and Bankruptcy Law, if the directing execution bailiff determines that the place requested to be seized is a residence, he/she decides to seize the place and immediately submits this decision to the approval of the enforcement court. The execution court decides definitively to approve the decision, if it is understood that the place requested to be seized is a residence at the end of the examination to be made on the file within three days at the latest. Upon notification of this decision to the enforcement office, seizure procedures shall be carried out. If it is understood that the place where the seizure is requested is not a residence, the court shall conclusively lift the decision on the seizure of the residence. Upon notification of this decision to the enforcement office, the enforcement manager shall make a new decision on the existing attachment request. If it is understood that the place of attachment is not a residence upon the court's approval decision, the attachment shall continue. However, during the seizure process carried out upon a seizure order issued in relation to a place that was accepted not to be a residence, if it is understood that this place is a residence and the debtor does not consent to the seizure, the seizure process is terminated. The legislator has regulated that Article 79/a shall not apply to precautionary attachment.

In the decisions of the Constitutional Court and the European Court of Human Rights, the concept of residence also includes workplaces. However, pursuant to Article 79/a of the Enforcement and Bankruptcy Law, the concept of residence refers only to living space and dwelling, and workplaces are not considered within the scope of the relevant article. In the opinion of this author, a court judgment must be relied upon in order to seize the workplace as well as the residence. Since the inviolability of residence is a fundamental right, it is necessary to protect the workplaces as well as the residences.

Article 79/a of the Enforcement and Bankruptcy Law aims to protect the debtor's residential immunity and private life. However, the current state and practice of the regulation shows that the seizure decision in the residence remains only formal. Considering the workload of the enforcement offices and the enforcement courts, the enforcement court makes decisions almost as mere approval authority without making an assessment in accordance with the principle of proportionality and without examining whether the debtor has other assets that can be seized.

The legislator has made a regulation by taking into consideration only the debtor and the debtor's residence; however, the right to inviolability of residence is not a right that protects only the debtor and the debtor's residence. Pursuant to the law on enforcement and bankruptcy, it may be necessary to enter third parties' premises for the seizure of the debtor's goods in third parties. In terms of the applicable law, the right of third parties to the inviolability of the residence should have been taken into consideration, as well.

The said regulation is included in the Enforcement and Bankruptcy Law, and public receivables are not within the scope of this regulation. In accordance with the law-making technique and the protection of the principle of equality among creditors, it would be appropriate to include a similar provision in the Law No. 6183 on the Procedure of Collection of Public Receivables. The only exception to the absence of a court order for seizure of a dwelling is precautionary seizure. However, not taking into account the possibility of the debtor's evasion of property has created a situation against the creditor in terms of the balance of interests.