

Information about the activities of the Swedish Enforcement Authority

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1. Enforcement Authority

The Enforcement Authority, Kronofogdemyndigheten, is administered by the State, and constitutes one national body after a reorganisation in 2006.

2. Preventive Communication

The Enforcement Authority has an overall mission given by the Government in the area of preventive communication concerning the work for high ethics in society for the payment of debts, the constant improvement of its knowledge about phenomena leading to that people who are living beyond their means are unable to pay their debts, and giving recommendations of improvements in law provisions which make it easier for people to pay their debts.

The mission of these tasks is within the Enforcement Authority entrusted to a specific process, the Preventive Communication. The strategy for this

communication is to provide the citizens and companies an access to knowledge and information in order to avoid being over indebted and the legislator, and other decision makers, knowledge and information so that achievements can be made to simplify bureaucracy concerning debt payments.

To fulfil this strategy knowledge is gathered from the world around us through: dialogues with our interested parties/ "customers"; statistics in our files and IT-system; the creation of new social networks; following new development trends concerning e.g. economy, social changes; and receiving information from our dialogues with the debtors and creditors.

The most common debts, and therefore the most effective ones trying to prevent relate to: television licenses, maintenance obligations, student loan grants, traffic insurance, debts concerning cellular telephones and internet connections, and quick loans (SMS loans).

The most vital target groups to work with in the preventive area are young people and new started companies.

Since the Preventive Communication only constitutes a minor part of the activities of the Enforcement Authority, it is very essential to co-operate with e.g. other authorities and to work through messengers such as teachers, immigrant organizations, and interest organizations for companies.

3. Summary Proceedings

Summary Proceedings is a simplified and accelerated procedure for order of payment. The purpose of Summary Proceedings is to deliver a verdict that is directly enforceable.

The procedure is for private individuals and enterprises alike and both can stand as either applicant or respondent. Normally claims are uncontested money orders but they can just as well be non-money orders. Non-money orders include requests for verdicts regarding for example eviction, to shut off electricity or move a fence.

In order for a claim to be handled by the process it needs to fulfil some basic requirements. The claim must be overdue and mediation has to be allowable. The application must be in writing and signed by the applicant. The claim itself, as well as the grounds for the claim, should be complete. One cannot add to the application during the process, only subtract from it. There is neither an upper nor lower limit to the size a financial claim can be. A money order can also be combined with a non-money order if, for example, an applicant

landlord not only wants a respondent evicted but also wants to collect the rent owed.

Summary truly means summary in Sweden as we do not question the validity of a claim. The applicant need not supply any evidence nor is there any examination of the case. As long as the application does not have any obvious faults in its format and all obligatory information is included, papers are automatically sent to the respondent. It is then the responsibility of the respondent to react to the claim.

After having been served with the claim the respondent has a certain time frame within which he/she has to object to the claim. If the respondent is not heard from a verdict will be rendered in accordance with the original application. If the respondent contests the claim however, the applicant has a choice of either having the case turned over to the District Court for a verdict or to terminate the process.

Neither the applicant nor the respondent need representation during the process, all parties may represent themselves. Forms and written instructions are designed for this purpose, they are to be easily understood by non-professionals. The process is not obligatory and an applicant may take his claim directly to the District Court instead.

On average the process takes just short of 2 months from application to a decision. A decision is rendered in 80% of incoming applications. A decision such as this is directly enforceable by the recoveries department. It is noteworthy that any and all decisions from the Summary Proceedings are appealable, meaning a final decision may be contested by either party.

4. Enforcement

4.1 Public and private claims

The Enforcement Authority is responsible for the enforcement of both public and private claims. Public matters are debts to central and local authorities (taxes, VAT, excise duties, social security contributions, but also e.g.: television licenses and parking fines). Private matters are based on titles of execution, judgments of general and administrative courts. Other titles may emanate from the summary procedure of the Enforcement Authority, such as repossessions and evictions, normally based on summary decisions. The enforcement matters which are based on public claims are e.g.: taxes, fines, custom duties and other duties. The treatment of such enforcement matters differ. Those matters are accounted for to the applicant authority when the enforcement is completed. The period of limitation in the enforcement matters

related to tax claims is generally five years accounted from the end of the year the tax originally had to be paid.

4.2 Enforceable judgments, decisions and orders

Private enforcement matters are, as mentioned above, mainly based on court judgments, but also some other titles of execution. Examples of enforceable titles of execution are: judgments of the general courts, the District Court the Court of Appeal the Supreme Court the Administrative Court the Administrative Court of Appeal and the Administrative Supreme Court. In addition, some private documents can be enforced, such as contracts for child and spousal support.

The general rules about enforceable titles can be found in chapter 4 of the Enforcement Code. For more information, about codes, acts and statutes, see further section 4.3. Titles of execution, such as judgments, must in principle be legally binding. An important exception is that all titles and judgments involving an obligation to pay can be enforced without being legally valid. Default judgments can also be enforced in the same way as injunctions to pay. Chapter 4, section 1, of the Enforcement Code contains a more detailed account of rules on the enforcement of various judgments and other titles of execution.

4.3 Code, acts and statutes

The main legal source for the enforcement of claims is the Enforcement Code, effective from 1 January 1982. The Enforcement Code includes 18 chapters. In addition, an Enforcement statute exists, including 19 chapters, which contains detailed provisions for procedures, as a supplement to the Enforcement Code.

The Consumer credit act contains special provisions that allow the seller to apply to the Enforcement Authority for the repossession of goods sold on credit. The Act of hire-purchase transactions between tradesmen contains similar provisions. The sales' company has the right, under the conditions of the act, to request that the Enforcement Authority repossesses the item sold based on instalments. Also see section 4.9 for more information on repossessions.

4.4 Use of computer technology

The enforcement register contains all registered debtors and is a central computer base used by the Enforcement Authority. This register contains public and private claims. All payments and actions taken in relation to the debtors are recorded in the register. With the help of the personal identity number or the organization registration number of a company one can find out

if the individual or the company is subject to enforcement, what kind of debt the individual or the company has and what action the Enforcement Authority has taken. For applicants handling large numbers of matters, applications can be transferred directly via computer from the applicant to the Enforcement Authority. Judgment and other material is sent by mail. Provisions for the handling of the register can be found in the enforcement register act.

An Authority must act swiftly to investigate cases when the debtor complains about errors in the register concerning his debts. Information regarding the debtor's assets is available to the following extent at the Enforcement Authorities for enforcement purposes through search in public registers, to which the Enforcement Authorities has direct access by computer.

The tax register is kept and administered by the Tax Agency for taxation purposes. The Enforcement Authority has direct access by computer concerning tax debtors. All taxpayers, both individuals and legal entities, are recorded in the register. Information which could be found in this register is for instance the debtor's sources of income, name of employer, bank accounts and real estate holdings.

The register of limited liabilities corporations is a computer register kept and administered by the Patent and Registration Office, which contains all limited liabilities companies, both public and private, the size of the share-capital of the company, the members of the board of directors and information about who is legally authorized to sign on behalf of the company. It is also possible to receive copies from the company's annual accounts. Information about all the limited liability companies in which a certain person is involved as a member of the Board of directors or as a deputy is also available.

The trade- and association register is kept and administered by the Patent and Registration Office and contains information about partnership companies, limited partnership companies, private firms, economic associations, certain foundations and non-profit associations. From the register one can for instance obtain information on who are the partners of the companies and which companies a certain person is involved in. Copies of the annual accounts are also available.

The vehicle register is a computerized register kept and administered by the National Road Administration. The register contains information regarding all registered vehicles and their registered owners. One can find out who the registered owner to a certain vehicle is, which vehicles a certain person is registered for as owner and the last three previous owners to a certain vehicle.

The real estate register is a computer based register kept and administered by the National Land Surveying Office. This register contains information regarding all real estates and site leasehold rights in the country. Information

to be found in this register is the ownership status, the taxation value and mortgages of the real estate. Also, other registers exist to which the Enforcement Authority has access, but not directly via computer.

The register for order of payment and enforcement assistance is a computer based register kept and administered by the Enforcement Authority containing certain information related to the applications.

4.5 Enforcing enforceable titles

If the debtor fails to pay the debt he is contacted by the Enforcement Authority. He is obliged to give information about his assets and where they are located. Third parties are also required to provide information about persons who have financial dealings with the debtor but who is himself not a creditor. A debtor, or a third party, who refuses to disclose information may be ordered to do so under the threat of fines. Such fines, which are imposed by the District Court, are not subject to any particular limit.

The debtor can be instructed to submit a list of his assets and sign an affirmation on his faith and honour that the information given in the list is correct. Another possibility is to hold a hearing with the debtor, and third parties, at the office of the Enforcement Authority. Such a hearing is reserved for matters when the debtor refuses to co-operate with the Authority and when other, less far reaching procedures, are deemed to be insufficient.

In some public matters the Enforcement Authority represents the creditor, the Swedish State, and can make agreements, for instance payment plans, with the debtor. In private matters all agreements have to be made with the creditor. Postponement of payment can be granted if the debtor is unable to pay directly and it is judged probable that he will pay in the future. Payments by instalments can also be granted. The Enforcement Authority then decides on an instalment schedule. If it is a large debt, some form of security will generally be required according to the recovery act. The Enforcement Authority acts, in some, but not all public matters, as creditor on behalf of the State and some other public entities. This role of the Authority is regulated in the recovery act.

The enforcement normally begins with that a demand of payment is sent to the debtor where he is urged to pay his debt within a certain period of time. If there is no payment the Authority is obliged to initiate an investigation to find out if the debtor has any property that can be subject to enforcement. The Authority can give the debtor a respite to pay. Enforcement can only apply to the property owned by the debtor, an individual or a legal entity, and that property must, when enforcement takes place, be in the possession of the debtor. It must also be possible to transfer the property and it must also have a value.

Some assets are excepted from enforcement: furniture, household machines, clothes and other personal belongings, such as watches, rings and jewellery, at a reasonable value. Also tools and equipment necessary for a person to perform his work are excepted from enforcement. Memorabilia are also protected from enforcement such as for instance honorary medals, family bibles, etc. Tenancy rights to apartments are excluded as well as tenant owner's apartments under a certain value, as opposed to real estate which is not. Other examples of exceptions are: cash, if it is necessary for the debtor's support up to a month, as well as the right to pension, but not the monthly pension payments as such, which can be attached. There also exist other exceptions but these just mentioned are the most important.

Some assets can be subject to enforcement without the officer being present at the place where the procedure is taking place. An example is the attachment of money in bank accounts. Another example relates to registered vehicles, where enforcement is done only provisionally to be followed by a proper enforcement proceeding within a certain time limit. Ships registered in Sweden can be subject to enforcement even if they are sailing between ports abroad. A protocol of the enforcement action/attachment is kept by the officer in charge, and a copy is sent to the debtor, if he is not present at the proceedings. A preliminary evaluation is made, to be followed later by expert evaluation.

An enforcement action/attachment in relation to a debtor's property means that the creditor obtains a priority right compared to other creditors, which is of importance for instance in the case of a later bankruptcy of the debtor. The Enforcement Authority can, if it is deemed necessary, take the distrained/attached property in custody until it can be auctioned. Until that time it is possible for the debtor to stop auction proceeding if he pays his debt.

In certain circumstances it is possible for the Authority to correct its own decision. Otherwise the debtor can appeal against the decision of the Authority at the District Court. A third party can also appeal if he claims the property is his favour. Before an enforcement action/attachment the debtor is notified about the proceedings unless there is reason to believe that he might attempt to hide and move away property.

After the just mentioned preparation the proceeding can take place in the home of the debtor or in the premises of the company owned by the debtor in search of assets if deemed necessary, but only if the officer has reason to believe that property can be found there. If the debtor tries to stop the officer from entering into his home or into the premises of his company, a locksmith and/or the police can aid the Authority to get into the building.

If the enforcement officer concludes that the debtor has no assets that can be subject to enforcement, that fact is noted in a protocol, which is later reported

back to the applicant creditor. Such a report can then be used by the creditor to apply to court for a bankruptcy order against the debtor. This means for the State, as a creditor, that the Tax Agency may make an application to a District Court for a bankruptcy order against the debtor. If the District Court issues a bankruptcy order an official receiver seizes the debtor's property and uses it for the payment of the debts.

In some matters concerning some types of property some extra care has to be observed. The property can be mortgaged in relation to both personal property and real estate, right of lien can be applicable, the goods can be sold on credit and not be fully paid and there may be a chattel as security for due payment, if the debtor for instance is a company. If the property is a right of use, bank account, promissory bond or patent, some special research and extra care may also have to be observed before any action of enforcement.

The Enforcement Authority can order the debtor to do, or not to do, something under the threat of an order of a penalty of a fine. Also a third party can be given such an order. However, there must exist a strong reason for issuing such an order. The size of the fine is not stipulated in the Enforcement Code. Therefore the officer can determine as high a fine as he considers to be necessary.

The enforcement officer is allowed to use force. This can involve breaking a lock to gain entry into an apartment. However, force against persons may only be used if the officer runs into opposition and the use of physical force is considered necessary. In these matters the police is called in to aid the enforcement officer. If a debtor is unwilling to indicate the location of his property the officer can do no more than to issue an order of a penalty of a fine.

A research for assets aims at the location of all assets of the debtor, but is adopted to the circumstances in the specific matter. When the Enforcement Authority has an option to make a choice between several assets the authority shall seize the asset which, in order to have the total debt paid, causes the least loss and inconvenience for the debtor. The authority decides in which order the seizure shall take place. Normally, the following order of seizure is applicable: money, bank accounts and other financial assets which are at an immediate disposal, attachment of earnings, shares and other securitises, other tangible property, and real estate.

4.6 Attachment of earnings

Attachment of earnings is the most common attachment made by the Enforcement Authority. Over 100 000 decisions of attachment of earnings are decided every year. Attachment of earnings in the Enforcement Code is possible both concerning public and private claims and maintenance allowances, and can in principle continue indefinitely. The procedure starts when the authority sends an order for enforcement to the debtor and provides him with the possibility to state his expenses. Different kind of earnings can be subject to attachment: salaries, pensions, intangible assets such as patents, sickness benefits and unemployment compensation. After having received necessary information about the salary and expenses of the debtor the authority determines the distress amount of the debtor's wages to be withdrawn and how much the debtor is allowed to keep for his expenses, *beneficium*. The Enforcement Code contains provisions for sanctions against employers who fail to account for the sum withdrawn from the debtor's salary.

4.7 Compulsory sale

4.7.1 Personal moveable property

Sale is arranged as a public auction by the Enforcement Authority in its own premises or by an auction firm. If suitable, property can also be sold informally by the Enforcement Authority. The auction is announced in the local daily press at least one week before the auction. If the property is believed to be of interest to a wider audience announcements are published in the national press and magazines. Before the sale the property is exhibited to prospective buyers.

Before the sale the Enforcement Authority has evaluated the property. An auction starts with a presentation of the conditions for the sale. Bidding is made by bid and overbid. Highest bid may only be accepted if it is likely that no higher bid can be reached. If the highest bid is accepted the buyer must pay the whole amount at once. If the price is over 2 000 SEK the buyer can be permitted a respite and only pay a deposit of 25 percent of the purchase sum as down payment. When the buyer has fulfilled his obligation by paying the purchase he gets the property. If the buyer does not fulfil his obligations a new attempt is made to sell the property. A protocol of the auction is kept. The auction can be appealed at within three weeks from the day of the auction. After the property has been sold the Enforcement authority distributes the purchase sum between the creditors in the list of parties.

4.7.2 Real estate

An enforcement action related to real estate is entered into the land register. The condition for enforcement is that there is a value above the mortgage. After the enforcement action the real estate is sold by the Enforcement Authority on public auction. The property can also be sold informally by a real estate firm. Before sale the real estate is evaluated and described in a protocol that is available to the public. An announcement is published in the daily press at least three weeks before the auction. The property is exhibited to prospective buyers.

Before an auction a supervisory meeting is held and the officer in charge of the auction goes through a list of parties concerned, often including banks and other loan associations. A protective amount is fixed to cover the costs and the mortgages with a better right than that of the creditor, or the distraint if the actual debt for which the real estate is sold is not based on a mortgage.

An auction starts with a presentation of the conditions for the sale. Bidding is made by bid and overbid and the highest bid is accepted. The enforcement officer in charge of the proceeding can refuse to accept the highest bid on grounds that a higher bid can be achieved at a new auction. If the highest bid is accepted the buyer must pay 10 percent of the purchase sum as down payment. At a certain time after the auction a session is held to distribute the purchase sum between the creditors in the list of parties. The auction can be appealed at within three weeks from the day of the auction. If the auction becomes legally binding, the buyer can move into the house. Should the debtor refuse to move out he can be evicted by the Enforcement Authority at no cost for the buyer. Distress sale on auction of ships and airplanes are regulated in a way similar to real estate. No detailed account will be presented here.

4.7.3 Tenant owners' apartments

Tenant Owner's apartments are regarded as moveable property and are sold as such and in the same various ways. There are two types of forced sales of apartments. One is decided upon after a distraint. The other, the special forced sale, regulated in the tenant owners' apartment act, can be carried out after an application from the tenant owner's apartment society where the owner is a member, if the owner for example does not pay his monthly fee to the society. After letting the tenant owner give his/hers opinion, the enforcement Authority may in a decision declare the right of the tenant owner suspended unless the owner shows cause that it should not be done and after evaluation of the property the apartment is sold on auction. The owner can appeal against the decision to sell at the auction to the District Court. In both cases the sale, as mentioned in the beginning, is the same as for moveable property and very similar to the sale of real estate.

4.8 Evictions and other non-money judgments and orders

The basis for an eviction can be a court judgment, a decision in the summary debt recovery procedure, a decision by a court in a divorce case, decisions by a regional rent tribunal or a rents and tenancies court of appeal, protocol of a distress auction of real estate or settlement confirmed by a court.

The tenant is notified by the Enforcement Authority beforehand, if it is possible. The local Social Welfare Authority of the city or municipality is also notified. The property of the debtor is removed from the home or the lock is changed in the door to prevent entry by the debtor. In the latter case the landlord lets the tenant in to fetch his property at a later date decided upon by the parties. If the property of the debtor is removed, the Enforcement Authority is charged with storing it. Property of no value is discarded with. The debtor must take care of his property before the end of a certain period of time. If he does not, the property is sold to pay for the rent of the storage premises. After the proceeding the debtor is notified of the eviction, if he has not been present.

In some matters an authority in charge of a particular field of responsibility can without a court order request the Enforcement Authority directly to take action. The road authority can according to the road act for instance request to have illegally placed signs or advertisements along a road removed.

4.9 Repossessions

Goods sold on instalment plans can be repossessed by the Enforcement Authority on application by the seller. After an application, and when the buyer has been given an opportunity to give his opinion, the Enforcement Authority proceeds to notify the buyer that repossession will take place. Usually a representative of the seller accompanies the Enforcement Officer who is responsible for the matter. The goods are inspected, for instance a car, and evaluated against payments made. Usually the representative of the seller takes care of the goods immediately and the buyer, if present, is handed a decision to repossess, which can be appealed at to the District Court. If the buyer is not present the decision is sent to him by mail.

5. Debt relief

Debt relief means that a heavily indebted individual, after a decision by the Enforcement Authority, under certain circumstances, may be relieved from the liability of paying his debts as a whole or partially.

A debtor may receive debt relief subject to if: he is heavily indebted in a way which makes it impossible to pay the debts during many years, it is reasonable taking into account his personal and economic circumstances, and he has a registered domicile in Sweden.

If all the requirements for debt relief are fulfilled the Enforcement Authority writes a proposal for debt relief, including an instalment plan for five years. The instalment plan is based on the debtor's exceeding capacity to pay after a deduction of an amount of *beneficium* similar to that applied in the context of the attachment of earnings, compare section 5 below. The incomes exceeding this amount is used to pay the debts.

The proposal must be approved by the debtor before it is submitted to the creditors. Even if one of the creditors should say no to the proposal the Enforcement Authority could make a decision about debt relief. This decision is appealable to the District Court. If the instalment plan is respected during five years the debtor will become clear of debts. Advices and assistance during the debt relief period are available from the budget and debt advisers of the municipality.

6. Supervision of bankruptcies

The bankruptcy act stipulates that an administrator in bankruptcy, often a lawyer, is responsible for the management of the bankruptcy estate. The Enforcement Authority has a supervision function over the management of bankruptcies, as a so called supervision authority. The task of the supervision authority is to control that the management of the bankruptcy estate is carried out in an appropriate way in accordance with the provisions in the bankruptcy act and other statutes. Therefore the supervision authority has an advisory and informative role in relation to the administrators. Of special concern is a fast and reliable winding up by the bankruptcy management and that it is not unnecessarily delayed and that the costs for the administration are limited. Also, the supervision authority has to control the obligation of the administrator to investigate possible crimes by the debtor.

6.1 Guarantee of salaries in bankruptcies

An act about the guarantee of salaries in bankruptcies assures that employees in companies and firms that go bankrupt are guaranteed outstanding salaries and salary during the period of notice according to the employment security act. The administrators in bankruptcy are, according to the act, responsible for the reviewing of applications from the employees to receive payment, while the county administrative boards are in charge of the actual payment to the employees. Decisions by the administrator in bankruptcy can be appealed at to the District Court.

6.2 Employer's right to set-off

The act of employer's right to set-off gives the employer the right to make deductions, set-offs, from the wage of the employee for certain claims he may have. The employee can for instance be liable for damages because he has violated a collective agreement between the employer's association and the trade-union by resigning from his work before the required period of notice has expired. The employer applies in these matters to the Enforcement Authority, which then establishes an amount which is not subject to distraint for the employee. The authority does not decide on the employer's right to a set off, a right, which can be challenged by the employee. No title is needed by the employer. The amount not subject to distraint is similar to the one applied at the attachment of earnings. The decision of the authority can not be appealed at, but changed by the authority on the application by the employee, if he can show cause.

7. Sequestration

The general courts are responsible for issuing orders of precautionary measures. Provisions exist in the Judicial Procedure Code and the act on order to pay and decision of enforcement assistance. The applicant must show that danger exists in delay and that there is a risk that the debtor will abscond, remove property or in a similar way attempt to avoid the fulfilling of his duties. He must also show probable cause generally and put up security for any damage that might be caused the debtor by the action. It is then up to the Enforcement Authority to carry out the provisional action of enforcement. After this action the debtor is forbidden to transfer the property or in any other way dispose of it in a harmful way to the creditor. A provisional action does not give the creditor a priority right.

In relation to public matters precautionary measures are possible, according to the securing of payment act, e.g. concerning taxes, contributions and customs duties. In a risk situation an Administrative Court can provisionally order an

enforcement action/attachment of the creditors property until the debt is paid or enforcement could be carried out. In principle the same rules apply as in cases of ordinary provisional enforcement/attachment. Certain conditions have to be fulfilled: the State must have a claim, the claim has to be matured and the claim has to amount to a considerable sum. There also has to be a manifest risk that the debtor will not pay. The Enforcement Authority is responsible for carrying out the order. To avoid the securing of payment the debtor is allowed to offer security.

8. Appeal

Almost all decisions by the Enforcement Authority can be appealed against by the debtor or by third party. The appeal is to be directed to the District Court but sent to the Enforcement Authority. According to the Enforcement Code all who are concerned by the decision have a right to appeal. Some preparatory decisions in the procedure cannot be appealed. If the Authority refuses to correct its decision, the decision to attach can be appealed. Decisions that can be appealed against must include a written instruction on how to appeal.

The main provision of the Enforcement Code provides for a period of appeal of three weeks from service of the decision. In decisions concerning the attachment of earnings there is no time limit of appeal. A third party can also appeal without time limit. The written appeal must contain information on the decision that is appealed against, what change is demanded, the grounds for a change, the evidence referred to and what the complainant wants to prove by it.

Before sending the appeal on to the court the Authority adds a statement of its own and enclose the file of the case. The court can decide to stop the enforcement, if there are sufficient grounds. In most cases the decision by a Court of Appeal can be directly enforced by the Enforcement Authority. The decision by the District Court can be appealed against to the Court of Appeal if it decides to grant a review dispensation. Enforcement decisions by the Courts of Appeal can be appealed against to the Supreme Court and reviewed if the court decides to grant a review dispensation.