

PROCEDURE OF THE PAYMENT ORDER. BETWEEN SPEED AND RESPECT FOR THE RIGHT TO DEFENCE

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ABSTRACT: *The procedure of the order for payment is a special procedure for solving requests that can be made in a short term and with lower expenses, the recovery of certain receivables. The celerity of the procedure allows the court to examine exclusively the documents and statements of the parties, on the basis of which the court will order the admission or rejection of the application.*

In the latter case, the creditor may file a claim under common law in order to obtain the debtor's obligation to pay the remainder of the debt.

This study aims to analyse this special procedure in terms of respect for the rights of defence of the parties, in the light of recent judicial practice.

KEYWORDS: *payment order; claim; right of defence; documents; contract.*

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1. INTRODUCTION

Originally legislated by Government Emergency Ordinance no. 119/2007¹ on measures to combat late payment obligations resulting from commercial contracts, the payment order is currently regulated in VI-th book, Title IX, art. 1013-1024 of the Code of Civil Procedure², being inspired by EC Regulation no. 861/2007 (Gheorghe, 2013).

In an age when justice is called to deliver judgments not only in compliance with the law's rigors, but also in a timely manner, the payment order procedure appears as one of the most expressive techniques for accelerating judgment. It is not, however, a procedural shortcut or a favour made to the creditor to the detriment of the debtor, but a special procedure whose legitimacy derives precisely from its suitability to a particular category

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¹ Published in the Official Gazette no. 738 of 31.10.2007, repealed by Law 76/2012 for the implementation of Law no. 134/2010 on the Civil Procedure Code, published in the Official Gazette no. 365 of 30.05.2012.

² Published in the Official Gazette no. 247 of 10.04.2015.

of disputes: those in which the obligation to pay is sufficiently clear to be verified on the basis of the documents and explanations of the parties.

The order for payment was therefore not designed to compete with the common law, but to supplement it where the complexity of the dispute does not justify the procedure of a substantive judgment. What is required, in reality, is not only a monetary claim, but a receivable liable for rapid verification, in a concentrated procedural framework, without the legal truth suffering by reducing the role of evidence.

2. THE NORMATIVE CONFIGURATION OF THE PROCEDURE

The current regulation is contained in article 1014–1025 of the Code of Civil Procedure and fixes, from the outset, the admissibility conditions of the procedure. Article 1014 of the Code of Civil Procedure defines the scope of application by showing that the procedure concerns certain, liquid and payable claims consisting of obligations to pay money resulting from a civil contract, including those concluded between a professional and a contracting authority, established by a written document or determined according to a statute regulation or other document appropriated by the parties by signature or otherwise permitted by law. At the same time, the text expressly excludes claims entered in the insolvency proceedings.

This legislative formulation is more significant than it seems. It describes not only the subject of the proceedings but also its legal philosophy: the special procedure is reserved for situations where the document has sufficient probative force to support a swift judicial review. The admissibility of only an evidence with documents is legitimate precisely in view of the accelerated nature of the payment order procedure, which facilitates the process of knowing the truth by the judge and avoids the administration of complex evidentials, especially the hearing of witnesses for proving the contractual relationship (Leș, et al., 2015).

The preliminary and mandatory stage (Deliu, 2018) regulated by article 1015 of the Code of Civil Procedure is of decisive practical importance. The creditor is obliged to communicate to the debtor an order by bailiff or by registered letter, with declared content and acknowledgement of receipt, giving him a period of 15 days for payment. Only after the expiry of that time limit, according to article 1016 of the Code of Civil Procedure, can the creditor refer the matter to the competent court and the proof of communication of the order must be attached to the application, subject to the sanction of inadmissibility. In doctrine (Boroi, et al., 2013) it was considered that the procedure is aimed at relieving the activity of the courts by amicable settlement of disputes. The communication of the summons is a condition for the exercise of civil action, since the legislator sanctions the failure to submit the proof of communication with the rejection of the application as inadmissible (Popa & Fodo, 2013).

This prior procedure can be viewed from two perspectives: on the one hand, it inevitably slows access to the accelerated mechanism; on the other hand, it provides the debtor with one last space of voluntary compliance and rigorously sets the point at which the creditor can legitimately claim the use of the special procedure. Thus seen, the order is not a mere formality, but strikes a balance between the procedural advantage granted to the creditor and the minimum protection due to the debtor.

If the debtor fails to pay within the 15-day time limit granted, the creditor may lodge the application for the payment order with the court having jurisdiction to hear the merits of the case at first instance. The application for the payment order shall include the elements provided for in article 1017 of the Civil Code. The application shall attach the documents attesting the amount due and any other documents proving it, being mandatory to submit the proof of communication of the prior order. The application and the documents annexed to it shall be submitted in copy in as many copies as there are parties, plus one for the court.

In order to settle the application, the judge orders summoning the parties, according to the provisions on urgent matters, for explanations and clarifications, as well as to insist on the payment of the amount due by the debtor or to reach an understanding of the parties on the payment methods. The summons will be handed to the party 10 days before the trial period. At the summons for the debtor will be attached, in copy, the request of the creditor and the documents filed by him in proving the claims.

The summons will specify that the debtor is obliged to file a claim at least 3 days before the trial period, mentioning that in case of failure to file a claim, the court may consider this as a recognition of the claims of the creditor. The complaint is not communicated to the applicant, who will take note of its contents from the case file. If the creditor declares that he has received the payment of the amount due, the court takes note of this circumstance by a final conclusion ordering the closure of the file. When the creditor and the debtor come to an agreement on the payment, the court takes note of it, issuing a decision of expedient. This judgment is final and constitutes an enforceable title.

If the debtor disputes the claim, the court checks whether the appeal is well founded, based on the documents on file and the explanations and clarifications of the parties. If the debtor's defence is well founded, the court will reject the creditor's application by closing.

If the substantive defenses formulated by the debtor imply the administration of evidence other than the documents, and they would be admissible, according to the law, in the ordinary procedure, the court will reject the creditor's request for payment order by closing. In the event of rejection of the application, the creditor is entitled to lodge the application by common law.

If the court, following the verification of the application on the basis of the submitted documents, as well as the statements of the parties, finds that the claims of the creditor are well-founded, it will issue a payment order, specifying the amount and term of payment. If the court, examining the evidence of the case, finds that only a part of the claims of the creditor are well founded, it will issue the payment order only for this part, establishing the payment term.

In this case, the creditor may file a claim under common law to obtain the debtor's obligation to pay the remainder of the debt.

The payment term shall not be less than 10 days and shall not exceed 30 days from the date of communication of the order. The judge will not be able to set another payment term, unless the parties agree to this.

If the debtor does not challenge the claim by welcoming, the payment order will be issued no later than 45 days after the application is lodged. The time limit necessary for the communication of procedural documents and the delay caused by the creditor, including as a result of the modification or completion of the application, shall not be included in the calculation of this time limit.

3. REQUIREMENTS RELATING TO THE CLAIM DEDUCTED FROM THE JUDGMENT

Conditions for certainty, liquidity and enforceability³ describes the profile of the claim that can be redeemed by payment order but, at the same time, selects disputes compatible with the special procedure. It is necessary that the obligations to pay amounts of money result from a civil contract, including those concluded between a professional and a contracting authority, established by a document or determined according to a statute, regulation or other document, appropriated by the parties by signature or otherwise accepted by law.

The claims entered at the insolvency table in insolvency proceedings cannot be subject to the payment order procedure.

These legal provisions impose on the court the obligation to verify not only the existence of a contract and invoices, but also their ability to support, without additional complex evidence, the conclusion that the debtor owes the amount claimed. That is why the mere existence of a contractual relationship is not enough. The order for payment procedure is not created to resolve disputes in which the amount depends on the interpretation of verbal agreements, unclear compensations, technically contested benefits or other circumstances that claim evidence in excess of the documents and explanations of the parties.

4. RIGHT OF DEFENCE UNDER THE SPECIAL PROCEDURE OF THE PAYMENT ORDER

The regime of judgment provided for in article 1019 of the Code of Civil Procedure seeks to preserve a necessary minimum of advisability, without abandoning the time savings specific to the procedure. The parties are summoned for explanations and clarifications, and the debtor is notified of the request and the documents of the creditor. From the content of these provisions, it would appear that the law provides the premises for an effective defense.

However, a certain limitation may result in respect of the welcome. Thus, according to article 1019 paragraph 4 of the Civil Procedure Code, the complaint is not communicated to the applicant, who will take note of its content in the case file. The justification of the legal text results from the desire of the legislator to avoid the extension of the written phase, but its practical effect may be to diminish the real possibility of the creditor to respond to the defenses of the debtor in a timely manner.

This reserve is not only of theoretical dimension. In judicial practice (Cîrstea, 2026), failure to communicate the claim was deemed fit to affect the rights of the defense when

³ According to Article 663, paragraph 2 of the Civil Procedure Code, the claim is certain when its undoubted existence results from the enforcement title itself. Art. 663, paragraph 3 of the Civil Procedure Code shows that the claim is liquid when its object is determined or when the enforceable title contains the elements that allow it to be established. Last but not least, paragraph 4 of the same legal text provides that the claim is due if the debtor's obligation is mature or it is deducted from the benefit of the payment term.

the party had no effective opportunity to formulate its position against the opposing defense.

Therefore, the question is not whether the special procedure can be exempted from common law, but whether these derogations are administered judicially in a sufficiently careful manner so as not to compromise the essence of the rights of the defense.

The appeal regarding the communication of the reception is of significant importance in the event that the debtor disputes the claim according to the provisions of art. 1021 Civil code. In the event of failure to lodge the claim, in the circumstances of the case, the court may consider this as recognition of the claims of the creditor (Boroi, 2015).

The court has the duty to verify whether the appeal is well founded, based on the documents on file and the explanations and clarifications of the parties (Leș, 2026). If the debtor's defence is well founded, the court will reject the creditor's application by closing.

A second situation of rejection of the application filed by the payment order is that in which the substantive defenses formulated by the debtor imply the administration of evidence other than the documents, and they would be admissible, according to the law, in the common law procedure.

This time, the judge of the case must conduct a summary examination of the merits of the case assessing the possibility of administering other evidence outside the documents which are admissible under the special procedure of the order for payment. This judgment of the judge must respect the procedural guarantees of the parties, namely the right to defense, but also the principle of legality and the finding of the truth expressly consecrated by art.7 and art. 13 Civil Procedure Code.

In case of admission and rejection of the application, the reasoning of the court decision must repeat the requirements that have been consistently outlined in the legal literature, and must be done in a clear and consistent manner, because it constitutes a guarantee against arbitrariness for the parties in the process, as it provides them with proof, on the one hand, that their claims and means of defence have been seriously examined by the court, the court said but also that the solutions adopted by the courts are based on a logical-legal reasoning meant to ensure that the court has given a just solution, in relation to the factual circumstances of the case and the applicable legal grounds (Blaj, 2023).

5. PROCEDURE OF THE PAYMENT ORDER IN RECENT JUDICIAL PRACTICE

Sentence no. 370/2026 of 11.06.2026 pronounced by the Court of Campeni⁴ it is relevant to the assumption that the special procedure fails not because of the apparent non-existence of the claim but because of non-compliance with its own prior requirements. The creditor requested the issuance of the payment order for the recovery of a principal debit and late payment penalties, in the context of successive assignments of the claim. Although the debtor did not file a complaint, the court checked the regularity of the order provided by art. 1015 C. proc. civ. and found that this order had been communicated without full compliance with the requirement of declared content. Consequently, the application was rejected as inadmissible.

⁴ Published on <https://www.rejust.ro/juris/738398e7g>.

It follows from the content of that judgment that the court did not exclusively consider the debtor's procedural passivity, but rather did correctly apply the special procedure that enshrines an accelerated debt recovery mechanism. This ruling underlines that the payment order procedure is not a procedural benefit to the creditor regardless of his conduct, but an instrument conditional on the exact observance of his or her own discipline.

Sentence no. 9934/ 10.06.2026 pronounced by the Targu Mures Court ⁵ illustrates the assumption that the payment order fully achieves its practical purpose. In the case at hand, the creditor requested that the debtor be ordered to pay the principal debt, contractual penalties and compensation for premature termination of the contract. The debtor did not submit a welcome. The court did not, however, resort to capitalizing on the procedural passivity of the defendant, but expressly verified the certain, liquid and enforceable nature of the claim, the contractual source of the obligation and the basis of penalties and compensation. Only after this verification did he admit the application and issue the payment order.

This judgment shows that the lack of reception does not dispense with the court the obligation to conduct a thorough analysis of the case and thus facilitate a solution for admitting the application for an order for payment.

By the conclusion of the Timisoara Court no. 19496/2026⁶ it was rejected as inadmissible the request for issuing the payment order formulated by the creditors. It was noted in the recitals of the judgment that, although the creditor bases its claim on the contractual relations between the parties and on the fiscal invoices issued for their execution, the court finds that the debtor seriously disputes both the existence and extent of the alleged debt, citing factual and legal issues that cannot be clarified solely on the basis of the documents on file and the explanations of the parties. (.) However, all these defenses are likely to create a real and serious doubt about the exact extent of the claimed claim, a doubt that cannot be removed in the special procedure of the payment order, a procedure characterized by celerity and a limited probation.

The court considers that, in order to establish the judicial truth, it is necessary to administer a complex probation, which exceeds the limits of the procedure regulated by the provisions of article 1014 and the following from Civil procedure code, it is necessary to administer other means of evidence admissible in common law, such as testimonial evidence, accounting expertise and, possibly, other useful evidence for the accurate determination of the amounts due, the way of calculating utilities, as well as any compensation and payments made between the parties.

In the sentence of the Iasi Court no. 7748/20.05.2026⁷ the court held that the claim had not been fully substantiated by the applicant, given that it had not lodged documents showing both the way in which the contract price was determined and the costs, in order to verify the re-billing to the defendant. Although he had the burden of proof in accordance with the provisions of art. 249 from Civil procedure code, did not prove the fulfillment of its own obligation. The court considered that the existence and the amount claimed did not unquestionably result from the documents attached to the file, so that the conditions provided for in article 663, par. 2 Civil procedure code, can be considered fulfilled.

⁵ Published on <https://www.rejust.ro/juris/e9g9dd4d8>.

⁶ Published on <https://www.rejust.ro/juris/84gd2e273>.

⁷ Published on <https://www.rejust.ro/juris/84e336e24>

Assuming that the urgent nature of the proceedings must not affect the debtor's right of defence and cannot lead to a judgment in the absence of a minimum of evidence to support the factual situation raised by the creditor, the court will find that the legal relations between the parties are complex and they cannot be clarified by the summary procedure of the payment order and in order to establish accurately the certainty, liquidity and enforceability of the claim, a more extensive probation is required, which goes beyond this procedure in which the documents are the only admissible means of proof.

By the sentence of the Court of Calarasi no. 431/2026⁸ the request made by the creditors was rejected. In the case, the debtor was summoned by the creditors, according to the provisions of art. 1015 from Civil procedure code, but did not comply with its request for the refund of the amount of money and did not submit the case in question.

However, the court held that the conditions laid down in art. 1014 from Civil procedure code are not met in the case and the claim invoked is not certain, liquid and chargeable.

Also, by the Court Sentence Brad no. 221/2026⁹ it was noted that the procedure of the payment order is simplified, which, unlike the actions in claims promoted by common law, can be exercised only if the party who succeeds in proving, on the basis of the documents administered, the unquestionable existence of the claim. Whenever it is necessary to verify the certainty of the claim, by analyzing the incidence of resolution and engagement of contractual liability of a party, the provisions of article 1021, par. 1 Civil procedure code, respectively the request of the creditor regarding the payment order will be rejected by closing.

In judicial practice¹⁰ it was also noted that the simplified nature of this procedure does not allow the administration of a more complex evidence to clarify this issue, so that the court cannot retain the existence of a certain claim only on the basis of the invoices filed or a correlative obligation of the creditor correctly fulfilled in the case file there is no evidence to clarify these aspects, but only some documents wrongly drawn up by the creditors. At the same time, the court cannot proceed to the analysis of the defendants by way of the payment order procedure, as the issues raised by the debtor must be clarified before the removal of the merits of the case.

6. APPLICATION FOR ANNULMENT AND ENFORCEABILITY OF THE ORDER

The application for cancellation, regulated by art. 1024 Civil procedure code, is the specific remedy of the procedure. The debtor may exercise it against the order for payment and the creditor may use it against rejection and, where appropriate, against the partial order. However, the law limits the scope of this path: only non-compliance with the special requirements of the procedure can be invoked, and possibly causes for the termination of the obligation after the issuance of the order.

This remedy has a deeper function than that of simple remedy. It is the mechanism by which the payment order recognises its own limits and corrects any excesses. Its restricted

⁸ Published on <https://www.rejust.ro/juris/e96245g2e>.

⁹ Published on <https://www.rejust.ro/juris/e9685d88d>

¹⁰ The sentence of the Iasi Court no. 997/2026 published on <https://www.rejust.ro/juris/9dg5d5g8d>

character is perfectly consistent with the nature of the procedure: it is not intended to retriage the legal relationship in its entirety, but to verify that the special mechanism has been used within its legitimate parameters.

At the same time, art. 1025 Civil procedure code enshrines the enforceability of the order even when it is appealed against with a request for annulment and recognises its provisional *res judicata* authority until the remedy is resolved. The law retains, of course, the possibility of suspension of execution, at the request of the debtor, with bail. From this normative architecture it is very clear the intention of the legislator: efficiency is favored, but not indefinitely, but subject to internal control and protection of the debtor against unjust enforceable effects.

7. PROSPECTS FOR LEGISLATIVE AMENDMENT

A characteristic aspect of the procedure is the formal rigidity of the prior summons. From a legal point of view, the sanction in case of non-compliance with this prior procedure is clear. From a practical point of view, we consider that it would be necessary to mention the possibility of a possible modernization of the communication modalities, by expressly establishing the electronic means that would guarantee both the transmission and the content of the summons.

Another aspect concerns the failure to communicate the welcome. This rule is intended to resolve the dispute within a short period of time, but may prejudice the creditor's rights of defence. Consequently, an amendment of the legal text which keeps the deadlines short but allows for immediate electronic communication of the claim to the creditor would be likely to respect the principle of adversariality and the right of defence without actually compromising celerity.

8. CONCLUSIONS

The procedure of the payment order provides the creditor with an important mechanism for the recovery of monetary claims, but only in those cases where the dispute can be settled in compliance with the fundamental requirements of the civil process. In this regard, art. 1014–1025 C. proc. civ. strikes a delicate balance between procedural provisions and legal rigour.

The judicial practice under review confirms that the success of the proceedings depends equally on the discipline of the creditor but also on careful consideration by the court. When the prior order is communicated according to the legal provisions, the documents unequivocally support the existence and requirements of the claim, and the defense of the debtor does not claim any other evidence, the payment order certainly performs its function. Otherwise, when one of these premises is missing, the application will have to be rejected.

We can say that the real challenge of the analyzed procedure is one of measure, from this point of view, the balance achieved by the judge is essential, as we have previously argued.

The procedure requires careful consideration by the judge so that it does not turn into a generalised simplification instrument for the analysis of the claim. The payment order is

undoubtedly a valuable instrument with undeniable advantages such as reduced settlement time and reduced costs.

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