

The replies to the questionnaire concerning the role of judges in the enforcement of judicial decisions, in their relationships with other state functions and/or other actors

ALBANIA

A) IN CIVIL AND ADMINISTRATIVE MATTERS

-Under the Constitution of the Republic of Albania, article 142, state organs must execute judicial decisions.

-The authority responsible for the enforcement in civil and administrative matters is specified in the Criminal Procedure Code, in the law "On organizing and functioning of bailiff service" and in the law "On private bailiff service".

-Compulsory execution of a final judicial decision in civil matters requires a law court order, which is initiated by the request of the creditor. It means that the parties have to make a new application for the decision to be enforced.

-This new application comes to an end with a judicial decision.

-The law court order is enforced by public or private bailiff on demand of creditor.

-The parties can submit a complaint to the law court, which has given the order of enforcement, against acts carried out by the bailiff or against his refusal to act. The law court considers the complaint and summons the bailiff as a defendant.

A particular complaint can be submitted against the judicial decision taken by the law court.

- The law court can suspend the enforcement.
- The judge is not responsible for the enforcement of the judicial decision.
- It is a requirement of the law, that bailiff responsible for the enforcement must be graduated from the faculty of law.
- The parties can appeal if the decision is not enforced within a reasonable time.
- The judge doesn't have any powers to speed up the enforcement.
- The judge can summon the parties and third parties in the enforcement to appear before him in order to protect their rights.
- The enforcement procedures for civil and administrative matters are more or less similar. Of the latter, the party concerned can complain to the upper administrative organ besides to the law court.
- One of the the main obstacles to the enforcement of decisions is the large number of these ones. On the other hand, the need for rapid action with respect to the rule of law should be taken into consideration.
- Respecting the rule of law is the main way to improve the effectiveness of the enforcement proceedings.

B) IN CRIMINAL MATTERS

- The authority responsible for the enforcement of sentence is specified in the Criminal Procedure Code and the law "On execution of penal decisions".
- The prosecutor gives the court notice of the execution of judicial decision, soon after it is put in action and carried out.

-The law court, which has taken the decision, is competent to consider requests and claims concerning its executing.

-The law court proceeds with execution matters on demand of prosecutor and lawyer.

-The law court, which has taken the decision can decide to postpone executing on demand of prosecutor, the convict and lawyer in certain circumstances.

-The law court, which is located in the territory where execution of judicial decision is put in action, decides on offender's probation, referring to Criminal Code criteria.

-The prisoner can submit his request to the above-mentioned law court. This demand is considered by one judge different from the judge who passed the custodial sentence.

-The law court, which is located in the territory where execution of judicial decision is put in action, can decide that the prisoner should be released from prison in case of his being imprisoned can risk his life.

-The law court, which has taken the decision, is competent to consider requests and claims concerning its executing.

-Procedural check in the enforcement procedure of final judicial decisions is performed by the prosecutor.

The law court, that has taken the judicial decision or that one which is located in the territory where execution of judicial decision is put in action, can ask prosecutor and the institution, where execution is put in action, for notices. The above-mentioned law court can check directly the enforcement procedure, whenever it considers necessary.

-A Supervisory Committee is established beside the Minister of Justice, as a consultative Committee on respecting the law in the enforcement procedure of custodial sentence (a term of imprisonment) and on protecting prisoners' rights.

-As regards the alternative solutions to prison, the judge, soon after the defendant found guilty of an offence upon a verdict, is released by the court without imprisonment, subject to conditions imposed by the court, makes the offender known of being under the supervision of a probation officer and orders him to be in contact with that officer.

-A noncustodial sentence, such as a fine is enforced by bailiff. The prosecutor submits a demand to the law court, which has taken the decision, in order to convert the punishment of the offender, if the latter is found insolvent. The law court can postpone converting till six months.

-The main reasons for complaints of detainees are concerned with living conditions in jail.

-Under the Constitution of Albania,(article 27), liberty of a person may not be limited, except in certain circumstances, such as:

- a. when he is punished with imprisonment by a competent court;
- b. for failure to comply with the lawful orders of the court or with an obligation set by law;
- c. when there is a reasonable suspicion that he has committed a criminal offense or to prevent the commission by him of a criminal offense or his escape after its commission;

-The person whose liberty has been taken away, according to the latter paragraph, must be brought within 48 hours before a judge, who shall decide upon his pre-sentence detention or release not later than 48 hours from the moment he receives the documents for review.

A person in pre-sentence detention has the right to appeal the judge's decision. He has the right to be tried within a reasonable period of time or to be released on bail pursuant to law.

In all other cases, the person whose liberty is taken away extrajudicially may address a judge at any time, who shall decide within 48 hours regarding the legality of this action.

Every person whose liberty was taken away pursuant to article 27 has the right to humane treatment and respect for his dignity.

-General Director of prisons is responsible for living conditions in a prison. The prisoner can address to Supervisory Committee, which considers complaints and verifies the situation and recommends certain solutions to relevant director of prison and make Minister of Justice known about this action. On the other hand, the prisoner can address to the law district court, within which territory the prison is located.

-Once again, respecting the rule of law is the main way to improve the effectiveness of the enforcement proceedings.
