

A) IN CIVIL AND ADMINISTRATIVE MATTERS

1. Is the authority responsible for the enforcement specified in the law or in the constitution?

Yes.

Article 1 of the Law on Enforcement Procedure before the Court of BiH („Official Gazette of BiH“, number 18/03) stipulates that the Court of BiH shall enforce claims based on enforceable and authentic documents, namely, enforceable rulings of the Court of BiH and enforceable Court settlements, as well as on the rulings passed in the administrative procedure before the BiH institutions, if they order the payment of a monetary obligation, unless otherwise stipulated by the Law.

Relevant provisions of the entity regulations governing the enforcement procedure stipulate that municipal courts have jurisdiction to enforce rulings of entity courts and administrative authorities.

2. What are responsibilities of the judge in enforcement procedure?

The judge is responsible for enforcement in its entirety: the judge examines the motion for enforcement, renders a decision on enforcement, reaches a conclusion governing the procedure and removes any obstacles to the enforcement of the decision. The judge is responsible for hearings when there is a need to schedule a hearing for the settlement of any disputable issues, he gives instructions to the Court enforcement officer, he is in charge of the hearing for sale and payment of creditors, he takes care of the order of priority of payments and the right of third parties in case of a joint ownership over the object of enforcement, and he reaches a conclusion on the enforcement termination.

3. Is the judge responsible for the enforcement the same judge who rendered the decision?

No, the decision is rendered by an individual judge who has not been involved in rendering of the enforcement decision.

4. Do the parties have to file a new application for the decision to be enforced?

Yes.

5. Shall this new application end with a court decision?

Yes, after it has been verified that a court decision can be enforced, that is, that it is final and enforceable.

6. Is the judge working with other actors involved in the enforcement procedure?

Yes, in the enforcement procedure before the Court of BiH this implies contacts with enforcement judges of the Entity Courts and contacts with the BiH Ministry of Justice for the purpose of having the enforcement decisions delivered to the Ministries of Justice of neighboring countries.

7. When working with other actors in the enforcement procedure, what are the exact responsibilities of the judge?

After the decision on enforcement has been rendered, it is delivered to the parties and the bank, provided that the enforcement involves a monetary claim, when the debtor has a bank account. The bank acts upon the decision and terminates the payments, while paying the creditor, but only upon receiving a notification by the Court that the decision is final.

As for the enforcement on debtor's movable and immovable property, considering that the BiH Court and BiH institution decisions are enforceable in the entire BiH, which requires a huge enforcement apparatus (a large number of enforcement officers, equipment), this enforcement is carried out by entity municipal courts.

The Court of BiH judge:

- Commences the proceedings by rendering a decision on enforcement, having the decision delivered to the parties and the court with jurisdiction, and/or the bank in case enforcement of current and other bank account enforcement,
- Follows and coordinates the course of the proceedings, makes intervention if necessary,
- Renders decisions on termination if the enforcement has been completed or if it has become impossible to carry out.

8. What is the training of the person responsible for the enforcement if it is not a judge?

Only a judge can be in charge the enforcement.

9. Can the parties appeal if the decision is not enforced within a reasonable time?

No, but they can file an urging request for a judge to act (to check the reasons due to which the decision was not rendered and notify the party)

10. What are the powers of the judge to speed up the enforcement?

Only such requests urging his action.

11. What are the powers of the judge to force the enforcement?

At the entity level, judges manage the enforcement procedure in its entirety. They schedule hearings as required and prescribed, and the entire enforcement procedure is under the control of a judge seized of the case. Judge of the Court of BiH does not have the authority to call the enforcement officer and give him/her instructions because the enforcement itself is carried out by the entity court judge.

12. What are the powers of the judge to protect the rights of parties and of third parties in the enforcement?

All authorities are stipulated in the applicable law and they have been established to protect the rights of the parties to the proceedings and third parties. Thus, Article 71 of the Law on Enforcement Procedure before the Court of BiH stipulates that immediately after issuing a decision on enforcement, the Court shall *ex officio* order that a notice on enforcement be entered in the Land Register. This rule was established to the benefit of the third *bona fide* parties.

13. In your country, what are the main obstacles to the enforcement of decisions?

When it comes to physical persons those are: insolvency, that is, the non-existence of property which can be used to settle the claims, the fact that some of the debtors hold residence in a foreign country and the mutual enforcement of court decision is regulated by bilateral agreements only in criminal matters, implying arrests but not the payment of the costs of proceedings. Those costs sometimes amount to more than several thousands of KM, and the issue of payment of those costs remains disputable, that is, it depends, as a rule, on the will of a debtor to cover the costs.

As for the legal entities, the major problem is the change of the seat of legal entities, deregistration of companies and the tracing of legal successors.

14. According to you, what main changes are needed to improve the effectiveness of the enforcement proceedings in your country?

As for the decisions rendered at the state level, the enforcement should fall under the jurisdiction of municipal courts, according to the seat/residence of a debtor. This is because both movable and immovable property of a debtor is located there.

15. Are the enforcement procedures similar in civil and administrative matters?

Yes.

B) IN CRIMINAL MATTERS

1. Is the authority responsible for the execution of the decisions specified in the law or in the Constitution?

Yes

Please specify

No

The Law of Bosnia and Herzegovina on the Execution of Criminal Sanctions, Detention and Other Measures stipulates that the Ministry of Justice of Bosnia and Herzegovina and the Institute for Execution of Criminal Sanctions, Detention and Other Measures of Bosnia and Herzegovina are responsible for the execution of criminal sanctions, detention and other measures.

What are the competences of the judge in the execution of sentences:

➤ He is responsible for the execution?

Yes

No

➤ He has others competences as regards the execution?

Yes

No

If yes, please specify

If the sentence of imprisonment is imposed, the judge shall instigate proceedings by rendering a decision to commit the person to serve the sentence. The judge shall call the convicted person, serve him with the committal warrant and inform the person as to when he/she has to report for serving the prison sentence. At the same time, the judge shall inform the institution where the person will serve the sentence.

Under certain conditions stipulated by the law, the judge may issue a decision terminating the execution of the criminal sanction, that is, to replace it by a different criminal sanction.

2. Is the judge responsible for the execution (if such a judge exists) the same judge who took the decision?

- Yes
 No

The judge shall pronounce the criminal sanction and render a decision to instigate the proceedings of execution but shall not execute it himself/herself, nor shall he/she be responsible for the execution.

3. Does this judge cooperate with others involved in the execution of sentences?

- Yes
Please specify the other persons involved
 No

The authorities that are ex officio responsible for the execution of the criminal sanction shall inform the Court on the facts relevant to the execution. It depends on the type of the sanction imposed which authority is responsible for the execution: the Ministry of Justice, Social Welfare Centers...

4. What are the exact competences of the judge when he works with others involved in the execution procedure:

➤ He instigates the proceedings?

- Yes
 No

➤ He controls and supervises the procedure (eg timeframes) and the work done by the other active participants?

- Yes
 No

➤ Others competences?

- Yes
 No

If yes, please specify

5. What are the powers of the judge to protect the rights of detainees and of third parties in the execution?

The judge may not ex officio, of his/her own initiative, take actions to protect the rights of prisoners and of the third parties in the execution procedure.

6. What are the powers of the judge as regards the alternatives to the prison sentence?

When the convicted person fails to carry out or partially carries out the community work during a set deadline while out of custody, the Court shall render a decision on the execution of the prison sentence for a period proportionate to the remaining community work period.

Under the conditions stipulated by the law, the Court may impose a suspended sentence on the perpetrator of the criminal offense (determine the sentence but at the same time decide

that it shall not be executed if the convict does not commit another criminal offense during the time determined by the Court). The Court may revoke the suspended sentence if the convict perpetrates another criminal offense during the probation period, or if established that the person had previously committed a criminal offense, or when the perpetrator does not comply with the terms of the suspended sentence as pronounced by the Court.

The Court may impose on the perpetrator of the criminal offense a suspended sentence including a protective surveillance, and order one of the obligations stipulated under the law as a part of the protective surveillance. If the convict fails to fulfill the obligations imposed upon him by the Court, the Court may issue a warning to the convict or replace previously imposed obligations with other obligations or extend the duration of the protective surveillance within the probation period, or reverse the suspended sentence.

The Law stipulates the conditions under which the Court may impose upon the perpetrator of the criminal offense one of the security measures prescribed by the law, as well as the conditions under which the Court may replace the imposed security measure with another criminal sanction.

7. What are the responsibilities of the judge as regards the execution of sentences (arrangement of sentence, parole, etc.)?

Under certain conditions stipulated under the law, after the convicted person has served a certain portion of his/her prison sentence, the Court may render a decision on parole, that is, exempt the convict from serving the remaining portion of the prison sentence.

Once the Court has meted out and imposed the sentence of imprisonment in the duration of no longer than six months, the Court may at the same time, with the consent of the accused, order the replacement of the imposed prison sentence with the community service performed while at liberty. If the convict, upon the expiry of a certain deadline, fails to complete or only partially completes his/her community service, the Court shall render a decision on the execution of the prison sentence in the duration proportionate to the remaining period intended for the community service performed at liberty.

If the imposed fine cannot be entirely or partially collected within the deadline established in the Verdict, the fine shall not be collected coercively, but the Court will render a decision to replace the fine with a prison sentence.

8. What are the authorities of the judge as regards the effective payment of fines?

The Judge does not have any authority in that respect.

9. What are the main reasons for complaints concerning the rights of prisoners?

The Court is not responsible for the matters of the execution of prison sentences and it is not in possession of any official and complete information on reasons for prisoners' complaints.

10. Who is responsible in your country, for complaints about living conditions in prison? What is the procedure for processing such complaints?

The Law guarantees the right of the prisoner to speak in confidence and without the presence of the official Institution staff to the Ministry of Justice inspectors, the state Ombudsmen,

relevant state and regional court, counsel of their choice, and to file requests, appeals and other submissions to the responsible authorities in order to protect their rights. In addition, the inspector working in the Ministry of Justice has an ex officio obligation to regularly monitor and report on the observance of the rights of prisoners.

The procedure of processing the complaints is regulated by internal documents of the Ministry of Justice and Ombudsmen.

11. In your country, what are the main obstacles to the execution of sentences?

The lack of adequate prison space.

12. What main changes are needed to improve the effectiveness of the execution of sentences in your country?

To increase the accommodation capacities of the institutions for the execution of criminal sanctions. To strengthen the staffing and financial capacities of the services in charge of the execution of alternative measures.