

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

QUESTIONNAIRE

A) IN CIVIL AND ADMINISTRATIVE MATTERS

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

Yes

No

The enforcement of court judgments is regulated by the Code of Enforcement Procedure. The enforcement of court judgments is arranged by bailiffs. The legal status of the bailiff is established by the Bailiffs Act.

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

➤ He is responsible for the enforcement

Yes

No

➤ He has others competences as regards enforcement

Yes

No

If yes, please specify

The following is in the competence of a court in enforcement proceedings:

- Imposition of fines (upon not fulfilling an obligation in enforcement proceedings);
- Making rulings on the imposition of compelled attendance, detention and arrest regarding persons;
- Grant of search permits;
- Deciding on matters of removal of bailiffs;
- Review of complaints filed against the decisions of bailiffs;
- Adjudication of actions related to enforcement proceedings;
- Appointment and release of compulsory administrators;
- Upon the death of a debtor, designation of a temporary representative for the successor if the estate has not yet been accepted, the successor is not known or it is not known whether the successor accepts the estate;
- Suspension of enforcement proceedings or extension or deferral of enforcement if continuation of the proceedings may be unjustified in respect of the debtor.
- Other tasks provided for in the law.

A court may require a debtor to swear in court that the information submitted to the bailiff concerning his or her assets is correct to the debtor's knowledge.

3. Is the judge responsible for the enforcement (if it exists) the same as the judge who made the decision?

- Yes
 No

The question is not applicable (see also answer no. 2).

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

- Yes
 No

Enforcement proceedings are usually commenced on the basis of an application of a claimant.

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

- Yes
 No

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

- Yes
Please specify which actors
 No

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

➤ He starts the procedure?

- Yes
 No

➤ He controls and supervises the procedure (e.g. timeframes) and the work done by other actors?

- Yes
 No

➤ Others competences?

- Yes
 No

If yes, please specify

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

A person designated a bailiff must be a citizen of the European Union, who is proficient in spoken and written Estonian, is honest and moral, has acquired a nationally recognised bachelor's degree or professional higher education in the speciality of law or has a respective qualification from abroad and who has worked as an assistant bailiff, sworn advocate, judge, notary public or trustee in bankruptcy at least one year or worked, at least five years prior to applying for the bailiff's position, in a position requiring academic or professional higher education in the field of law and passed the bailiff's exam.

A bailiff is required to undergo periodic in-service training. The evaluation period for in-service training is five years. For each year of the evaluation period, a bailiff must undergo 40 hours of in-service training: in total 200 hours over a five-year evaluation period. At least 75% of the annual volume of the in-service training must be in the field of law.

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

- Yes
 No

If yes, what are the sanctions of this appeal?

Should a debtor not agree with the activities of a bailiff in commencing enforcement proceedings, the debtor has the right to file a complaint about the activities of the bailiff. The aim of such a complaint is to challenge the activities or decisions of the bailiff in enforcing an enforcement instrument or refusing to perform an enforcement action, i.e. organisation of enforcement proceedings. First a complaint is filed to the bailiff in question, who shall make a decision on it and if the party to the proceedings does not agree with it, the party has the right to go to a county court. This is not a follow-up to the earlier court proceedings but fully separate proceedings. The court shall make a decision whereby the bailiff can be required to perform certain activities.

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

A judge cannot influence the speed of the enforcement.

For example the Code of Administrative Court Procedure regulates the entry into force and execution of decision:

§ 96. Entry into force of decision

A court decision enters into force pursuant to the provisions concerning entry into force of the decision made in a civil action.

(14.06.2006 entered into force 01.09.2006 - RT I 2006, 31, 235)

§ 97 (Repealed - 14.06.2006 entered into force 01.09.2006 – RT I 2006, 31, 235)

§ 98. Execution of decision

(1) A decision shall be executed after it has entered into force. A court may set a term for the execution of a court judgment which begins to run upon entry into force of the judgment. A court judgment shall be executed immediately in the cases provided by law, or if the court has ordered the immediate execution of the judgment in the cases provided by law.

(2) If a court restores a term for appeal or a term for cassation, the court shall suspend the execution of the judgment by a ruling. A court shall not suspend the execution of a court judgment if the judgment is subject to immediate execution.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(3) For a failure to comply with a precept contained in a court judgment or a compromise approved by a court, the court shall impose a fine of up to 100,000 kroons on the participant in the proceeding at fault. The imposition of a fine does not release the participant in the proceeding, who failed to comply with a precept contained in a court judgment or a compromise approved by a court, from the obligation to comply with the precept or compromise within a reasonable period of time or deprive the participant in the proceeding, in whose interests the precept is made or the compromise is approved, of the right to request imposition of a new fine by the court for failure to comply with the precept or compromise.

(14.06.2006 entered into force 01.09.2006 - RT I 2006, 31, 235)

(4) A fine for a failure to execute a judgment of the Supreme Court or a circuit court shall be imposed by the court of first instance.

§ 99. Immediate execution of decision

(1) A judgment shall be executed immediately:

- 1) if the payment of wages is ordered, but not for more than two months;
- 2) if the reinstatement of an official in the service is ordered;
- 3) in other cases provided by law.

(2) On the basis of a request of a participant in a proceeding, a court may order the immediate execution of:

- 1) a judgment made with regard to a claim arising from § 56 of the Public Service Act (RT I 1995, 16, 228; 1999, 7, 112; 10, 155; 16, 271; 276; 2000, 25, 144; 145; 28, 167; 102, 672; 2001, 7, 17; 18; 17, 78; 24, 133; 42, 233; 47, 260; 2002, 21, 117; 62, 377; 110, 656; 2003, 4, 22; 13, 67; 69; 20, 116);
- 2) a judgment a delay in the execution of which may cause significant damage to the person in whose favour the judgment was made.

(3) If immediate execution was not adjudicated by a court judgment, an application of a participant in the proceeding for the immediate execution of the judgment shall be heard in a court session and adjudicated by a court ruling. The participants in the proceeding shall be notified of the time and place of the court session; their absence shall not prevent the hearing of the matter. (14.06.2006 entered into force 01.09.2006 - RT I 2006, 31, 235)

(4) An appeal may be filed against a court ruling specified in subsection (3) of this section.

(15.06.2005 entered into force 01.01.2006 - RT I 2005, 39, 308)

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

A court may, upon failure of a debtor to fulfil the obligation to provide information or comply with the instrument of seizure, impose a fine or detention on the debtor or a third party liable to the debtor.

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

A party to the proceedings has the right to file a complaint to a bailiff concerning a decision or activity of the bailiff in enforcing an enforcement instrument or refusing to perform an enforcement activity. Concerning a decision of the bailiff made about the complaint, a party to the proceedings is entitled to file a complaint with a county court.

A third party who has the right regarding an object of compulsory enforcement which prevents compulsory enforcement, may, for the purpose of protecting their rights, file a claim with a court for the release of property from seizure or for the declaration of compulsory enforcement inadmissible for other reasons. A third party may also file an action if a restraint on disposition made for the benefit of the party is violated in enforcement proceedings.

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

- Seizure and realisation of movables is complicated and time-consuming.
- All bailiffs have too many proceedings under way and therefore they do not have enough time for all claims.
- There are problems with complying with the procedure for communicating with children, because first of all it is complicated to use the measures against the parent of the child and secondly there is a lack of measures to force the parent to follow the communication procedure.

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

On 01.01.2010 a new Bailiffs Act came into force whereby a joint professional association of bailiffs and trustees in bankruptcy was founded, on which the responsibility for in-service training and preparation of a new generation, development of professional information systems and supervision of professional ethics is laid.

In the nearest future, it is planned to increase the number of bailiffs, which should decrease the number of proceedings per bailiff. To simplify and modernise the work of bailiffs, it is planned to develop a new information system of enforcement proceedings.

01.01.2010 a simplified auction procedure for the sale of lower-cost (2,000 euros) movables came into force.

The sale of immovable property and valuable movables (vehicles, etc.) is directed more to the Internet environment to reduce the risks of malevolent collusion between participants and influencing them.

The option of immediate compulsory enforcement also expanded the range of notarised contracts for such financial obligations like contracts for maintenance support (alimony) and real encumbrance entered into the Land Register (only with respect to financial obligations).

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

Yes

No

If not, please clarify the differences.

B) IN CRIMINAL MATTERS

16. Is the authority responsible for the enforcement of sentence specified in the law or in the constitution?

Yes

Please specify

The Imprisonment Act provides for the procedure for and organisation of execution of imprisonment, detention and custody pending trial. There exist special custodial institutions (prisons).

No

17. What are the competences of the judge in the enforcement of sentences:

➤ He is responsible for the enforcement?

Yes

No

➤ He has others competences as regards enforcement?

- Yes
 No

If yes, please specify

It is, for example, within the competence of a court to decide on the release of a prisoner on parole and the court may enforce the unserved time of the sentence of a convicted offender. The content of correspondence of and messages communicated by phone by prisoners may be checked only with the permission of a court and on the bases and pursuant to the procedure provided for in the Surveillance Act. Regarding detention conditions, a prisoner is entitled to file a challenge with the Ministry of Justice. If the result of such resolution of the challenge is not satisfactory for the person who filed the challenge, the challenge can be filed with a court (see also answer no. 26). Additional restrictions may be applied to a person in custody or a suspect or an accused who is imprisoned or serving detention, on the basis of an order of the Prosecutor's Office or court ruling on the bases and pursuant to the procedure provided for in the Code of Criminal Procedure.

18. Is the judge responsible for the enforcement (if it exists) the same as the judge who made the decision?

- Yes
 No

The question is not applicable (see also answer no. 2).

19. Is the judge working with other actors involved in the enforcement of sentences?

- Yes

Please specify which actors

- No

Explanation: He has rather different competences, it is not directly the cooperation of the judge in the enforcement of sentences. For instance, to release a prisoner on parole, the prison forwards to the court, *inter alia*, a characterisation providing the estimation of the prison about the probability of the prisoner committing another criminal offence, how dangerous the prisoner is and about the release of the prisoner on parole, and the opinion of the probation supervisor. For example, the director of a prison has the right to grant a prisoner permission for prison leave under supervision for up to one day if the investigative body, Prosecutor's Office or court, if the court is conducting proceedings in the criminal matter, has granted consent thereto, under essential and urgent circumstances which require the personal attendance of the person in custody.

20. When he is working with other actors in the enforcement procedure, what are the exact competences of the judge:

➤ He starts the procedure?

- Yes
 No

Explanation: He has rather different competences, it is not directly the cooperation of the judge in the enforcement of sentences (see also answer no. 19).

➤ He controls and supervises the procedure (e.g. timeframes) and the work done by the other actors?

Yes

No

➤ Others competences?

Yes

No

If yes, please specify

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

Generally speaking, if a prison violates the subjective rights of a prisoner or person in custody (e.g. by a measure, administrative act or general order), there is the procedure for submission of complaints regulated by the law (see answer no. 26 on the role of court). *Inter alia*, the content of correspondence of and messages communicated by phone by prisoners may be checked only with the permission of court and on the bases and pursuant to the procedure provided for in the Surveillance Act.

22. What are the powers of the judge as regards the alternative solutions to prison?

The type and term of the punishment is decided by court. For example, when a court, considering the circumstances of a criminal offence and the identity of the convicted offender, finds that serving the fixed-term sentence in prison by the convicted offender is not purposeful, the court may decide conditionally not to apply the punishment to the convicted offender. In such a case, the sentence imposed shall not be fully or partly enforced if the convicted offender does not commit a new intentional criminal offence during the period of probation imposed by the court. There is the option of the release on parole by subjecting the convicted offender to the supervision of conduct. (Electronic surveillance is the obligation imposed by a court for a fixed term on the convicted offender to obey the control of complying with the restrictions of the freedom of movement by means of an electronic device attached to the body of the convicted offender and enabling the location of the convicted offender.)

23. What are the powers of the judge as regards the implementation of sentences (arrangement of sentence, conditional release, etc.)?

The court may release on parole a convicted offender who has negligently committed a criminal offence in the second or first degree if the offender has actually served part of the sentence.

The court may release on parole a person serving a life sentence if the convicted offender has served at least thirty years of the sentence.

Also persons suffering from a terminal illness can be released by a court from serving the sentence. At this the court takes into account the circumstances of the criminal offence committed, the identity of the convicted offender and the nature of the illness. If the convicted offender has suffered severe injuries as a consequence of committing a criminal offence punishable with up to five years in prison, the court may release the offender.

24. What are the powers of the judge as regards the effective payment of fines?

In case of convicted persons not paying a fine imposed on them, the court shall substitute the fine by detention.

In case of convicted persons not paying a fine to the extent of assets imposed on them, the court shall substitute the fine by detention.

In case of convicted persons not paying the sum of pecuniary penalty imposed on them, the court shall substitute the penalty by detention or community service upon the consent of the offender.

25. What are the main reasons for complaints concerning the rights of detainees?

As a rule, detainees challenge disciplinary punishments (reprimand, prohibition of short-term or long-term visit, removal from work for up to one month and commission to a solitary confinement cell for up to 45 days) imposed or additional security measures (restriction of a prisoner's freedom of movement and communication inside the prison, prohibition for a prisoner to wear personal clothing or use personal effects or engage in sports, commissioning a prisoner to an isolated locked cell, use of means of restraint) applied. There are numerous complaints of detainees concerning the detention conditions (e.g. compliance of the cell and solitary confinement cell with the requirements, allowing prisoners to have long-term and short-term visits and acquire education and providing prisoners with work, obtaining permission for possession of different audio-video equipment) as well as claims for compensation of proprietary or non-proprietary damage (the primary reason provided by prisoners for the damage occurred is that the prison has demeaned their human dignity).

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

In Estonia a mandatory pre-trial procedure has been established for all complaints, incl. concerning living conditions, of detainees and persons in custody. Challenges are examined both by the Ministry of Justice and the director of the relevant prison. If challenged is an administrative act or measure of the director of a prison, the review of the challenge is within the competence of the Ministry of Justice. In such a case the prison forwards a challenge along with necessary documentation and its positions to the Ministry of Justice. Challenge proceedings end either with a challenge decision or return of the challenge (e.g. when the person filing the challenge fails to remedy shortcomings in the challenge or the date for submission of the challenge has been violated and it is not restored). Complying with the decision on challenge is compulsory for the prison. A challenge must be resolved in 30 calendar days. Challenges filed on an administrative act or a measure of another prison officer are reviewed by the director of the prison or the challenge is submitted directly to the prison. Only the prison is competent to review claims for compensation of damage in pre-trial proceedings.

After undergoing challenge proceedings, the person filing the challenge assumes the right to go to an administrative court in the same case. The administrative court shall hear the complaint pursuant to the procedure set out in the Code of Administrative Court Procedure and the court judgment is made public by pronouncing it publicly or through the Court Registry within 20 days of the ending of the court hearing. The person filing the complaint has the right to appeal against the judgment to the circuit court if the administrative court has not correctly applied the norms of substantive law, not assessed correctly the evidence or substantially violated the norms of legal proceedings. The judgment of the circuit court can, in its turn, be appealed to the Supreme Court if the circuit court has not correctly applied the norms of substantive law or substantially violated the norms of legal proceedings. The judgment of the Supreme Court shall be based on factual circumstances identified with the decision of the court of lower instance. The Supreme Court does not identify the factual circumstances underlying the complaint.

27. In your country, what are the main obstacles to the enforcement of sentences?

There are, for instance, problems with satisfying civil claims against detainees with money on their current accounts. To evade satisfying a civil claim, detainees transfer money to current accounts of third parties. Realisation of civil claims is also problematic due to the fact that detainees, as a rule, do not have any income.

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

The aim of the modern criminal punishment is to change persons who could become law-abiding citizens and safely detain those who cannot be reformed. The application of alternative imprisonment should be made more effective, to ensure the safety of society. Setting such a goal is based on the assumption that the person who committed a criminal offence can be left at large if, in addition to surveillance of the person, work is undertaken to change the person's criminal behaviour. Thus surveillance and promotion of social adjustment should be made more efficient. These measures also help reduce repeated crime by decreasing, at the same time, the expenses of the state on imprisonment. Also work done by prisoners in the prison should more efficiently prepare the persons for their release.