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**Consultative Council of European Judges
(CCJE)**

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

QUESTIONNAIRE

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QUESTIONNAIRE

A) IN CIVIL AND ADMINISTRATIVE MATTERS

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

Yes – in the Law on enforcement of the Republic of Macedonia (Official gazette 35/2005,50/2006/8/2008 and 83/09)

Please specify

In the framework of the Strategy for the judicial reforms, passed by the Government of the Republic of Macedonia in 2005, the Ministry of justice has prepared several laws towards improving the efficiency and the independence of the judiciary in the process of the harmonization of the national law with the EU law. The previous law on the enforcement had a lot of procedural obstacles for speeding up the procedure, which situation was in behalf and was very often misused by the side of the debtor, who had a lot of opportunities for postponing of the procedure, thus prolonging the completing of the cases. The new Law on the enforcement passed in 2005, introduced a quite new system of the enforcing of the judgements. The new law intended to release the courts from the huge amount of the enforcement cases that overloaded the courts and the executive judges, also to enhance and to strengthen the position and the procedural guarantee of the creditors, and introduced the process of transferring the cases from the courts to the enforcement agents, as a new subjects responsible for the carrying out of the enforcement procedure with a very few competences for the Notaries and the courts in the civil matter. This transfer of the enforcement cases should be completed by 1 st. July 2010.

The Law on the enforcement regulates the rules according to which enforcement agents act for forcible enforcement of a court decision for fulfillment of an obligation, unless otherwise stipulated by another law. The provisions of this Law shall also apply to forcible enforcement of a decision passed in an administrative procedure for the fulfillment of a monetary obligation, unless otherwise stipulated by another law. The provisions of this law are also applied to forced enforcement of the notary titles and other enforcement titles prescribed by law.

Enforcement titles are: an enforceable court decision and court settlement; an enforceable decision and settlement in an administrative procedure if designed for fulfillment of a monetary obligation, enforceable public notary title. Confirmation for enforceability shall be issued by the court, respectively the body that has decided on the request in the first instance. The unfounded confirmation for enforceability shall

be rendered invalid with a decision by the same court, respectively the body, upon a request or ex-officio.

A court decision, that should be executed, shall be considered to be a judgment, decision, payment order or other order pronounced by the courts, the elected courts and the arbitrages, while a court settlement shall be considered to be the settlement concluded before these courts. A decision in an administrative procedure, as provided by this Law, shall be considered to be a decision or conclusion reached by a state administration body or a legal entity, passed in the course of the performance of their public authorizations, determined with law, whereas a settlement in an administrative procedure shall be considered to be a settlement concluded in accordance with the Law on General Administrative Procedure. A court decision is enforceable if it has become final and if the time limit for voluntary fulfillment of the debtor's obligation has expired. The time limit for voluntary fulfillment of the obligation shall start to run from the day the decision was delivered to the debtor. The enforcement shall also be carried out on the basis of a court decision that has not become final and a decision reached in an administrative procedure that has not become final, if it is provided by law that the appeal shall not postpone the enforcement of the decision.

The **“enforcement agent”**, **“deputy enforcement agent”** and **“assistant enforcement agent”** denote persons who performs public authorizations determined with law, appointed according to the provisions of this Law, who decide directly on the actions to be taken, within their authorizations, in order to carry out the enforcement decision and take up the enforcement actions;. The enforcement title shall be the ground for enforcement, but also the decision which authorizes enforcement based on an authentic title issued by a Notary, the enforcement shall commence on the request of the creditor. The enforcement of the enforcement title can be carried out only by one enforcement agent. The enforcement of collecting fines and expenses pronounced in civil, misdemeanor, criminal and administrative procedures shall commence upon a request of the Public Attorney of the Republic of Macedonia. During the enforcement the provisions from the Law on Civil Procedure shall apply accordingly, unless otherwise provided by this or other law.

An enforcement agent shall be a person who performs public authorizations, determined with law. and shall be appointed for the territory of a basic court, and shall enforce the enforcement titles of the court or the body which seat is located in territory for which he/she is appointed and during the performance of the enforcement shall take up actions on the overall territory of the Republic of Macedonia. The number of enforcement agents for the territory of the basic court shall be determined by the Minister of Justice, on the basis of previously obtained opinion from the president of the basic court on the number of final and enforceable decisions of the basic court, from the Government of the Republic of Macedonia data on the final administrative decisions pronounced for monetary claims that could be

object for enforcement, as well as upon the opinion from the Chamber of Enforcement Agents. A person can be appointed as enforcement agent if he/she fulfils the following conditions: to have completed the Law School; to have at least five years of working experience in legal matters or three years in enforcement matters; to have passed the enforcement agent exam according to the programme proscribed by the Minister of Justice; to have the equipment and the facilities required and appropriate for carrying out enforcement actions. The Minister of Justice shall appoint the enforcement agent on the basis of a competition that shall be announced by the Ministry of Justice in the "Official Gazette of the Republic of Macedonia" and in at least two daily newspapers. The Minister of Justice shall carry out the selection of candidates that satisfy the conditions for appointment. Against the decision of the Minister of Justice, the candidate who is not appointed for enforcement agent shall be entitled to file an appeal, within 15 days from the day of reception of the decision, to the Second Instance Commission of the Government of the Republic of Macedonia. The seat of the enforcement agent shall be located within the territory of the basic court for which he/she has been appointed. After the giving the solemn statement, the enforcement agent shall deposit his/her signature in the basic court for the territory of which he/she is appointed. The enforcement agent cannot perform public functions or managerial, supervisory and administrative functions in trade companies, state institutes, collection services, trade activities, intermediary, public notary or attorney activities.

According to the Law, the enforcement agents and the deputy enforcement agents in the Republic of Macedonia shall be obligated to join into a Chamber of Enforcement Agents which is an autonomous organization with its own organs, finances and regulation, only the draft tariff and the programme for the continuous training for the final adoption have to be approved by the minister of justice.

The enforcement agent can take up the following actions:- receives requests for enforcement; - performs service of court writ;- performs delivery of orders, minutes, conclusions and other documents that are related to his work;-conducts personal identification of the parties and the participants in the enforcement; - gathers data on the property condition of the debtor for the purpose of the enforcement;- passes orders and conclusions, creates minutes, requests and official notes in accordance with the provisions of this Law;- performs inventory, evaluation, seizure and sell of movable objects, rights and real estate, receives assets from the debtor, transfers into possession, allocates assets;- performs evictions and other enforcement actions necessary to carry out the enforcement, which are regulated with law and sub-regulations;- attaches the movable objects and real estate in order to disable their usage or consummation, by placing a seal of the enforcement agent. *In taking enforcement actions*, the enforcement agent prepares orders, conclusions, minutes, requests, official notes and other documents in form and content prescribed by the Minister of Justice. The documents which do not conform to the prescribed form and content will be considered invalid.

The enforcement agent shall be held liable for all the damage that he/she caused towards third parties, by illegal performance of enforcement actions and by lack of fulfilment of the duties that he/she has as enforcement agent according to this Law. The illegal performance or the lack of performance of the duties specified with this Law shall be determined with a decision from the president of the court, passed in accordance with the Law. The tariff for award of the enforcement agents shall be passed by the Chamber of Enforcement Agents, based on previous consent from the Minister of Justice.

No

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 – according to article 77 of the Law on enforcement the judge controls the irregularities of the enforcement

No

If yes, please specify

The competences for the control of the work of the enforcement agents and their executive activities are strictly divided between the Ministry of justice and the courts, and regulated in the Law on the enforcement.

The Ministry of Justice shall carry out a regular supervision of the work of enforcement agents and the Chamber, at least once a year. The Ministry of Justice can perform extraordinary supervision over the work of the enforcement agent at any time ex-officio or upon a request from the president of the court, in accordance with the regulations determined in the Law.

- The enforcement agent shall be punished for negligence or disciplinary violation if while working, with his/her behaviour, violates the official duties while carrying out the enforcement actions, or if he/she performs official duties in an illegal manner, or is personally responsible for the delay of the actions, or with his/her behaviour in the private life damages the honour and the reputation of a person with public authorisations. The Disciplinary Committee of the Chamber shall decide in the first instance of the disciplinary procedure.

The members of the Disciplinary Committee shall be elected by the Assembly of the Chamber and shall be composed of five members out of which: three judges from the territory of the basic court for which the enforcement agent is appointed and two members from the Chamber. The initiation of the disciplinary procedure can be made upon a request of the Chamber, the competent court for the territory for which

the enforcement agent is appointed, the parties and the participants in the enforcement. Against the decision of the disciplinary committee it shall be allowed to file an appeal to the Minister of Justice. Against the decision of the Minister of Justice the enforcement agent shall be entitled to initiate an administrative dispute. For its decisions, the Disciplinary Committee shall inform the president of the basic court for the territory of which the enforcement agent is appointed and the Chamber.

For the enforcement agent against whom a procedure for severe violation and extremely severe violation has been initiated, in order to protect the dignity of the profession, upon the request from the Disciplinary Commission, respectively upon information from the court, the Minister of Justice can reach a decision that bans temporarily the performing of the profession up until the completion of the disciplinary procedure. For these decisions, the Disciplinary Committee shall inform the president of the basic court for the territory of which the enforcement agent is appointed and the Chamber.

The Minister, will pass the decision for termination of the function, otherwise the function will stop according to the law. The decision for dismissal of the enforcement agent shall be brought by the Minister of Justice. The enforcement agent has to be given the opportunity to declare himself/herself regarding the reasons for dismissal before the decision is brought. The enforcement agent shall be allowed to file an appeal against the decision from the Minister of Justice, to the Second Instance Committee of the Government of the Republic of Macedonia.

COOPERATION WITH OTHER BODIES WHEN CARRYING OUT THE EXECUTIVE ACTS

For the purpose of having unobstructed enforcement, the enforcement agent shall be entitled to have access to all information and data from the employer, banks, public books and registers for a specific debtor. The enforcement agent while carrying out the enforcement shall be entitled to ask for data from a state body. The state body shall be obligated to cooperate with the enforcement agent.

With the permission of the president of the basic court in the territory of which the enforcement is being carried out, the enforcement can be carried out regardless the regular time.

The enforcement agent shall be obligated, during the undertaken of enforcement activities in the debtor's apartment, while searching of the clothes that he/she is wearing or when undertaking any other enforcement actions, to treat the debtor and members of his/her household with due respect. For undertaking of the enforcement activities in the debtor's apartment, the enforcement agent shall provide a written approval from the president of the basic court on which territory the enforcement is carried out, where the day when the action will take place will not be

stated. The enforcement actions in the debtor's apartment during which the debtor, his/her legal representative, authorized agent or an adult member of his/her household are not present, have to be attended by the police and two adult witnesses.

Enforcement occurring in premises of a legal entity shall be carried out when the enforcement agent, before undertaking the enforcement action, shall request from the person authorized to represent the legal entity to be present during the action himself or to appoint another person.

When the enforcement action is to be carried out in premises that are locked, and the debtor is not present or does not want to open the premises, the enforcement agent shall open the premises in the presence of the police and two adult witnesses.

If the representative of the legal entity refuses to abide by the request of the enforcement agent or if he/she is not in the premises while the enforcement agent is carrying out the enforcement action, the action shall be carried out in presence of the police and two adult witnesses.

If the enforcement agent during the actions cannot provide the presence of the two adult witnesses he/she may invite a public notary.

For the actions undertaken, the enforcement agent shall prepare separate minutes to be signed by the present witnesses and the police. If the actions of the enforcement agent were taken in the presence of a public notary, the public notary shall prepare the minutes in accordance with the Law on Performing Notary Activities.

The enforcement agent shall be authorized to remove any person that is obstructing the actual enforcement, and if the circumstances of the case so require, request police assistance.

3. Is the judge responsible for the enforcement (if exists) the same than the judge who took the decision?

- Yes
 No

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

- Yes,

See the reply (1)

The creditor shall submit the request for enforcement of the enforcement title to the enforcement agent in written form, together with the original of the enforcement

title. The enforcement agent shall be obligated to act upon the request for enforcement. With the handing in of the enforcement title, whose enforcement is requested, the enforcement agent shall be authorized to choose assets for enforcement and objects belonging to the debtor for the complete enforcement of the enforcement title.

According to the newest amendments of the Law, enacted in 2009, beside the enforcement agents, certain competences regarding the executive procedure, have the Notaries. The notaries are performing the activities related to passing a decision which authorizes enforcement. The proposal for passing a decision that authorizes enforcement based on authentic title is submitted by the creditor for a money claim which due date has been expired, which can be proved by an authentic title attached to the proposal in original or in a certified copy with a Notary. (for the electricity bills etc) In the decision which obliges the debtor to pay and which authorizes the enforcement based on an authentic title - decision for enforcement, the creditor, debtor, the type and scope of the claim and the time of fulfillment of the obligation should be noted. If the Notary assesses that the proposal for passing a decision that authorizes enforcement based on an authentic title is acceptable and has grounds, he/she will make a decision that authorizes enforcement based on an authentic title and will submit it to the clients. If the notary assesses that the proposal for passing a decision that authorizes enforcement based on an authentic title is not acceptable or it does not have grounds, he/she will forward the case to the Authorized Court for further proceeding and deciding as if a complaint is being submitted.

The debtor can file an objection against the decision that authorizes enforcement based on an authentic title to the Notary who made the decision, within 8 days from the day the decision was received and will submit the allowed objection and the writs to the Basic Court, for conducting a proceeding regarding the objection and making a decision according to the provisions from the Law on Civil procedure for proceeding upon an objection for a payment order.

The Notary will certify the effectiveness and enforceability of the decision, if he/she does not receive an objection within 8 days, or he/she rejected the objection as untimely or not allowed and shall submit the decision that authorizes enforcement with a certification for effectiveness and enforceability to the Creditor.

The creditor shall submit the request for enforcement of the enforcement title to the enforcement agent in written form, together with the original of the enforcement title.

The enforcement agent shall be obligated to act upon the request for enforcement. And shall be authorized to choose assets for enforcement and objects belonging to the debtor for the complete enforcement of the enforcement title.

No

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 (eg timeframes) and the work done by the other actors?

Yes
 No

➤ Others competences?

Yes
 No

If yes, please specify

The president of the court, upon a request from one of the parties or participants, can postpone the enforcement, not more than once, for certain period of time, but not longer than 90 days. The president of the court, according to the facts of the case, shall condition the postponement of the enforcement by depositing a guarantee in the amount of the value of the main claim.

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

See the answer of the question 1 (the conditions for appointing of the enforcement agents)

The continuous training of the agents is compulsory and not fulfilling of this obligation is a basis for a disciplinary responsibility. The chamber is organizing the training for each agent according to the Annual programme for training that has to be confirmed by the minister of justice. In parallel, the Chamber has started a cooperation with the Academy for training of judges and prosecutors in jointly organizing trainings for the civil, executive judges and the agents in order to find

solutions for improving of the enforcement procedure (for the civil judges is important to issue clear, understandable and enforceable sentences)

The national and international cooperation of the enforcement agents has been organized through the Chamber that has Commissions for education of the agents, for international cooperation etc. This Chamber in Macedonia is very active, it became a member of the International union of the judicial enforcement agents, they have bilateral cooperation with the countries in the region and our agents are present on all the international events. They also have a very good cooperation with the international community in Macedonia, especially with the USAID (the project for implementation of the judicial reforms) which means providing assistance to the Chamber in facilitating the process of the complete transfer of the cases from the courts to the agents. They also cooperate with the CILC (Netherland) regarding the implementation of the project on the reform of the enforcement system in the Balkans that promotes the system of the private execution in the countries that have not been yet introduced such system.

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

Yes

The enforcement agent shall be punished for negligence or disciplinary violation if while working, with his/her behaviour, violates the official duties while carrying out the enforcement actions, or if he/she performs official duties in an illegal manner, or is personally responsible for the delay of the actions, or with his/her behaviour in the private life damages the honour and the reputation of a person with public authorisations.

The initiation of the disciplinary procedure can be made upon a request of the Chamber, the competent court for the territory for which the enforcement agent is appointed, the parties and the participants in the enforcement. Against the decision of the disciplinary committee it shall be allowed to file an appeal to the Minister of Justice. Against the decision of the Minister of Justice the enforcement agent shall be entitled to initiate an administrative dispute. Other issues related to the work of the Disciplinary Committee shall be regulated with the Bylaws and the other acts of the Chamber.

No

If yes, what are the sanctions of this appeal?

- disciplinary responsibility of the enforcement agent

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

According to the Law on enforcement of the Republic of Macedonia the judge do not possess the power to affect the speed of enforcement which is carried out by the enforcement agents

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

According to the Law on enforcement of the Republic of Macedonia the judge do not possess the power to force the enforcement which is carried out by the enforcement agents

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

The party or the participant that considers that there are irregularities committed during the enforcement, can file an objection to the president of the basic court on the territory of which all or part of the enforcement is carried out. The objection, elaborated, argued and supported with appropriate evidence shall be filed within three days after the day of finding out about the irregularity, but not later than 15 days after the conclusion of the enforcement.

The president of the court shall decide upon the objection within 72 hours after the receipt of the objection. If necessary, the president of the court can decide to hear the parties, participants and the enforcement agent. The objection shall be submitted for response to the parties, participants and the enforcement agent, together with the summons that specify the date and time of the hearing of the parties and participants in front of the court, if it was decided to hold a hearing. With the decision the president of the court can either dismiss or accept the objection. The president of the court with the decision with which he/she accepts the objection determines the performed irregularities and declares void the undertaken enforcement actions. The president of the court with the decision cannot stop the enforcement, revoke enforcement actions, or oblige the enforcement agent to take enforcement actions. The party or the participant is entitled to file an appeal against the decision of the president of the court, to the appellate court in the area of which the basic court is located. The appeal shall not postpone the enforcement.

The enforcement agent can ask the court to fine the company, the manager of the company and the managing body of the company, which obstruct or disable the enforcement, according to the provisions of this Law for enforcement of an action that can be performed only by the debtor. The court shall be obligated to decide upon the request of the enforcement agent within 48 hours, starting from the day of the receipt of the request at the court.

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

- Still the insufficient number of enforcement agents. Strict conditions for becoming an enforcement agent which from the other side is important for having a legal and an efficient executive procedure carried out by the competent, skilled and trained executive agents. The problems with the Cadastar that does not cover all the territory of the state and the problems with the unlawful buildings that can not be a subject to enforcement.

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

In the opinion of the legal professionals and the public, the new introduced system of a private enforcement procedure is better than the previous one, but the agents daily face huge problems regarding the carrying out the executive acts - problems with the debtors, they often need the assistance of the police etc. A public awareness campaign is needed for promoting the benefits from the new private system of the execution of the civil judgements, that has been improved the efficiency of the execution procedure in general, thus avoiding the long, complicated court procedures with a lot of legal remedies, that were regularly misused by the debtors for prolonging of the procedure. Enhancing the number of the enforcement agents is needed (out of 130 planned agents, about 80 are appointed). Amendments in the Law on enforcement are needed to improve the conditions for better and more efficient performing of the executive acts.

- Are the enforcement procedures similar for civil and administrative matters?

- Yes
 No

If not, please clarify the differences.

In the administrative matters – the administrative bodies themselves enforce the decisions, whereas in the civil matters, it is a duty of the enforcement agent.

B) IN CRIMINAL MATTERS

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

- Yes – Law on enforcement of sanctions (in the further text, LES)
Please specify

The Law on the execution of sanctions (2006) (Article 35) provides function of a “judge for execution of sanctions”. This function is established also by the Law on courts, in the way that in all basic courts shall be appointed a judge who will perform this function.

- The judge for execution of sanctions is basically authorised, in case of an enforceable decision, to take measures to ensure that a convicted person sentenced to imprisonment, fine, security measure or institutional corrective measure in case of a minor is referred to a respective facility/institution, and to take measures for securing the execution of other sanctions as well. At the request of the convicted person for stay of execution of the prison sentence, the respective judge decides on the postponement of the execution of the sentence pursuant to the conditions

stipulated in the Law on the execution of sanctions. Also, he decides on the interruption in serving the sentence, decides on the obsolescence of the execution, on the replacement of the fine with imprisonment sentence

- The judge is responsible for ensuring the consistent enforcement of the legal position of the convicted person during the serving of the sentence and for conducting supervision in the correctional facilities from the perspective of operating in accordance with the law.

- A panel of three judges, decides on requests by convicted person for release on parole, upon the previous opinion from the judge for execution of sanctions

- The judge cooperates with the Centres for Social Work in regard to provision of the necessary supervision over individuals released on parole and about the post-penal aid and the execution of the alternative measures

Regardless the fact that this function is regulated by law, it has to be organised as a special department in the court with the necessary assisting personnel; the judges should more often perform their supervisory function of visiting correction facilities, their duty of care for the situation and the status of convicted persons; they should more go into detail into problems related to re-socialisation of convicted persons, and to the supervision of those released from the correction facilities on parole and the control of the post-penal aid. Legislative elaboration of this judicial function is necessary.

No

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

➤ He is responsible for the enforcement?

Yes

- The authority competent for the enforcement of a ruling governing a sentence, is a judge for execution of sanctions and is regulated by law, i.e. by two laws: the Law on the execution of sanctions (LES) and the Law on the courts, but it is necessary to elaborate this function more clearly and to define the position, in the same manner as that of those judges working in criminal, civil and other departments of the court, and to develop the department itself as a special organisational unit.

The task of a judge for execution of sanctions is: to undertake measures for enforcement of a sentence, he has a task to refer the person to the correction facility, to decide upon requests of a convicted person for postponing the beginning of the serving of the sentence, may interrupt serving of the sentence, to visit him/her in the correction facility and to exercise a supervisory function, to decide on the post-penal aid and others tasks stipulated in the LES

- A Judge for execution of sanctions determined according to the convict's place of permanent residence which is his place of temporary stay shall be competent body to undertake the necessary actions for executing the sentence of imprisonment. The procedure for sending the convicts is considered as urgent. The court, which has taken the first-degree decision, shall deliver to the competent court for execution of sanction all the data's regarding the convict's personality, which have been obtained during the procedure and which are relevant for the execution of the sentence, together with the decision on execution. A Judge for execution of sanctions is obliged to take the necessary actions to execute the sentence of imprisonment immediately after the reception of the executable decision but at latest within eight days after its reception. When determining the day of convicted person coming to the institution, it should be taken into consideration that the convict should have at least eight or maximum thirteen days left after he has received the prison invitation (referral act). The Judge for execution of sanctions with submission of referral act to the convict, will also inform the institution about the day when the convict should come and will submit a copy of the enforceable and executable verdict with which the sentence was pronounced, an excerpt of the criminal records, as well as other available information on the convict's personality in his disposal. If the convict failed to appear on the determined day for execution of the imprisonment sentence the institution without delay will inform the Judge for execution of sanctions. The Judge for execution of sanctions will issue immediately order to the Ministry of Interior for apprehension of this convict upon which the judge will request from the unit issuing of search warrant, if the convict is concealed or at large, for the purposes of his location and escort to the institution for execution of the imprisonment sentence.

- The Judge for execution of sanctions will be informed immediately about the convict's reception in the institution. The institution is obliged to inform the respective Centre for Social Welfare about the convict's reception whether the convict has juvenile children or others whose care is his responsibility only.

- Upon the request, postponing the beginning of execution of the sentence of an imprisonment shall be decided by the judge for execution of sanctions who is obliged to bring a decision within three day after the reception of request. Before delivering the decision, the judge may investigate the circumstances stated in the request. The beginning of sentence's execution will be postponed until the decision on the request is not rendered. Against the decision refusing the request for postponing the beginning of execution of the imprisonment sentence, the convict is entitle to lodge an appeal to the Criminal Council of the competent court for execution of sanctions within three days from the day of the reception of the first-degree decision. The appeal postpones the execution of the sentence. The Criminal Council is obliged to decide upon the appeal within the term of three days after the reception of appeal.

- Also, the competent Public Prosecutor according to his lawful authorization can request postponement of the commencement of serving the imprisonment sentence, and then the Judge for execution of sanctions will not summon the convict to serve his sentence, but, if he has already called and the deadline to appear in the institution didn't expired, the judge will deliver a decision to postpone the commencement of the execution of sanction. The postponement of the commence of execution of the sentence in the cases will last until the Public Prosecutor does not

inform the Judge for execution of sanctions that the execution of the imprisonment sentence can start, respectively until the decision upon Public Prosecutor's legal remedy has not been passed.

- Upon request of the convict or upon proposal by the director of the institution, and according to the opinion of the prison medical service and by previous opinion of the competent public prosecutor, the judge for execution of sanctions may interrupt serving of the sentence longer than 30 days for the purpose of healing, if there are no conditions for the healing to be carried out in the institution or the institution shall refer him to an appropriate health institution. The convict being granted with the interruption of serving his sentence for the purpose of healing, shall be obliged to send a certification on his state of health to the judge of execution of sanctions every month. The judge for execution of sanctions shall revoke the decision for interruption of the sentence, if it is established in the way that the reasons, under which that decision was taken, have been relinquished. A proposal for putting the decision out of force can be submitted by the authorized public prosecutor. With proposal, the public prosecutor can request from the judge for execution of sanctions, to conduct independent medical examinations over the convicted person. Against the decision brought upon the request for the interruption of serving a sentence, the convicted person and the competent public prosecutor have the right to appeal to the criminal council of the court which is competent for execution of the sanction.

- Also, the correctional institution shall have the obligation to inform the judge for execution of sanctions in any case of escape of the convict

- The judge for execution the sentence is also responsible for the enforcement

- This judge is also required to monitor the enforcement of the sentence and the manner in which the treatment and the re-socialisation of the convicted person is conducted; to conduct supervision in regard to the lawful conduct of the prison personnel in the correction facilities on the territory of his jurisdiction.

- The supervision of the court in executing the sentences regarding the treatment with the convicts as well as in achieving their rights and obligations is conducted by the judge for execution of sanctions within the basic court in the institutions' headquarters.

The director of the correctional institution is obliged to ensure the insight on the necessary documentation to the inspector for execution of the sanctions and to the judge for execution of the sanctions also, to enable them with undisturbed performance of the supervision and also undisturbed conversation with the convicts with or without presence of the prison employees depending on the needs. The inspector for executing sanctions and also the judge for executing the sanctions, will compel a minutes for the made supervision and established situations in the framework on their authorization. If irregularities were established during the supervision the inspector for executing sanctions and judge for executing sanctions will bring a decision for removing the determined irregularities within a fixed term and a for re-establishing the violated rights of the convicts. The inspector for executing sanctions and the judge for executing sanctions will announce in between with regard

to the established conditions within the institution and on the irregularities established during the performance of their supervision. The Government of the Republic of Macedonia established a State Commission for performing a supervision in the penitentiary institutions, which is composed of five members selected among judges, penologists, sociological and educative workers, the Ministry of Health, the Ministry of Labor and Social Politics, the Ministry of Economy and from among the scientific and expert workers of other institutions for a period of five years.

- After releasing the convicted person from the institution, he can request help and support from the Judge for execution of sanctions. The Judge for execution of sanctions shall cooperate with the Centre for Social Welfare and can issue a written order for undertaking the needed measures and actions for after releasing help which are applied for better socialization of the convicts in their life at freedom as providing an accommodation and food, health treatment, counseling about the choice of accommodation and stay, arranging his family circumstances, finding an employment, completing of his started vocational training, providing him with money for covering the essential needs, as well as other forms of help and support.

No
➤ He has others competences as regards enforcement?
 Yes
 No

If yes, please specify

The answer on the question 16

17. Is the judge responsible for the enforcement (if exists) the same than the judge who took the decision?

Yes
 No

As analysed above, the functions of the ruling judge and the judge for execution of sanctions are completely different, separate functions. The ruling judge has, for now, no competences in regard to the enforcement of the sentence he/she has pronounced.

- Under the conditions stipulated by the law, either the convict or a member of his closer family may submit a request for release under the bases of parole. A proposal for releasing a convict under the bases of parole may also be submitted by the director of the institution. The parole of the convict shall be decided by the court having taken the judgment in first instance, in a council composed of three judges who shall decide beyond the main hearing. Before deciding on the parole, the first instance court shall request a data, from the institution and the institution's official persons and the convict may be interrogated about the circumstances pertaining the convict's personality, his behavior during the serving of sentence, carrying out of his labor duties and about other circumstances, under which it may be concluded whether the aim of punishment was achieved and especially whether the convict is likely to commit further criminal acts in future. In the decision for parole, the court may determine protective supervision under the convict,

which is composed by special measures for aid, care, supervision or protection, which are accomplished by the social body. Against the decision, which has refused the request or the proposal for parole, the convict and the authorized public prosecutor have the right of complaint to the higher court within a term of 8 days.

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

Yes –

Please specify which actors

No

19. 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 (eg timeframes) and the work done by the other actors?

Yes

No

➤ Others competences?

Yes

No

If yes, please specify

The judge for execution of sanctions unavoidably cooperates with the management of the correction facility in which the sentence is carried out, with the prison personnel or other personnel of the facility in which the correction measure or the security measure is being carried out, with the Centre for Social Work according to the place of residence of the convicted person, and with the Directorate for Execution of Sanctions at the Ministry of Justice.

- The judge for execution of sanctions undertakes measures also for the enforcement of fines (Article 212 of the CSEA) and proceeds in the transformation of the fine into a “Detention in lieu of Payment of Fines” and also follows requests and appeals of a convicted person in accordance with the LES, which regulates the enforcement of such a sentence.

The judge for execution of sanctions is in an identical position as the other judges in the basic courts (rights and duties, status), as stipulated in the Law on courts. Hence also the empowerment on the manner of communication with other authorities, which implies that all other authorities (executive, administrative and other) are required to enforce court decision without delay, and to act upon the request of courts immediately, urgently and without delay. In regard to the personnel in the prison in which the sanction is executed or the corrective facilities in which the

corrective measure against a minor is carried out, the judge is authorised to conduct supervision as to the lawful execution of the sanctions and to prepare protocols on the ascertained failings, omissions and breaches, requesting their elimination within a deadline he/she stipulates. This is not a matter of revision or supervision, but of relations enabling regular discharge of the duties emanating from the abovementioned laws - namely regular performance of the function and exercise of authorities. Hence, this is not a special procedure, as all other authorities are legally required to act upon the requests of the court.

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

The judge for execution of sanctions like any other judge is required to ensure that the rights and freedoms of the citizens are met and protected as guaranteed by law. The judge for execution of sanctions is responsible for the supervision over the correction facilities as to the manner in which the status of the convicted person is carried out in relation to the guaranteed legal position of the convicted person according to the domestic and international guarantees stipulated in the international conventions and other documents ratified by the Republic of Macedonia, during the serving of the sentence. This is done in the way that in specific time periods, upon his/hers decision, but at least one a year, he/she visits the penal-correctional facility and conducts an assessment as to treatment of the convicted persons, the application of inadmissible means and methods of force (torture), application of methods of treatment and re-socialisation, the living and working conditions, the protection of rights and amenities and disciplinary measures, etc., and prepares a protocol in which the findings and conclusions are recorded, especially those that refer to a stated breach of the LES and of the status of the convicted person, including guidelines on the manner and deadlines for the elimination of the stated deficiencies, weaknesses and breaches. This procedure creates an obligation for the judge, in the timeframe he/she himself/herself stipulates, to verify whether the management of the correction facility has acted upon his requests and conclusions, whether the defects have been eliminated, etc.

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

The enforcement of alternative measures is regulated in the special Chapter XVIII of the LES under that respective heading (Articles 225 to 239). The LES elaborates the enforcement of the following alternative measures: protective supervision with suspended conviction, community work and house arrest. The law provides opportunities for the person sentenced to imprisonment who has been granted release on parole, to be placed under protective supervision supported by specific obligations with a decision by the judge for execution of sanctions.

- The enforcement of alternative measures has been awarded to the Department for Enforcement of Alternative Measures in the respective Centre for Social Work competent according to the place of residence of the convicted person. The Department is composed of the necessary expert staff certified for enforcement of alternative sanctions. The certificates are issued by the Directorate for Execution

of Sanctions at the Ministry of Justice. Such an organisation of the Centres for Social Work should be established urgently.

- The costs for enforcement of such measures should also be defined precisely in the law.

- The judge for execution of sanctions informs (sends an order to) the Centre for Social Work on the enforcement of the alternative measure over the specified person. The Department prepares a Plan and Programme for Enforcement of the Measure in line with the perpetrated act, the person itself and other conditions necessary for its individualisation. Special attention is paid to the obligations and the manner of their performance. The Department maintains records on the measures enforced.

- The Department that enforces alternative measures is required to inform the judge for execution of sanctions, every three months in writing of the course of the enforcement of the measure, the achieved effects, and the conduct of the convicted person. If the convicted person refuses to execute the measure, the enforcement authority is obligated within 8 days to notify the court (the judge).

- The supervision over the legality in the enforcement of these measures is performed by the court that has pronounced the measure (this means the judge for execution of sanctions) whereas the expert – instructing supervision over the enforcement of such measures is performed by the Directorate for Execution of Sanctions. To this end, the Directorate establishes an inspectorate. The Inspectorate notifies in writing the judge for execution of sanctions on the conducted supervision. The procedure relating to this component of the supervision is regulated by a special Rulebook adopted by the Minister of Justice.

- This means that the judge for execution of sanctions controls the supervision in the enforcement of alternative measures indirectly through the Department for Enforcement of Alternative Measures at the Centre for Social Work and the Inspectorate at the Directorate for Execution of Sanctions at the Ministry of Justice.

- On the basis of these reports, the enforcement judge will make a proposal to the judge that has pronounced the alternative measure to re-examine the situation and possibly to decide upon its termination or replacement by another alternative measure, in case the original one did not yield results or if the convicted person refused to accept it or act upon it.

- The law elaborates in detail the enforcement of each of the three alternative measures.

- This means that the judge can directly influence the manner, the course, the dynamics of and the treatment in the enforcement of such measures, and the conditions under which the measures are enforced. The judge, with his/her active relation, can directly influence the enforcement of these measures, whereas their successful implementation of the sanction is responsibility of the judge for execution of sanctions.

- The implementation of alternative measures in the Macedonian penitentiary system is plagued by lack of appropriate staff, staff training and creation of respective departments at the Centres for Social Work who would take up the enforcement of such measures in order to yield the desired and expected quality of the re- socialisation.

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

- The judge for the implementation of sentences protects the rights of the convicted persons, controls the regularity of the procedure for implementation of sentences and ensures equality and parity of the convicted persons according to the law etc-see the answers below

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

- The enforcement of fines is in the competence of the basic court that has pronounced the sentence, more precisely the judge for execution of sanctions. The enforcement of fines is executed with the delivery of the valid and binding executive ruling to the convicted person. With this delivery of the verdict, the enforcement judge guides the person as to the manner and deadline for the payment of the fine. Difficulties arise when the judge is not in possession of correct data on the place of residence and address of the convicted person, or when the latter avoids receipt of the verdict including the order and the guidelines for its enforcement. If the convicted person does not pay the fine within the deadline prescribed by the judge, the procedure of forced execution of the sentence (collection) is initiated, with the convicted person bearing the costs of the forced collection.

Prior to the forced collection of the fine, the enforcement judge will in writing reprimand and invite the convicted person to pay the fine within 15 days, enclosing an instruction on how to do that. If the convicted person does not pay the fine within this deadline, then the judge initiates its enforcement pursuant to the provisions of the LES. If this procedure fails to secure the enforcement of the sentence, then the fine is substituted by a prison sentence through force taking into custody of the convicted person. Depending on the amount of the fine and evidenced failure to pay the said fine, the judge may order the individual to pay the fine in instalments with a maximum duration of two years. The instalments and the terms and conditions are determined by the sanction enforcement judge. He/she can also extend this deadline for additional three months. The judge is required to monitor the regular payment of the instalments, and this should not be the case, he/she is authorised to decide on a substitution of the fine with a “detention in lieu of payment of fines”. In case of a combined payment of the fine and the costs for the criminal proceedings, the judge will tend to collect first the costs of the proceedings, and only then the fine.

In case of substitution of a fine with a detention in lieu of fine, it is calculated so that one day costs 1,000 denars, with the longest possible duration of the substitute penalty being 6 months. Otherwise, the financial penalty is tallied according to the “day-penalty” principle.

The person sentenced to a fine is entitled, in the course of the enforcement of the penalty, to submitting an objection to the judge for execution of sanctions, but only as regards the validity and enforceability of the ruling.

The delivery of written notifications to parties or convicted persons in court proceedings is a general problem in the Republic of Macedonia and is characterised by a multitude of weaknesses and irregularities, which is also the case in this type of proceedings. The person sentenced to a fine is entitled to appeal in front of the Sanction Enforcement Council in case his/her objection is not accepted.

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

- The LES integrates all standards and rules of the United Nations Standards for Treatment of Prisoners and also the European Prison Rules and the CE Conventions and documents regarding protecting the rights of the convicted persons.

a. The majority of the convicted persons' complaints are related to the general living conditions. Problems in correction facilities are caused by the high concentration of a large number of prisoners in a small space, the opportunities for work activities are minimal as to the general material condition in the state, and hence the prisons have insufficient activities in the course of the day. More training activities are needed for the prison personnel.

The Directorate for the execution of sanctions is performing the training activities for the prison personnel through their training centre, according to the framework training programme. Recently, jointly with the Academy for training of judges and prosecutors they started cooperation in organizing joint training events for the prison personnel, the judges for execution of sanctions, other criminal judges, prosecutors and the employees from the Directorate.

b. The Ministry of Justice, the Department for Execution of Sanctions is preparing a "Strategy for Re-socialisation and Social Adaptation of Persons Serving Prison Sentences" which should be adopted by the Government of the Republic of Macedonia. The strategy proposes measures and steps for resolving the problems in the area of enforcement of sanctions through the penitentiary system and the improvement of the organisation and functioning of the penitentiary system. According to this Strategy, reconstructions, renovations and construction are planned in the correction facilities, aimed at improving the general living conditions of the persons sentenced to imprisonment. About 56 million Euros are planned for this purpose with the national budget and the foreign funds. (EU, World bank)

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

Convicted persons in general and those serving a prison sentence, have at their disposal, in regard to their situation and their treatment in the course of the

-serving of the sentence, legal means through which they can express their dissatisfaction or breaches of their legal position and status, that are guaranteed through the LES. The means at their disposal are as follows:

- In the process of applying the respective legal means, the convicted persons are provided with information and, at request, also with legal assistance by the correction facility services. They can refer, in respect to their requests and objections, to all government authorities in the state, all of this through the management of the facility. They are entitled to receive, in regard to their complaints and objections, responses through the prison management; this system functions relatively well. The facility management is required to register the date, the time of the submission of the application to any authority, and also the time of the receipt of the response or the fact that no response has been received. The convicted person is entitled, in the process, to discretion in relation to the application and the received response.

- The convicted person is entitled to an oral and a written complaint to the manager of the Facility within eight days as of the day the person regards as the day when his/her right was violated, and illiterate persons can do this through a protocol with the competent body in the facility. The Manager is obligated to investigate the situation and to respond to the convicted person in writing within eight days.

- The person dissatisfied with the action and response of the facility manager is entitled to submitting an application to the Director of the Directorate for Execution of Sanctions within eight days; the Director is obligated to investigate and within 15 days to adopt a decision upon this appeal. The decision of the Director of the Directorate for Execution of Sanctions is final and binding, upon which the convicted person can seek court protection. The convicted person is entitled to court protection also when the facility manager does provide him/her with a response.

- The convicted person is entitled also to an application, appeal and objection to the Ombudsman of the Republic of Macedonia. This institution deals with the problems of convicted persons in correction facilities and the enforcement of sentences by facilitating the right of convicted persons to apply to this authority, by visiting the correction facilities in response to specific applications and by general occasional visits to correction facilities in the form of supervision in order to verify that their remarks and the application of convicted persons are given due weight and being acted upon, etc.

- The convicted persons are entitled to applications (submissions in regard to violations of their rights) to the European Court of Human Rights. In regard to such submissions, the Ministry of Justice is required to prepare and submit to this Court the entire documentation necessary for resolving the respective dispute. There is no commenced procedure for violation of prisoner rights (for torture during execution of sanctions) before the ECHR.

Also, the Directorate for Execution of sanctions is conducting a commercial campaign for the raising awareness between the prisoners about their rights (issuing Guidelines for the prisoners' rights and distributes to each prisoner in the state.)

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

- see the following answer

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

The factors for improving of the efficiency and speediness in the enforcement of verdicts in criminal cases are:

- The new system of the execution through the role and the activities of the judge for the execution of sanctions means enhancing the efficiency in general, because this role in the past was given to the presidents of the courts and them, hence to their huge jurisdiction could have not been strongly dedicated to this issue.

- Enhancing the management capacities in handling of the criminal cases, starting from the pre-trial procedure, through the application and securing of the evidence which are to be provided by the respective detection authorities, to the public prosecutor and the prosecution act, all of which should facilitate a speedy and efficient deliberation (here are also the evidences needed for better and speedy execution of the sentence - especially those for the alternative measures, the facts and evidences related to the personnel, family, material and social conditions of the defendant.) More active role of the Ministry of interior and the prosecutors in the obtaining of the evidence needed for the execution of the sanctions (finding the defendants who are avoiding serving the sentence) and adherence with the timeframes provided in the Criminal Proceedings Act for the execution of specific processes in the proceedings, especially the deadlines for preparing and delivery of the ruling; sometimes the serving of the sentence is getting obsolete due to the insufficient activities of the MOI for finding the sentenced defendants who are fugitive.

- Better management styles and manners of the presidents of the courts especially as regards the organisation of the enforcement of the sanctions. This also includes the issues that relate to resolving the problems with the delivery as an issue which frequently causes delays in the processes and misuses by the parties and defence through avoiding the delivery and receipt of written notifications that causes obstacles in the successful execution.

- permanent training for the Judges for execution of sanctions, the presidents of the courts, the Criminal chamber of the court that decides on the certain provisions from the LES (on parole, suspension of the serving of the sentence ect), training on the rights and obligations of the enforcement judge regarding the execution and for better protection of the rights of the prisoners – especially on the protection against ill-treatment and torture-recognizing and detecting the evidences for the torture and other violations of human rights (the records when receiving the prisoner, expertises etc.)

- The training of the staff in the penitentiary institutions is performed through their Training centre, financed by the budget and foreign projects, following the training programme adopted by the Directorate for the execution and approved

by the minister of justice.

- finalisation of the legislation, especially the LES, which is about to undergo amendments and supplementation in the part of defining the position and status of the enforcement judge and placing at his/her disposal instruments and methods for more successful and more efficient enforcement of sanctions, in this line, especially the creation of rules and organisation for enforcement of alternative measures (possibly a Law on Probation Services).

- Improving the organizational structure of the Centre for the social affairs, enough financial resources, equipping them with enough skilled and trained personnel towards better execution of the alternative measures and providing the post penal aid and the measures imposed with the parole, completing the by-laws that regulate these issues.

- better organisation of the courts in the part of enforcement of sanctions;

- better organisation of the services in the Ministry of Justice whose main function is the part of enforcement of sanctions

- The Ministry of Justice, the Directorate for Execution of Sanctions is preparing a "Strategy for Re-socialisation and Social Adaptation of Persons Serving Prison Sentences" which should be adopted by the Government of the Republic of Macedonia soon. Regardless of the title, the strategy proposes measures and steps for resolving the problems in the area of enforcement of sanctions through the penitentiary system and the improvement of the organisation and functioning of the penitentiary system.

- The entire penal-corrective system is undergoing amendments and supplementation in the part of the legislation and also synchronisation with the legislation of the states in the European Union. This process of shaping the legislation should be completed.

- In this area, of special significance are the amendments to the Law on Criminal Proceedings, which will resolve the status of the authorities for detection of crime and the prosecution and the police. The system needs to be concluded with the Executive Criminal Legislation as a whole (LES, alternative measures, Probation Act, etc.).

- A special problem requiring special attention is the enforcement of sanctions (primarily fines) pronounced for committed misdemeanours with the establishment of a necessary recordkeeping and statistics on such sanctions.

- In a similar manner, it is necessary in the basic to establish courts under the sanction enforcement judge's records for the pronounced sanctions that have become valid and binding and executive.

- It is of utmost interest in the state, to create conditions and prerequisites for the discharge of the judicial function on the part of courts and judges in an

“independent and autonomous” manner. The other two powers need to create conditions for the judiciary to discharge its function independently and to reaffirm itself continuously through this vital feature of his.

- Increasing of the capacities and improvement of the penitentiary institutions, more budget resources for creating adequate conditions and programmes for re-socialization with rich social, working, and cultural contents in order to achieve the goal of the imprisonment sentence, to stimulate the convicted persons to accept the treatment and to participate actively in it during the serving of their punishment which is motivated and directed to re-educating and development of positive character traits, attitudes and capabilities, that speed up the successful return to the society.

- More institutions with enough space that will enable adequate classification and displacement of separate categories of convicts in separate divisions in different institutions and groups, for the purpose of easier implementation of different kinds of treatment, for preventing the criminal infection and for maintaining the discipline, adequate classification according to the provisions of this Law and in accordance with the court decision, according to the necessity and the type of the required treatment, their age, personal characteristics and other circumstances of importance for the evaluation of the personality of the convicted persons.

- to improve the conditions for life and work of the prisoners, for cultural, sports and other activities adequate to their age and abilities, also the convicts should be provided with a work, which will be useful and an appropriate to the way of its performing at freedom in order for the convicts to achieve and develop the working habits, maintain their work capabilities and gain a professional knowledge for work at freedom.

- Equipping the penitentiary institutions with qualified staff, opening more positions for educators, teachers, instructors and other qualified job positions, who will be physically and psychologically fit for dealing with supervisory activities in an institution, for the positions commander and commandant in the security units persons with high education, are needed, also being both physically and psychologically fit for dealing with these activities in the security service. It is difficult to find such specialized staff because of the complexity and the hard conditions of the affairs' nature, as well special conditions under which they are being executed in the immediate contact with the convicted persons with what significantly is being influenced on the decreasing of the working ability.

- More economy units in the institutions that will enable better work engagement of the prisoners

- Improving and deepening the national cooperation and coordination between all the subjects involved in the execution of sanctions (The Ministry of justice, Ministry of interior, Ministry of labour and social policy, the courts, the judge for execution of sanctions, the institutions for execution of sanctions) in implementing the national policies in execution of the sanctions based on all democratic recognised international standards and values, adapted to the national conditions.