



Strasbourg, 8 February 2010

CCJE-GT(2010)1

**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

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

Please specify

No

There is no direct stipulation about the responsibility of the authority in a law but the Law on Execution Proceedings in its Article 2 envisages all the acts that are subject to execution that indirectly stresses out the responsibility of the authority to carry out enforcement.

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 judge signs the execution list which is a document from which the execution proceedings is initiated. At the same time the judge may suspend execution in situations directly stipulated by law, may approve amicable settlement between the parties during enforcement, may interpret the judgement at the request of the bailiff it is not clear etc.

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

Yes

No

Usually it is the case, but if the judge who took the decision does not work in the court than there may be any other judge responsible for the enforcement.

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

- Yes
 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

As it was mentioned above, sometimes at the request of the bailiff the judge may discuss the issue of interpretation of the judgement if it is not clear. However, to my mind this can not be considered as involvement in the enforcement procedure.

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

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

The bailiff should have a higher legal education and should have passed a special exam.

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?

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

There is no direct power given to the judge to speed up the enforcement.

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

The power of the judge to force the enforcement is limited to his/her power to issue the execution list (enforcement writ).

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

In some cases directly stipulated by law the judge may suspend execution (for example, in case when the debtor is a legal entity which is liquidated, or when the debtor is in the unit of army which is in war etc). In cases of alimony, or damages incurred to the health of the creditor the judge may adopt a decision to start search of the debtor whose whereabouts is not known or who intentionally avoids fulfillment of his/her obligations.

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

To my mind the enforcement legislation should be more precise and flexible.

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

The legislation in force may be amended in a way to make the proceedings more effective.

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
 No

According to Article 3 of the Law of Georgia on Detention the Body of execution of the sentence are Penitentiary Department and penitentiary organizations falling within the Penitentiary Department. The department itself enters in the system of the Ministry of Corrections and Legal Aid.

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

The judge is competent to suspend execution of the sentence in certain cases, for example, the detainee is ill, or is pregnant, or has a child of age under 5. The judge can also liberate the detainee from execution of the sentence in case the detainee is terminally ill or reaches certain age or has psychological illness.

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

Yes

No

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

Yes

Please specify which actors

No

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

➤ 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

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

The judge in order to protect the rights of the third persons can arrest the property of the accused person until the final judgement is adopted.

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

If the sanction for that particular offence envisages an alternative punishment the judge is competent to use that punishment rather than imprisonment taking into consideration the peculiarities of the case.

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

In case of arrangement of sentence the judge is limited by the measure of punishment stipulated by law. As for the conditional release, the judge is competent to do so if the request is filed by special commission responsible for conditional release.

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

The judge only issues an execution list (writ) and after that the execution is responsibility of the bailiffs.

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

Conditions of the detention

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

Ministry of Corrections and Legal Aid (<http://www.mcla.gov.ge>).

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

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

Lagislation may be improved because there is always a space for improvement