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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

Please specify

The code of civil procedure provides for a special proceeding for enforcement of civil decisions, that was by legislation of 2006 and 2009 simplified and improved (by adding, for example, „astreintes" and allowing the judge to delegate enforcement activities to notaries and other professionals). To be short, precautionary measures are enforced under the control of the same judge who has decided the measure; final decisions and decisions subject to appeal but provisionally enforceable are enforced under the supervision of a „judge of execution" established by the law in the courts of first instance.

The code of criminal procedure and special legislation regulate enforcement of criminal decisions, that are enforced under the supervision of the court competent for the proceeding, if it is pending; after a final decision, a wide role is played by the single „judge of supervision" of criminal penalties and a panel named „court of supervision" of criminal penalties.

The administrative judge is also competent for enforcement of its decisions, mostly affecting agencies of the State and public bodies.

No

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

Yes

In the civil sector, the judge is competent to solve problems that arise during enforcement, mainly by way of order. Upon oppositions of interested parties or third subjects, the judge also decides on correct property to be object of execution, interpretation of the „title" on which opposition is based, etc. The judge can delegate private professionals to perform acts of enforcement (mainly, sale of attached property).

In the criminal sector, the „supervision" judicial bodies decide on suspension, substitution or other measures affecting the serving of

criminal penalties; grants permissions to detainees to be allowed to temporarily released, to work outside of penitentiary, to serve penalty in alternative ways. They also supervise conditions of detention.

The administrative judge may give orders to the administration and may also appoint a „commissioner“ with the powers of the public agency involved, in order to adopt those actions that the agency refuses to adopt. Within the enforcement procedure, in case of unjustified delay, damages may be awarded.

- No
- He has others competences as regards enforcement
- Yes
- No

If yes, please specify

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

Yes

See answer to point 1.

No

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

Yes, in the civil and administrative sector.

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

In the civil sector, the main actor is the bailiff („ufficiale giudiziario“), the civil enforcement agent who, in Italy, has the position of an employee of the Ministry of Justice, acts under the authority of the Ministry in structures that exist in each judicial district and is compensated both with a fixed wage and a fee that must be paid by the interested party, then to be recovered on the losing party.

In the criminal sector, the main actors are judicial police, competent to arrest, and the Department of Penitentiary Administration, within the Ministry of Justice, competent to give instructions to Penitentiary

management and to organise Penitentiary structures. Within each penitentiary, the Director is the liason with the Judiciary; special structures exist for supervision of home and hospital detention.

In the administrative sector, competent for enforcement is the same administration that is adjudicated; if it fails to comply with the judgement, a special „commissioner“ may be appointed by the court.

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

x No

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

x Yes

Traditionally there has been little attention on respect of timeframes, also being lacking a specific legislative framework giving the judge the power to control duration of execution. Unfortunately, a number of cases have involved Italy before the ECHR concerning the length of execution procedures, as well as the laws that in the past have suspended enforcement (e.g. in the area of expulsion of house tenants). Other aspects are carefully supervised, mostly upon request of the interested parties.

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 – for civil enforcement – is a law graduate, recruited by public competition; it may be assisted by personnel of a lower professional profile.

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

Yes

x No

If yes, what are the sanctions of this appeal?

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

See answer to point 7.

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

The question mainly concerns the civil and administrative sector. In the civil, upon request of the interested party, orders may be given to the bailiff who, however, organises his/her work within the priorities determined by himself/herself. In the administrative sector, see above concerning the possibility to delegate enforcement to a commissioner.

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

Please see above answers.

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

Please see above answers.

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

In the civil sector, the „astreintes“ and the possibility to delegate to private professionals execution sales of property were finally introduced as remedies that had long been asked for to simplify procedures.

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

Yes

No

If not, please clarify the differences.

See above answers.

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

See above answers, also including criminal.

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

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?

See above answers.

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

It belongs to the judge to order alternative measures, in the cases the law provides for. Please see above answers.

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

The judge, as said before, controls most aspects of implementation of sentences. However, some important powers lie with the Minister of Justice (e.g., the Minister can order that a special prison regime apply to those accused of organised criminal violations; but then the interested party has a right to judicial review).

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

The judge has practically no powers to secure payment, which is left to State financial offices. Only if a case is started (e.g. if the debtor claims that the right to execute is covered by statute of limitations), the judge has a role.

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

Usually health reasons are the basis for claims.

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

Claims are brought before the judge. However, penitentiary overpopulation is a reality.

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

See above answers.

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

No substantial contestations exist on „effectiveness“ of enforcement procedures. There is, however, debate as to the effectiveness of the criminal penalty system in general.