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(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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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 Netherlands, bailiffs are responsible for the enforcement of judicial decisions in civil law cases. This is laid down in article 434 of the Code of Civil Procedure and in article 2 of the Bailiffs Act.
 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, the judge can intervene (for instance in summary proceedings) upon request of the parties whenever a problem occurs with regard to the enforcement of a judicial decision.
 No
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
 No.
It can be mentioned that, in general, decisions of a judge are immediately enforceable notwithstanding a possible appeal. The parties may, however, request the first judge or the appeal court to suspend the enforceability.
5. Shall this new application end with a judicial decision ?
Not applicable.
6. Is the judge working with other actors involved in the enforcement procedure?
Not applicable.

7. When he is working with other actors in the enforcement procedure, what are the exact competences of the judge:
- He starts the procedure?
Not applicable.
 - He controls and supervises the procedure (eg timeframes) and the work done by the other actors?
Not applicable.
 - Others competences?
Not applicable.

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

Bailiffs receive extensive education and training, followed by an exam. These requirements are prescribed by law (article 35, section 2 and 4 of the Bailiffs Act). Bailiffs also undergo continuous training and are subject to disciplinary rules.

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

Yes

No. Since the enforcement of judicial decisions is the responsibility of parties themselves, it is up to the parties to contact a bailiff. If the chosen bailiff fails to act within a reasonable time, parties can contact another bailiff. A failure to act within reasonable time may result in disciplinary proceedings against the bailiff in question. The bailiff having failed to enforce the decision within a reasonable time can also be held liable by the party having suffered damages by the bailiff's negligence.

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

As mentioned under question 2, parties can always ask for the intervention of a judge in case of problems with regard to the enforcement of a judicial decision.

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

In his decision, the judge may impose penalties (incremental penalty payment) on the uncooperative debtor. The judgement itself may substitute acts of a debtor (for instance in the case of transfer of real estate).

12. What are the powers of the judge to protect the rights of parties and

of third parties in the enforcement?

Cf. the answer to question 2.

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

There are no structural obstacles to effective enforcement of judicial decisions as described above. It is up to parties to contact a bailiff and the quality of bailiffs is generally considered to be satisfactory. In case of problems with the enforcement of decisions, the parties can always refer to a judge.

In practice, lack of assets of the debtor can, of course be an obstacle to execution.

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

As mentioned here-above under question 13, there are no major structural obstacles to effective enforcement of judicial decisions in civil and administrative cases.

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

Yes
 No

B) IN CRIMINAL MATTERS

Sentences in criminal cases in the Netherlands

For a better understanding of the answers to the questions on criminal matters, it is useful to first make a couple of introductory remarks about sentencing in the Netherlands.

Dutch penal law makes a distinction between principal sentences (prison sentence, pre-trial detention, community service orders and financial penalties) and subsidiary penalties (deprivation of certain rights, forfeiture, disclosure of the decision) and punitive measures (removal from circulation, confiscation of illegally obtained assets, compensation, placement in a psychiatric hospital, detention under a hospital order).

The law gives judges a considerable amount of freedom in determining the sentence in criminal cases. The Criminal Code provides for general minimum and maximum sentences.

Furthermore, the judge can decide that no principal sentence or subsidiary penalty will be imposed if he believes that this is advisable due to the minor gravity of the case, the personality of the offender or the circumstances under which the offence took place. The freedom of the judge as regards sentencing is increased by the fact that the principal sentences and subsidiary penalties may be given in conditional terms. In addition, it is also possible to combine a principal sentence with a subsidiary penalty.

16. Is the authority responsible for the enforcement of sentence specified in the law or in the constitution?
- Yes, article 553 of the Code of Criminal Procedure states that the enforcement of judicial decisions in criminal matters is realised by the Public Prosecution Service, sometimes in cooperation with the Minister of Justice.
- No.
17. What are the competences of the judge in the enforcement of sentences:
- He is responsible for the enforcement?
- Yes
- No, the Public Prosecution Service is responsible.
- He has others competences as regards enforcement?
- Yes
- No. In The Netherlands the judge is not responsible for the enforcement of sentences. However, when passing a sentence the judge is obliged to take into account (a) the seriousness of the offence (b) the particulars of the case and (c) the particular circumstances of the offender. Therefore, the judge has a variety of sanctions, orders and other legal instruments at his disposal to realise a tailor-made sentence, addressing all penal objectives: retaliation, general prevention and special prevention. In order to achieve these objectives – in particular the objective of special prevention - the judge may advise that the sentence should be executed in a specified penal institution or in a specified manner or he may exclude certain types of enforcement. (Custodial Institutions Act (*Penitentiare beginselenwet*) art.15.4) This competence is however not used very frequently.
18. Is the judge responsible for the enforcement (if exists) the same than the judge who took the decision?
- Yes
- No, not applicable.
19. Is the judge working with other actors involved in the enforcement of sentences?
- Yes

No, not applicable.

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, not applicable.

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

Yes

No, not applicable.

➤ Others competences?

Yes

No, not applicable.

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

Courts can affect the enforcement of decisions by imposing conditions. In case of unconditional prison terms, courts can determine, for instance, that a young adult, for his own protection, should serve his sentence in an institution for minors. In imposing a sentence, a court can also add measures for the protection of third parties, victims in particular. Such measures can include the obligation not to contact the victim or the obligation to refrain from entering the victim's neighbourhood. Such obligations are frequently imposed in cases of domestic violence and sexual abuse.

Courts have wide powers in imposing conditions in cases of probational sentences. Moreover, they can impose alternative sanctions to imprisonment. The most important of these are community service and electronic detention. Conditional to the former will always be the obligation to obey the instructions given by the Probation Service (*Reclassering*), the government agency responsible for the execution of such sentences under the supervision of the Public Prosecution Service. The Probation Service is also involved in the execution of conditions imposed in connection with probational sentences. Such conditions can include the obligations to stay under the supervision of the Probation Service, attend behavioural courses, undergo medical treatment etc. for the duration of the term of probation (standard term: two years).

If a convicted person fails to comply with the imposed conditions or fails to properly execute his community service, the community service order will be converted into a custodial sentence by the Public Prosecution. The latter can be appealed at the criminal sector of the court. The court can also extend the term of probation or add additional conditions.

Until recently, persons serving a prison term were automatically released after serving two thirds of their sentence. Currently, however, any release prior to the completion of the imposed prison term can be subject to conditions, imposed by the prosecution. Courts can get involved if the convicted person fails to meet these conditions.

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

Alternative sanctions are widely used. Cf. "Sentences in criminal cases in the Netherlands" here-above and the answer to question 21.

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

Cf. answer to question 21.

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

The judge does not have any powers as regards the effective payment of fines. However, it can be mentioned that in judicial decisions in which the offender is sentenced to payment of a fine, the judgment will always include the alternative sentence of imprisonment in the case of non-payment of that fine.

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

The main reasons for complaints concerning the rights of detainees are restrictive measures during pre-trial detention and in detention under highly intensified supervision. The complaints concern restrictions on contacts with the outer world, medical treatment, living and working conditions, confinement in the isolation cell, etc..

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

The Director of the prison is responsible for the living conditions in the prison. In order to ensure adequate living conditions within prisons, article 7 of the Custodial Institutions Act stipulates that each institution shall have a Supervisory Committee responsible for supervising the implementation of the deprivation of liberty. Each Supervisory Committee has at least one judge amongst its

members. Among other tasks, the Supervisory Committee is responsible for hearing/taking note of complaints about living conditions in the prison. Prisoners may ask to speak to a member of this committee. In the case of such a request, the member of the committee on duty will visit the prisoner in question and hear his complaint. This can result in mediation by the committee member with the Director of the prison. A prisoner can also submit a notice of complaint against a decision of the Director affecting him. The notice of complaint is handled by a complaints commission consisting of three members of the Supervisory Committee. Ultimately, a prisoner may initiate (summary) proceedings against the state.

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

The main obstacle to the enforcement of sentences in the Netherlands is the lack of resources, capacity and buildings for the enforcement of hospital orders (*TBS*) and the enforcement of judicial decisions in cases regarding minors. Another obstacle may be the fact that the convicted person cannot be found.

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

As mentioned under question 27, more resources for the enforcement of hospital orders and the enforcement of judicial decisions in cases regarding minors are badly needed.