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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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A) IN CIVIL AND ADMINISTRATIVE MATTERS

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

Yes

The authority responsible for the enforcement is specified in the Code on Civil Procedure and the Act No. 233/1995 Coll. on Enforcement Authorities and Execution (hereinafter „the Execution Order“). Constitution does not deal with the matters of enforcement.

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

No

Competence of the court in the enforcement procedure is generally regulated in Code on Civil Procedure and particularly in the Execution Order.

The enforcement authority acts on behalf of the state in the matters of enforcement of the decisions of courts and another decisions.

Court in particular authorizes the enforcement authority to execution, reviews the lawfulness of a instrument permitting enforcement, decides if the enforcement authority is excluded from leading of the enforcement where there is a doubt as to its impartiality, examines the plea against enforcement, rules on the suspension or discontinuance of the enforcement proceedings. Court on the basis of demand of the enforcement authority requests the competent authority of another state to obtain evidence, or to perform some other judicial act and also effects a cross-border service of documents.

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

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

- Yes
See the answer to question 7.
 No

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

- Yes
See the answer to question 2.
 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

Enforcement procedure starts with the day when the enforcement authority receives a claim of authorized person for enforcement, however the enforcement authority may start the execution only after the court authorizes the enforcement authority to execution.

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

- Yes
 No

The court particularly reviews the request for authorization to enforcement, claim for enforcement, instrument permitting enforcement. Court has no special powers regarding timeframes

➤ Others competences?

- Yes
 No

See the answer to question 2.

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

As the enforcement authority may be appointed person who has obtained legal education by graduating from a master's programme at the law faculty, who had at least for three years practised as enforcement body and has passed special examination.

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

- Yes
 No

Any person may submit to the *Chamber of the Enforcement Authorities* a complaint against acts of the enforcement authority. The Chamber may decide, if there is a failure to comply with obligations of the enforcement authority, that the disciplinary measure shall be taken, such as warning, fine or removal from the post in a case of grave misconduct.

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

Judge has no special powers in the matters of speeding up the enforcement.

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

Judge has no special powers in the matter of forcing the enforcement.

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

Court may also impose a fine in case that the third person involved in the enforcement (e.g. public authority, police, bank, tax office, post office ...) does not cooperate or breaches its obligations. To other powers of court see also the answer to question 2.

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

We do not have such information since the courts are not the main actors in the enforcement procedure.

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

We are not able to provide a well-qualified opinion on this matter. In the light of our system this is the question more focused on the enforcement authorities themselves.

Reform of the enforcement procedure was made in 2005 when the amendment of the Code on Civil procedure was adopted. Before this amendment existed two independent systems of enforcement - one carried out by district courts and second carried out by enforcement authorities. That twofold was thus eliminate.

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

The authority generally responsible for the enforcement of sentence (court) is specified in the Code on Criminal Procedure. Further is the matter of enforcement of sentence specified in Act No. 475/2005 on Enforcement of the Custodial Sentence. According this act the Prison and Court Guards Service is the authority responsible for supervision, security, treatment of convicted persons and for conditions of execution of a custodial sentence.

Constitution does not deal with the matters of the enforcement of the sentence.

- No

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

➤ He is responsible for the enforcement?

- Yes
 No

➤ He has others competences as regards enforcement?

- Yes
 No

The decision of the court is enforced by the court (judge) which has given the decision to be enforced. Judge may particularly suspend enforcement of the sentence, decide on change in the way of enforcement of the sentence, decide on discontinuance of enforcement of the sentence, on calculating time of detention to the time of prison sentence, on conditional release or on waiving or conditional waiving of punishment.

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

Others actors: Prison and Court Guards Service, Prosecutor, Minister

of Justice, Probation and Mediation Officer.

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 (e.g. timeframes) and the work done by the other actors?

Yes

However, supervising of the legality of execution of the sentence in prison is carried out by prosecutor

No

➤ Others competences?

Yes

No

See the answer to question 17.

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

See the answer to question 17.

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

See the answer to question 23.

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

In determining the appropriate sentence, court takes into account the way in which the offences was committed, result of this offence, wrongful conduct on the part of the offender, aggravating and mitigating circumstances, personality of the offender and possibility to reform his behaviour.

Judge may decide on change in the way of enforcement of the prison sentence, conditional release, waiving or conditional waiving of punishment.

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

As soon as the sentence imposing a fine became effective, presiding judge invite the person convicted to pay the fine within 15 days, otherwise the court administration will enforce the fine.

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

We are not able to provide a well-qualified opinion on this matter since courts are not the main subjects dealing with complaints of the detainees. Such subjects are prosecutors, officers of Prison and Court Guards Service and directors of prisons.

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

The control of execution of the sentence in prison is carried out by parliament, minister of justice or a person authorised by him, director general of prison or a person authorised by him. Prosecutor supervises the legality of execution of the sentence in prison.

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

We do not have knowledge on this matter.

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

We do not have particular knowledge on this matter. General reform of the criminal procedure including the enforcement procedure was made in 2005 when the new Code on Criminal procedure was adopted and has been effective since January 2006.