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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

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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 law (Enforcement of judgments and protective measures Act).

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

He is responsible for the enforcement

Yes

He (or the court clerk) starts the procedure by issuing a warrant of execution. He controls and supervises the procedure and the work done by bailiffs and other actors.

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

No

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

Yes

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

Yes

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

Yes

He controls and supervises the procedure and the work done by bailiffs and other actors (police, court clerks).

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

He controls and supervises the procedure (eg timeframes) and the

work done by the other actors?

Yes

Others competences?

Yes

Judicial review of all decisions taken in the enforcement procedure; after the warrant of execution has been rendered the enforcement proceedings remain in the domain of the enforcement court in certain types of enforcement (e.g. enforcement against real estate, enforcement with garnishment of earnings).

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

Bailiffs are nominated by the Minister of Justice. It is not obligatory for them to have a law degree. However, a special training and examination is a condition for obtaining a license.

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

Yes

The Act on protection of the right to trial without unnecessary delay provides that in the event of a delay in the proceedings any party may lodge a request for supervision with the president of the court. He may request the judge to report on the progress in the proceedings. The judge may put the case on the priority list or set deadlines for procedural measures. In a case of a heavy caseload, a case can be transferred to another judge. A further remedy is possible: a motion for setting of deadlines with the president of a superior court.

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

The obligation of the court to contribute to the acceleration of the enforcement procedure is stressed in the Enforcement of judgments and protective measures Act. In the event that parties abuse their procedural rights the court may impose on them disciplinary sanctions.

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

The principle of free disposition is recognized in the Slovenian enforcement procedure, so the court is bound by the creditor's motion for enforcement, including methods and means of enforcement. As a general rule, the effectiveness of the proceedings depend on the creditor's accessibility to information as to the debtor's assets.

Upon the creditor's request, the court can request from the debtor to deliver a list of his assets and dispositions with his property in the last year. An interrogation of the debtor at the court's hearing may also take place if it is demonstrated that attempts of enforcement have been or are likely to be unsuccessful. Pecuniary fines and imprisonment may be imposed if the debtor fails to deliver the aforementioned information or if he gives false or incomplete statements or if he does not appear at the hearing.

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

From the beginning the creditor is free to choose any of the means of enforcement, available under law. The court can, upon debtor's motion substitute the chosen means of enforcement (e.g. enforcement into real estate) with another type of enforcement if it is probable that the latter shall be successful. As far the enforcement upon movable property is concerned, various assets are immune from execution, such as clothes, and other items for debtor's personal use, household equipment to the extent it is necessary for living, working tools and other equipment, necessary for the debtor's professional activity... Regarding the garnishment proceedings the debtor must retain a minimum income and therefore enforcement out of debtor's earnings is subject to limitations.

As a principle, a bailiff cannot seize the goods that are not the property of the debtor. A third party who claims that he has such a right on the attached property that makes enforcement inadmissible may file an objection or bring an action at the court of general jurisdiction.

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

The bailiffs have taken over some tasks, which, under the Yugoslav law, were reserved for the court's enforcement officers. However, their competences are much narrower than, for example, those of French *hussier de justice*. In any case, the court remains involved in the enforcement procedure, as it has the jurisdiction for enforcement and must first render a decision allowing the enforcement. The system has not contributed to the efficiency of the enforcement procedure. The system of communication between the court and bailiffs is not effective.

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

It is questionable, whether a "compromise system", according to which a court must first authorize the enforcement by means proposed by the plaintiff, and the "physical" enforcement only is conducted by bailiffs, is plausible. It might nevertheless be better to either retain the system, in which all the enforcement procedure remains in the competence of state authorities on one hand, or the system, in which a bailiff is responsible for entire accomplishment of an effective enforcement and the court gets involved only in case of appeals or other remedies.

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

No

Enforcement in administrative matters is regulated by the Administrative procedure Act. In administrative matters the authority responsible for the enforcement is not the court.

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 responsible for the enforcement is specified in the law (Enforcement of criminal sanctions Act).

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

➤ He is responsible for the enforcement?

Yes

No

He is responsible for the enforcement in certain matters only (e.g. pecuniary sanctions, deprivation of property, seizure).

➤ He has others competences as regards enforcement?

Yes

The court decides on certain issues regarding the enforcement in criminal matters, e.g. postponement of penalty of imprisonment, conditional release, summons to serve penalty of imprisonment, control of other actors involved in the enforcement of sentences.

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

No

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

Yes

He is working with penal institutions, juvenile institutions, social service institutions and health-care institutions.

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

He starts *ex officio* the procedure in the enforcement of pecuniary sanctions. He also starts the procedure in the enforcement of the penalty of imprisonment by summoning the convict to serve the penalty.

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

Yes

Others competences?

Yes

Judges have competences regarding the protection of the rights of detainees, alternative solutions to imprisonment, conditional release.

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

The detainee may file a request for judicial protection when he is subject to torture and other methods of inhuman treatment.

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

It is within the powers to the judge to decide on the alternative solutions to prison and to control the execution of the sentence with the assistance of the police.

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

Judges (with prosecutors and officers of the Ministry of Justice) constitute the body which decides on the conditional release.

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

In the enforcement of pecuniary sanctions the judge starts the procedure *ex officio* by issuing a warrant of execution. The provisions of the enforcement in civil matters are implied in these proceedings.

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

The main reasons for complaints concerning the rights of detainees are bad living conditions in prison caused by the fact that prisons in Slovenia are overcrowded.

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 Agency for the enforcement of criminal sanctions is responsible for complaints about living conditions in prison. If he does not decide upon the complaint within the time limit of fifteen days or when a detainee disagrees with the decision, the detainee may file a complaint with the Ministry of Justice.

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

In general, the enforcement of sentences in criminal matters is perceived to fulfill its expectations.

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

The most critical situation remains in the field of post penal assistance to detainees (probation). Concerning the involvement of judges in the enforcement of sentences in criminal matters, it might be better to restrict

their role to cases of judicial review. Their tasks with respect to the implementation of sentences (arrangement of sentence, conditional release, postponement of penalty of imprisonment, summons to serve penalty of imprisonment, etc.) should be performed by prosecutors.