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**CONSEIL CONSULTATIF DE JUGES EUROPEENS  
CONSULTATIVE COUNCIL OF EUROPEAN JUDGES  
(CCJE)**

**Questionnaire sur  
*le rôle des juges dans l'exécution des décisions judiciaires, dans leurs relations  
avec les autres fonctions étatiques ou et les autres acteurs***

**Questionnaire on the role of judges in the enforcement of judicial decisions, in  
their relationships with other state functions and/or other actors**

**Réponses des pays suivant /  
Replies from the following countries :**

**Belgique/Belgium, Cyprus/Chypre, Royaume Uni/United Kingdom, Malte/Malta,  
Lituanie/Lithuania, Croatie/Croatia, Bosnie-Herzegovine/Bosnia and Herzegovina,  
Espagne/Spain, France, Finland/Finlande, Montenegro, Danemark/Denmark, L'ex  
République Yougoslave de la Macédoine/"the Former Yugoslave Republic of  
Macedonia, Roumanie/Romania, Suède/Sweden, Slovénie/Slovenia, Pays-  
Bas/Netherlands, Hongrie/Hungary, Allemagne/Germany, Islande/Iceland,  
Norvège/Norway, République Tchèque/Czech Republic, Luxembourg,  
Slovaquie/Slovakia, Albanie/Albania, Monaco, Bulgarie/Bulgaria, Géorgie/Georgia,  
Italie/Italy, Pologne/Poland, Estonie/Estonia, Lettonie/Latvia**

A) EN MATIERE CIVILE ET ADMINISTRATIVE / In civil and administrative matters

1. L'autorité chargée de l'exécution est-elle spécifiée dans la loi (constitution, loi, etc.) ? / Is the authority responsible for the enforcement specified in the law or in the constitution?

- Oui / Yes  
Please specify  
 Non / No

2. Quelles sont les compétences du juge en matière d'exécution / What are the competences of the judge in the enforcement procedure?:

➤ Il est chargé de l'exécution ? / He is responsible for the enforcement ?

- Oui / Yes  
 Non / No

➤ Autres compétences en matière d'exécution ? / He has others competences as regards enforcement ?

- Oui / Yes  
 Non / No

Si oui, veuillez préciser / If yes, please specify

3. Le juge chargé de l'exécution (s'il existe) est-il le même que celui qui a rendu la décision ? / Is the judge responsible for the enforcement (if exists) the same than the judge who took the decision?

- Oui / Yes  
 Non / No

4. Les parties doivent-elles tenter une nouvelle procédure pour que la décision soit exécutée ? / Do the parties have to make a new application for the decision to be enforced?

- Oui / Yes  
 Non / No

5. Cette procédure doit-elle aboutir par une nouvelle décision ? / Shall this new application end with a judicial decision ?

- Oui / Yes  
 Non / No

6. Le juge travaille-t-il avec d'autres personnes, acteurs dans la procédure d'exécution ? / Is the judge working with other actors involved in the enforcement procedure?

Oui / Yes

Veillez préciser quelles sont ces personnes / Please specify which actors

Non / No

7. Lorsqu'il travaille avec d'autres acteurs de la procédure d'exécution, quelles sont les tâches exactes du juge / When he is working with other actors in the enforcement procedure, what are the exact competences of the judge:

➤ Il engage la procédure ? / He starts the procedure?

Oui / Yes

Non / No

➤ Il contrôle et surveille la procédure (délai par ex.) et le travail effectué par les autres acteurs ? / He controls and supervises the procedure (eg timeframes) and the work done by the other actors?

Oui / Yes

Non / No

➤ Autres tâches ? / Others competences?

Oui / Yes

Non / No

Le cas échéant, veuillez préciser / If yes, please specify

8. Quelle est la formation de la personne chargée de l'exécution, si ce n'est pas un juge ? / What is the training of the person responsible for the enforcement if it is not a judge?

9. Les parties ont-elles un recours si l'exécution n'est pas effectuée dans un délai raisonnable ? / Can the parties appeal if the decision is not enforced within a reasonable time?

Oui / Yes

Non / No

Si oui, quelles peuvent être les sanctions de ce recours ? / If yes, what are the sanctions of this appeal?

10. Quels sont les pouvoirs du juge pour accélérer l'exécution ? / What are the powers of the judge to speed up the enforcement?

11. Quels sont les pouvoirs du juge pour forcer l'exécution ? / What are the powers of the judge to force the enforcement?

12. Quels sont les pouvoirs du juge pour protéger les droits des parties et des tiers lors de la procédure d'exécution ? / What are the powers of the judge to protect the rights of parties and of third parties in the enforcement?

13. Dans votre pays, quels sont les principaux obstacles à l'exécution des décisions? / In your country, what are the main obstacles to the enforcement of decisions?

14. Selon vous, pour votre pays, quels sont les changements principaux nécessaires pour améliorer l'efficacité de la procédure d'exécution? / According to you, what main changes are needed to improve the effectiveness of the enforcement proceedings in your country?

15. La procédure d'exécution est-elle la même en matière civile et en matière administrative / Are the enforcement procedures similar for civil and administrative matters?

Oui / Yes  
 Non / No

Sinon, veuillez préciser les différences / If not, please clarify the differences.

## B) EN MATIERE PENALE

1. L'autorité chargée de l'exécution des peines est-elle spécifiée dans la loi (constitution, loi, etc.)? / Is the authority responsible for the enforcement of sentence specified in the law or in the constitution?

Oui / Yes  
Veuillez préciser / Please specify

Non / No

2. Quelles sont les compétences du juge en matière d'exécution des peines / What are the competences of the judge in the enforcement of sentences:

➤ Il est chargé de l'exécution? / He is responsible for the enforcement?

Oui / Yes  
 Non / No

➤ Autres compétences en matière d'exécution? / He has others competences as regards enforcement?

Oui / Yes  
 Non / No

Si oui veuillez préciser / If yes, please specify

3. Le juge chargé de l'exécution (s'il existe) est-il le même que celui qui a rendu la décision? / Is the judge responsible for the enforcement (if exists) the same than the judge who took the decision?

Oui / Yes

Non / No

4. Le juge travaille-t-il avec d'autres personnes, acteurs dans la procédure d'exécution des peines? / Is the judge working with other actors involved in the enforcement of sentences?

Oui

Veillez préciser quelles sont ces personnes / Please specify which actors

Non

5. Lorsque le juge travaille avec d'autres acteurs de la procédure d'exécution, quelles sont les tâches exactes du juge ? / When he is working with other actors in the enforcement procedure, what are the exact competences of the judge:

➤ Il engage la procédure / He starts the procedure?

Oui / Yes

Non / No

➤ Il contrôle et surveille la procédure (délai par ex.) et le travail effectué par les autres acteurs / He controls and supervises the procedure (eg timeframes) and the work done by the other actors?

Oui / Yes

Non / No

➤ Autres / Others competences?

Oui / Yes

Non / No

Le cas échéant, veuillez préciser / If yes, please specify

6. Quels sont les pouvoirs du juge pour protéger les droits des détenus et des tiers lors de la procédure de l'exécution ? / What are the powers of the judge to protect the rights of detainees and of third parties in the enforcement?

7. Quel est le rôle du juge dans les peines alternatives à l'emprisonnement ? / What are the powers of the judge as regards the alternative solutions to prison ?

8. Quel est le rôle du juge dans l'application des peines (aménagement, libération conditionnelle, etc.) ? / What are the powers of the judge as regards the implementation of sentences (arrangement of sentence, conditional release, etc.) ?

9. Quel est le rôle du juge pour permettre le paiement effectif des amendes ? / What are the powers of the judge as regards the effective payment of fines ?

10. Quelles sont les motifs principaux des plaintes concernant les droits des détenus ? / What are the main reasons for complaints concerning the rights of detainees?

11. Qui est chargé, dans votre pays, des plaintes concernant les conditions de vie en prison ? Quelle est la procédure de traitement de ces plaintes ? / Who is responsible in your country, for complaints about living conditions in prison? What is the procedure for processing such complaints?

12. Dans votre pays, quelles sont les principaux obstacles à l'exécution des peines? / In your country, what are the main obstacles to the enforcement of sentences?

13. Selon vous, pour votre pays, quels sont les changements principaux nécessaires pour améliorer l'efficacité de la procédure d'exécution des peines? / According to you, what main changes are needed to improve the effectiveness of the enforcement of sentences in your country?

### **Belgium/ Belgique :**

#### *REMARQUE PRÉLIMINAIRE*

*En Belgique, l'exécution des décisions judiciaires n'est pas entre les mains du juge. Le rôle du juge est en effet de trancher les contestations portées devant lui. Dès que le juge, dans le cadre d'une contestation dont il a à juger, prend une décision définitive, celle-ci forme un titre exécutoire. Il appartiendra alors aux agents chargés de l'exécution, c'est-à-dire l'huissier de justice mandaté à cette fin par la partie qui a obtenu gain de cause et, dans certains cas, le notaire désigné par le juge, d'exécuter le titre exécutoire que constitue la décision judiciaire.*

*Pourtant, le juge ne reste pas absent du processus d'exécution. En effet, il interviendra chaque fois que les voies d'exécution donnent elles-mêmes lieu à des contestations qu'il incombera au juge de trancher au moyen d'un jugement. A ces occasions, le juge vérifiera la régularité de la procédure d'exécution. Dans certains cas également, notamment les saisies-exécutives immobilières, le juge désignera lui-même le notaire instrument devant procéder à la vente forcée de l'immeuble saisi aux fins d'exécution.*

*Pour le surplus il s'indique de renvoyer à ce qui est exposé ci-dessous.*

*C'est à la lumière de ces remarques que les réponses aux questions suivantes doivent être lues.*

1. L'autorité chargée de l'exécution est-elle spécifiée dans la loi (constitution, loi, etc.) ?

  

**Oui; il s'agit du juge des saisies.**

Non

2. Quelles sont les compétences du juge en matière d'exécution :

a. Il est chargé de l'exécution ?

  

Oui

**Non**

b. Autres compétences en matière d'exécution ?

  

**Oui**

Non

Si oui, veuillez préciser

Le juge des saisies est appelé à trancher les contestations et litiges relatifs à l'exécution. Ainsi, tout défendeur faisant l'objet d'une exécution forcée peut faire opposition auprès du juge des saisies s'il estime l'exécution contestable.

En cas de saisie-exécution immobilière, le juge désignera, à la demande du créancier, le notaire appelé à procéder à la vente publique ou de gré à gré et à la répartition du produit de la vente de l'immeuble. Il intervient également au niveau des saisies-arrêts conservatoires. Le juge des saisies veille au respect des dispositions en matière de saisies-arrêts conservatoires et de voies d'exécution. Il peut, d'office, se faire remettre un rapport sur l'état de la procédure d'exécution par les officiers instrumentant. S'il constate une négligence, il en informe le procureur du Roi en vue de mesures disciplinaires éventuelles.

Le juge interviendra, enfin, en cas de prétention de tiers dont les biens sont saisis en vue de l'exécution d'une décision à laquelle ils ne sont ni parties, ni intéressés (procédure en revendication).

3. Le juge chargé de l'exécution (s'il existe) est-il le même que celui qui a rendu la décision ?

- Oui  
 Non

4. Les parties doivent-elles tenter une nouvelle procédure pour que la décision soit exécutée ?

- Oui  
 Non

5. Cette procédure doit-elle aboutir par une nouvelle décision ?

- Oui,  
 Non

6. Le juge travaille-t-il avec d'autres personnes, acteurs dans la procédure d'exécution ?

- Oui  
Veuillez préciser quelles sont ces personnes  
 Non,

Dès lors que ses interventions sont limitées à trancher les contestations nées de l'exécution ou, dans certains cas, à désigner un acteur chargé de l'exécution (notaire); les acteurs de l'exécution (huissier de justice, notaire) agissent de manière autonome - éventuellement avec le concours de la police - mais leurs actes sont contrôlés par le juge quant à leur légalité lorsque celui-ci est saisi d'une contestation née de l'exécution ; la décision du juge s'imposera à ces différents acteurs, mais il n'y a pas de collaboration en tant que telle entre le juge **ceux-ci**.

7. Lorsqu'il travaille avec d'autres acteurs de la procédure d'exécution, quelles sont les tâches exactes du juge :

- a. Il engage la procédure ?  
 Oui  
 Non
- b.

***Il contrôle et surveille la procédure (délai par ex.) et le travail effectué par les autres acteurs.***

- Oui**  
 **Non**

c. Autres tâches ?

- Oui**  
 **Non**

Le cas échéant, veuillez préciser

8. Quelle est la formation de la personne chargée de l'exécution, si ce n'est pas un juge ?

***Il s'agit de personnes qui ont une formation juridique : huissiers de justice et notaires.***

9. Les parties ont-elles un recours si l'exécution n'est pas effectuée dans un délai raisonnable ?

- Oui**  
 **En règle non;**

Il faut savoir que le problème du délai raisonnable ne se pose pas réellement en matière d'exécution, celle-ci étant entre les mains des parties exécutantes et de leur mandataire qui ont intérêt à faire diligence; quant aux contestations portées devant le juge, elles sont examinées dans le cadre d'une procédure d'urgence, donc rapide. Toutefois, si la partie qui poursuit l'exécution traîne dans celle-ci, le débiteur pourra contester l'exécution devant le juge des saisies et invoquer des circonstances nouvelles devant le juge des saisies, telles que l'absence d'actualité du titre sur lequel se fonde l'exécution.

Si oui, quelles peuvent être les sanctions de ce recours ?

10. Quels sont les pouvoirs du juge pour accélérer l'exécution ?

***Dès lors que l'exécution est entre les mains du créancier exécutant, le juge n'intervient pas pour accélérer l'exécution.***

11. Quels sont les pouvoirs du juge pour forcer l'exécution ?

***Aucun. Il appartient au créancier de prendre l'initiative.***

12. Quels sont les pouvoirs du juge pour protéger les droits des parties et des tiers lors de la procédure d'exécution ?

*Voir les réponses aux questions ci-dessus.*

13. Dans votre pays, quels sont les principaux obstacles à l'exécution des décisions ?



*Dès lors qu'il appartient au créancier de prendre l'initiative de l'exécution, il n'existe aucun obstacle à l'exécution. Quant au débiteur, l'opposition qu'il peut faire à l'exécution auprès du juge des saisies assure l'équilibre entre les droits de l'exécutant et les siens. Toutefois, la pratique se fait parfois l'écho de certains retards dans l'exécution du fait des huissiers de justice.*

14. Selon vous, pour votre pays, quels sont les changements principaux nécessaires pour améliorer l'efficacité de la procédure d'exécution?

*Le système actuel donne globalement satisfaction. Il donne au créancier les moyens de poursuivre l'exécution du titre exécutoire que le juge du fond lui a octroyé et offre aux débiteurs les garanties de la sauvegarde de ses droits.*

15. La procédure d'exécution est-elle la même en matière civile et en matière administrative :

  

Oui

Non

Sinon, veuillez préciser les différences.

*IL faut savoir qu'en Belgique, les litiges administratifs qui mettent en cause des droits subjectifs sont de la compétence des cours et tribunaux de l'ordre judiciaire et sont assimilés à des affaires civiles.*

B) EN MATIERE PENALE

#### REMARQUE PRÉLIMINAIRE

*En Belgique, l'exécution des jugements en matière pénale n'est pas du ressort du juge. C'est au pouvoir exécutif, c.-à-d. au ministre de la Justice et à l'administration pénitentiaire qui dépend de lui, et au ministère public à exécuter ou faire exécuter les jugements. Le juge interviendra dans certaines circonstances lorsqu' en cours d'exécution, il s'agira d'aménager les modalités d'une peine privative de liberté décidée antérieurement par jugement ou d'exercer un recours contre certaines conditions de détention.*

16. L'autorité chargée de l'exécution des peines est-elle spécifiée dans la loi (constitution, loi, etc.) ?

Oui

Veuillez préciser:

*l'article 40 de la Constitution dispose que les arrêts et jugements sont exécutés au nom du Roi;*

*l'article 197 du Code d'instruction criminelle précise que le jugement sera exécuté à la requête du procureur du Roi et de la partie civile, chacun en ce qui le concerne; le recouvrement des amendes sera faite au nom du procureur du Roi par l'administration de l'enregistrement et des domaines (c.-à-d. par l'administration fiscale);*

*l'article 197bis du Code d'instruction criminelle dispose que le recouvrement des biens confisqués sera faite au nom du procureur du Roi par l'administration de l'enregistrement et des domaines;*

*L'article 21 de la loi du 9 avril 1930 sur la défense sociale dispose que le ministre de la Justice peut ordonner l'internement d'une personne qui exécute sa peine et dont il*

*apparaît que l'état de santé mentale constitue un danger pour la société; en vertu de l'article 25bis de la même loi, le ministre peut sous les mêmes conditions ordonner l'internement d'une personne mise à la disposition du gouvernement.*

Non

17. Quelles sont les compétences du juge en matière d'exécution des peines :

a. Il est chargé de l'exécution ?

Oui

Non

b. Autres compétences en matière d'exécution?

Oui

Non

Si oui veuillez préciser

*en cours d'exécution d'une peine privative de liberté, lorsque le condamné remplit les conditions pour obtenir une modalité alternative d'application de la peine (libération conditionnelle, libération conditionnelle en vue de l'éloignement du pays, surveillance électronique, détention limitée, congé pénitentiaire, permission de sortie), le Tribunal d'application des peines (TAP) peut ordonner une telle modalité; le tribunal de première instance en cas de recours contre la décision d'internement prise par le ministre de la Justice;*

*si le condamné se plaint de ses conditions de détention, il peut s'adresser au tribunal civil (référé) afin de réclamer que ses conditions soient conformes aux critères adoptés par la législation ou prévus par les conventions internationales auxquelles la Belgique a souscrit;*

*le commission de défense sociale, présidée par un juge, examine tous les six mois s'il peut être mis fin à l'internement d'une personne internée;*

*le juge d'instruction ordonne l'arrestation d'une personne faisant l'objet d'un mandat d'arrêt européen ou d'une demande d'extradition;*

*les juridictions d'instruction (chambre du conseil et chambre des mises en accusation) ordonnent l'exécution d'un mandat d'arrêt européen;*

*les juridictions d'instruction rendent un avis non contraignant sur une demande d'extradition, celle-ci étant décidée par le gouvernement.*

18. Le juge chargé de l'exécution (s'il existe) est-il le même que celui qui a rendu la décision ?

Oui

Non

19. Le juge travaille-t-il avec d'autres personnes, acteurs dans la procédure d'exécution des peines?

Oui

Veuillez préciser quelles sont ces personnes

*les assistants de probation lorsqu'une mesure probatoire a été ordonnée;*

*le directeur de la prison qui doit rendre au TAP un avis sur les modalités alternative d'exécution de la peine;*

*les assistants de justice lorsque le TAP a ordonné une modalité alternative d'exécution de la peine.*

Non

20. Lorsque le juge travaille avec d'autres acteurs de la procédure d'exécution, quelles sont les tâches exactes du juge ?

a. Il engage la procédure

Oui

Non

b. Il contrôle et surveille la procédure (délai par ex.) et le travail effectué par les autres acteurs

Oui

Non

c. Autres

Oui

Non

Le cas échéant, veuillez préciser

21. Quels sont les pouvoirs du juge pour protéger les droits des détenus et des tiers lors de la procédure de l'exécution ?

*Lorsque les conditions de détention ne sont pas conformes aux règles légales ou internationales, le condamné peut s'adresser au juge civil afin que celui-ci ordonne à l'Etat (c.-à-d au pouvoir exécutif) de respecter ces règles.*

*Le TAP ne décide de modalités alternatives d'exécution de la peine d'emprisonnement qu'après un débat contradictoire entre le condamné, le ministère public. Les victimes sont également entendues.*

*Lorsque le ministre de la justice décide l'internement d'un condamné d'une personne condamnée récidiviste, délinquant d'habitude ou auteur de certains délits sexuels, dont un jugement a décidé la mise à la disposition du gouvernement, le condamné peut exercer un recours qui sera examiné par le tribunal de première instance.*

22. Quel est le rôle du juge dans les peines alternatives à l'emprisonnement ?

*Le juge qui connaît de l'action pénale peut condamner le prévenu à une peine avec sursis (probatoire ou non) ou à une peine de travail; le TAP peut transformer ce qui subsiste de peine d'emprisonnement effective en liberté conditionnelle, en détention limitée ou en surveillance électronique; il peut également accorder un congé pénitentiaire ou une permission de sortie.*

23. Quel est le rôle du juge dans l'application des peines (aménagement, libération conditionnelle, etc.) ?

*Le TAP peut, après que le condamné a purgé une partie de sa peine (un tiers de celle-ci, ou la moitié lorsque le condamné est en état de récidive), décider soit la libération conditionnelle, libération conditionnelle en vue de l'éloignement du pays, soit la détention limitée, soit la surveillance électronique, soit le congé pénitentiaire, soit la permission de sortie. Ces modalités ne sont accordées que s'il n'y a pas de contre-indications qui portent sur l'absence de perspectives de réinsertion sociale, le risque de récidive, le risque d'importuner les victimes et l'attitude à l'égard des victimes (efforts en vue d'indemniser les victimes p.e.).*

24. Quel est le rôle du juge pour permettre le paiement effectif des amendes ?

*Aucun. Son seul rôle est de le condamner au paiement de celle-ci.*

25. Quelles sont les motifs principaux des plaintes concernant les droits des détenus ?

*Les conditions carcérales en raison, surtout, de la surpopulation des prisons et de certaines conditions de sécurité pour les condamnés de grande criminalité (grand banditisme, terrorisme).*

26. Qui est chargé, dans votre pays, des plaintes concernant les conditions de vie en prison ? Quelle est la procédure de traitement de ces plaintes ?

*Lorsqu'un condamné se plaint des conditions de vie en prison, il peut s'adresser au tribunal civil qui examine si ces conditions sont conformes aux exigences légales ou conventionnelles en la matière. Une telle affaire peut être examinée en référé (procédure d'urgence).*

*Lorsque des abus sont constatés dans la manière dont les détenus sont traités, ces abus peuvent constituer des infractions pénales et peuvent faire l'objet d'une information pénale par le procureur du Roi voire même d'une instruction pénale par le juge d'instruction.*

27. Dans votre pays, quelles sont les principaux obstacles à l'exécution des peines?

*la capacité pénitentiaire insuffisante: les prisons sont surpeuplées, ce qui a pour effet que les peines d'emprisonnement légères ne sont pas exécutées; cette surpopulation a également des effets néfastes sur la qualité des conditions de détention; une administration fiscale insuffisamment outillée pour percevoir les amendes pénales.*

28. Selon vous, pour votre pays, quels sont les changements principaux nécessaires pour améliorer l'efficacité de la procédure d'exécution des peines?

*une meilleure capacité pénitentiaire;  
un personnel pénitentiaire mieux qualifié et mieux encadré;  
une administration fiscale mieux outillée et plus performante pour percevoir avec efficacité et rapidité les amendes pénales.*

### **Chypre/Cyprus :**

A) IN CIVIL AND ADMINISTRATIVE MATTERS
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14. Is the authority responsible for the enforcement specified in the law or in the constitution?

Yes

Please specify: There is a general reference in the Constitution in Article 159.6 on enforcement and there are a number of laws and procedural rules that deal specifically with the mechanisms and details of the enforcement process.

No

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

➤ He is responsible for the enforcement

Yes

xNo

➤ He has others competences as regards enforcement

xYes

No

If yes, please specify: A judge may deal with any application by any party that relates to the enforcement of a judgment or order of the court and may give any directions necessary for the due execution of the order as the interest of the case may require.

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

Yes

xNo Not in the sense that requires the same physical person of the judge to deal with the procedure. Any judge of the same jurisdiction may deal with any such application.

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

xYes: The parties have to follow a certain relatively easy procedure to have the decision enforced.

No

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

Yes

Xno: Not necessarily. If during the enforcement process no problems are encountered then no application to the judge will be necessary.

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

Yes

Please specify which actors

xNo

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 N/A

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

Yes

No N/A

➤ Others competences?

Yes

No N/A

If yes, please specify

21. What is the training of the person responsible for the enforcement if it is not a judge? He is a judicial bailiff part of the permanent court staff specially appointed for the purpose of execution.

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

- Yes  
 xNo

If yes, what are the sanctions of this appeal?

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

He may give general directions if he is the administrative president but normally this falls within the function of the court registrar.

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

Only on application when a problem is encountered.

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

He may deal with any application and issue judgment or orders accordingly as the justice of the case may demand.

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

Few bailiffs having in mind the totality of the cases that need enforcement.

27. According to you, what main changes are needed to improve the effectiveness of the enforcement proceedings in your country? More personnel and simplification of procedure.

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

- xYes  
 No

If not, please clarify the differences.

## B) IN CRIMINAL MATTERS

29. Is the authority responsible for the enforcement of sentence specified in the law or in the constitution?

xYes Both the Constitution and specific laws deal with the enforcement of sentences.

Please specify

- No

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

➤ He is responsible for the enforcement?

- Yes  
 xNo

➤ He has others competences as regards enforcement?

- Yes  
 xNo

If yes, please specify

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

- Yes  
 No N/A

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

Yes

Please specify which actors

x no

33. 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 N/A

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

Yes

No N/A

➤ Others competences?

Yes

No N/A

If yes, please specify

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

The judge may at any stage of the whole process deal with any application by any party regarding illegal or unlawful detention or excess of police or administrative authority.

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

The judge is solely responsible at the time of reflection on the appropriate sentence to pass any sentence other than imprisonment, such as suspended sentence, fine, rehabilitation order, release on conditions etc.

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

If a sentence is not respected or followed or misapplied to the detriment of the person involved the judge may give appropriate directions or order his release.

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

N/A

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

Usually length of detention.

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

A number of independent officers such as the ombudsman and human rights officials have a say on the matter. Primarily the matter rests with the Ministry of Justice.

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

Only on payment of fines more personnel is needed,

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

More personnel as above,

## **Royaume Uni/United Kingdom :**

### Civil/Administrative Judgments

1. Courts in the United Kingdom have very extensive powers to make orders designed to assist and lead to the enforcement of civil judgments. However, they act not on their own initiative, but on application made by the beneficiary of the judgment. The courts' powers include, under Part V of the County Court Act 1984, the power to authorise execution (by a bailiff) against goods, the appointment of a receiver or manager and attachment of debts, powers to order a judgment debtor to attend for cross-examination, warrants of possession of premises, the power to make administration orders and the power to commit or fine for contempt of court (e.g. in case of deliberate breach of an injunction or other mandatory order). These and other powers also exist in the High Court under Civil Procedure Rules (CPR) 69 to 73. Magistrates Courts also have various enforcement powers. The Attachment of Earnings Act 1971 further enables specified courts to attach earnings to meet maintenance or judgment debts.
2.
  - a) Not directly, since he acts only on application.
  - b) Yes. The judge has extensive powers, on application by the beneficiary of the judgment, to make orders in aid of enforcement (as above).
3. Not necessarily or even usually.
4. If enforcement is necessary, yes. Some judgments (e.g. declaring the parties' rights or declining jurisdiction) do not require enforcement.
5. Yes, in the form of an order.
6. Yes, in the sense that he proceeds on the application of the judgment beneficiary (and on notice to the judgment debtor) and his orders may authorise the use of third parties, such as bailiffs or a receiver/manager.
7. See above.
8. Bailiffs and enforcement officers are certified and have undergone some training, although this is primarily run through the private sector. Others such as a receiver or manager will commonly have professional (e.g. accountancy) qualifications.
9. In the light of the above, this does not apply. It is up to the successful party to apply for the orders appropriate to achieve enforcement.
10. Again, it is up to the successful party to apply for the appropriate orders. The judge can of course then set a timetable for enforcement, or stay enforcement for a period (e.g. in appropriate cases, pending an appeal).
11. The court has no independent powers. It acts on the application of a successful party.



12. Orders will not normally be given which affect non-parties. Where (exceptionally) such an order can be and is made (e.g. for costs against a third person who has instigated and supported litigation), it is enforceable as though it were against a party: CPR rule 70.4. A judge has a wide discretion in terms of the types of enforcement orders appropriate in the circumstances of the particular case.

13. The primary problems with enforcement are (a) lack of resources on the part of the judgment debtor and (b) inability to track down a judgment debtor who has provided false or no personal details. There might be scope for more extensive facilities enabling information to be obtained about earnings and so the attachment of earnings.

14. Parts 3 and 4 of the Tribunals, Courts and Enforcement Act 2007 were designed to regulate and improve the enforcement process but these have not been brought into force and there appears to be no current plans to do so.

15. Yes. Enforcement against administrative bodies is achieved through the same process. However, orders against administrative bodies are in the United Kingdom customarily obeyed without more – i.e. without any need for enforcement measures.

#### Criminal Judgments

16. Yes. The Prison Act 1952 specifies the responsibilities of the Prison Service in respect of custodial sentences. The magistrates court is, under Powers of Criminal Courts (Sentencing) Act 2000, s.140 and Magistrates Court Act 1980, ss.75-91, responsible for the enforcement of fines whether imposed in a magistrates court or in the Crown Court, as well as for the enforcement of compensation orders, and other sums adjudged to be paid by a conviction or order. Magistrates courts also act as supervising authority for community orders. Community orders include a community punishment order, community rehabilitation orders, orders combining both these features, curfew orders, drug treatment and testing orders, and exclusion orders. The actual operation of these orders is undertaken by others, such as probation officers from the National Probation Service.

17. a) See above.

b) Yes. He is able to make further orders upon request to aid enforcement of non-penal sanctions.

18. No, not usually.

1. Yes. Custodial sentences will be managed by HM Prison Service; fines and other monetary sentences will be enforced by bailiffs or enforcement officers; probationary sentences will be managed by the National Probation Service; absconding offenders will be notified to the police.

19. a) and (b) No. The judicial role is normally restricted the handing down of sentence, and so only reactivates if an issue is referred back to the court. However, since the Criminal Justice Act 2003, s.178 a limited number of courts have on a pilot basis acquired a more extensive supervisory role. See Annex A for s.178 and for the description of the manner in which one such court (the Liverpool Justice Centre) now operates.

(c) Yes. He has the power to make further orders to ensure enforcement.

20. The judge is always required to have regard to rights of the defendant under the ECHR, as well as any other statutory provisions and the common law, which provide a number of possible remedies for prisoners. Third parties affected by the order will have their circumstances taken into account in the exercise of the sentencing discretion. Victims of crime are entitled to make statements to the court after conviction to state the effect that the crime has had upon them. Compensation orders may in clear cases be made by criminal courts in their favour (without prejudice to their rights to invoke the civil courts). Otherwise they are not involved.

21. Any sentencing exercise requires the judge to consider what sort of sentence (if any) is appropriate. The range is from absolute discharge to fine or some form of community service, to a suspended or immediate term of imprisonment to, last of all, life imprisonment. (Life imprisonment does not normally mean that a prisoner will actually remain in prison for the rest of his or her life – a tariff period will normally be set, according to the circumstances, after which period the prisoner is eligible to be considered for parole). A prison sentence should always be regarded as a last resort, to be ordered only where necessary.

22. None. Prison arrangements are organised by HM Prison Service and the Ministry of Justice. Release arrangements are organised by the Parole Board. The involvement of the judge usually ends with the determination of the sentence and its minimum term. Some experiments are being conducted with courts where the judges do have a continuing role in the supervision of sentences: see Annex A.

23. The court may make arrangements as to the amount to be paid and the time over which payment is to be made. If the offender does not meet the payment schedule ordered he may, if shown to have had the means to pay, face a custodial sentence upon application by the prosecuting authorities. Alternative non-custodial sentences may include: community sentences, fines, compensation orders, discharges, mental health orders and a number of ancillary orders.

24. According to figures released by the Prisons and Probation Ombudsman 4,288 complaints were received in 2008-09. The leading issues for complaint concerned general conditions in custody, complaints about treatment of property (including cash) and general complaints about the probation service.

25. Prisoners can complain to the Prisons and Probation Ombudsman. Any breach of ECHR rights can be addressed through an application for judicial review to the courts.

26. The prison population has substantially increased in recent years, placing pressure on conditions in prisons and on the sentencing decisions of courts. Judicial guidance has been provided as to the relevance of prison places in making sentencing decisions. Over-crowding in prisons is generally thought to have been detrimental to the use of prisons as means to rehabilitate and has also led to early release of some prisoners being ordered in order to ease pressure.

27. (a) A better combination of (i) an adequate number of properly resourced prison places, (ii) a greater legislative, political and public willingness to contemplate alternatives to custodial sentences, and (iii) more funding for offender management and

rehabilitation programmes. Over the last twenty years, “law and order” and changes to the criminal justice system (particularly as regards sentencing) have become political themes, and the prison population has, in part probably due to this, steadily increased.

(b) The volume of outstanding fines appears steadily to have increased over the years. Fines not yet paid (admittedly including fines payable only by instalments) were recorded as at June 2008 as £500 million (against an annual total of new fines imposed of £270 million).

## **ANNEX A**

### ***Liverpool Community Justice Centre***

***<http://www.communityjustice.gov.uk/northliverpool/about.htm>***

#### ***“2. Tackling crime and its causes***

The Community Justice Centre combines the powers of a courtroom, run by Judge David Fletcher, with a range of community resources, available to all North Liverpool residents as well as victims, witnesses and offenders.

Our Centre deals with problems with anti-social behaviour and cases involving crimes committed in North Liverpool that affect quality of life for local people, such as vandalism and graffiti.

The Judge has a range of powers and can sentence offenders in a way that benefits the community, although he can also issue custodial sentences where appropriate and necessary.

He works with a team of experts drawn from a range of agencies, such as the Crown Prosecution Service, Probation Service and Youth Offending Team, together with specialists providing advice and support on drug and alcohol issues, housing and debt. He can also offer support to offenders from volunteer mentors, able to provide practical support in carrying out their sentence and achieving their longer term goals.

Together they aim to make sure offenders repay their debt to the local community, while at the same time addressing the underlying issues that contribute to their offending.

The team may make recommendations for extra support such as a drug treatment programme, or debt counselling, either through the centre or at other locations.

The Judge takes a personal interest in offenders and meets them for regular reviews while they are carrying out their sentence, where it involves a community penalty such as an unpaid work order.

This happens because of new powers given to the centre under Section 178 of the Criminal Justice Act 2003, enabling the Judge to review sentences by bringing offenders back to see him, to monitor their progress.”

**The Criminal Justice Act 2003 s. 178** provides:

“178 Power to provide for court review of community orders

(1) The Secretary of State may by order—

(a) enable or require a court making a community order to provide for the community order to be reviewed periodically by that or another court,

(b) enable a court to amend a community order so as to include or remove a provision for review by a court, and

(c) make provision as to the timing and conduct of reviews and as to the powers of the court on a review.”

**Malte/Malta :**

**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 – in the ordinary law

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

➤ He is responsible for the enforcement

No

➤ He has others competences as regards enforcement

Yes .

If yes, please specify

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

Not always the same judge. Moreover it also depends whether the case is appealed

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

Yes, if some time elapses from date of judgment.

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

No, just confirmation of the original decision.

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

Yes

Please specify which actors  
Marshalls, lawyers, or executive police.

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 and sees that the Court orders are obeyed.

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

Yes

Others competences?

No, those already mentioned.

If yes, please specify

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

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

Yes – parties can apply to the Court but not appeal.

If yes, what are the sanctions of this appeal?

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

Setting time frames

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

Contempt of Court and even arrest.

12. What are the powers of the judge to protect the rights of parties and of third parties in the enforcement? Same as 11

13. In your country, what are the main obstacles to the enforcement of decisions? Delaying tactics by lawyers, prolonged contestations, evading enforcement; corruption?

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

It all depends on all the actors involved as mentioned above.

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

Not applicable, as we do not have administrative courts, administrative matters are dealt with in the ordinary way as other cases.

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?

In the law

Please specify

No

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

➤ He is responsible for the enforcement?

No

➤ He has others competences as regards enforcement?

Yes

No

If yes, please specify – Judge gives orders in his judgment.

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

No- enforcement is through the executive police

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

Yes

Please specify which actors – executive police

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

and sees that the judgement is executed

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

Yes

➤ Others competences?

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? – Applications can be made to the Court.

22. What are the powers of the judge as regards the alternative solutions to prison ? Alternative solutions can be given in the judgment. But then it is the authorities who see which alternatives will apply depending on each case.

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

24. What are the powers of the judge as regards the effective payment of fines ? It depends on the Court administration

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

Usually it is the sentencing policy

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

27. In your country, what are the main obstacles to the enforcement of sentences? Depends on the kind of punishment meted out. Eg fines, probation, prison sentence, suspended sentence.

28. According to you, what main changes are needed to improve the effectiveness of the enforcement of sentences in your country? There has to be proper surveillance that judgments are served as they should and where they should; suspended sentences are observed; probation orders followed; fines collected.

### Lituanie/Lithuania :

#### A) IN CIVIL AND ADMINISTRATIVE MATTERS

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

- Yes – The Law on Bailiffs  
Please specify  
 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

If yes, please specify.

A judge:

- authorises the access to a residence for a bailiff, if the debtor does not allow to entry in good faith;
- allows the bailiff to exercise the enforcement proceedings in a territory served by another bailiff;
- approves the distribution act of recovered amounts for creditors
- investigates complaints concerning the activities of bailiffs
- etc.

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  
 No

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

- Yes  
Please specify which actors  
 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

➤ 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?

In Lithuania, the system of private Bailiff's operates. A training of bailiffs is organised by the Bailiffs Chamber of Lithuania and co-ordinated by the Ministry of Justice.

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?

Court may order a bailiff to carry out specific actions of enforcement if it is found that the enforcement is delayed. Also, a court can award damages if bailiff delays the procedure and thus causes damage.

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

A judge does not have a direct control of bailiff actions. However, if the debtor or creditor apply to the court that the bailiff delays the procedure, the court after investigation could give references to bailiff which action should be taken.

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

Only a creditor could start the procedure of enforcement. The exception concerns the decisions of the administrative court. In this case, the court may refer an adopted decision to a bailiff for the enforcement and the decision is enforced by the general procedure.



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

The court could refuse to approve the procedural documents written by bailiff in order to protect the rights of the parties in enforcement proceedings (eg. refuse to authorise the access to the debtor's home, refuse to approve the act of the realization of debtor's assets, refuse to approve the act of recovered amounts, punish or refuse to punish those who violates the enforcement procedure). Also, the court could investigate the complaints against bailiff's activities. In other cases, the court has no right to initiate proceedings to protect the rights of parties in the enforcement.

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

The Law on Bailiffs and the new Code of Civil Procedure *inter alia* regulating the enforcement of judgements entered into entry in 2003. Those acts constituted a legal foundation to create an institution system of private bailiffs. The present law lacks the proper regulation on the bailiffs' system, eg. the remuneration of services. The misleading court practice is formed, especially in cases when debtor's rights are defended. As a result, the recovery from the debtor's assets is aggravated.

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

- to simplify the procedure of enforcement of judicial decisions,
- to clarify the regulation of the responsibility of the parties for the passive participation in the enforcement procedure.

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

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 court forwards the enforcement of the judgement in criminal cases to the executive authorities (the police, bailiff etc).

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.

An executive institution can apply to the court with a suggestion to release the convict on probation, to reduce a time of sentence etc.

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

The activities of officials enforcing judgements could be challenged to the court, but such investigation could not be linked with a judge who imposed the punishment.

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

A court could award an alternative punishment to custodial sentences when it is allowed by the Criminal Code.

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

A court is not directly involved in the enforcement of judgements. However, the institution exercising the punishment could apply to the court with a proposal to release the convict from the punishment before the expiration of a term, to reduce the period of punishment etc. A court investigates such proposals.

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

If the bailiff could not recover a fine (imposed as a criminal punishment), he may apply to the court asking for a replacement of the fine to the arrest. A bailiff recovers fines

imposed by a court under the general procedure of judgements' enforcement, unless a fine is imposed as punishment for a criminal offence.

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

Unreasonable detention.

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

The Ministry of justice is responsible for the conditions of detainees. A person who believes what his rights are violated can appeal to a court. Such an appeal is examined by the general procedure.

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

Frequently there are poor living conditions of detainees in the prisons.

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

A court is not directly involved in the enforcement proceedings of sentences.

### **Croatie/Croatia :**

A) IN CIVIL AND ADMINISTRATIVE MATTERS
--

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

Yes

**Courts are responsible for enforcement and their position is regulated by Constitution and by Laws ( Law on Courts, Law on Enforcement, Law on Civil Procedure)**

Please specify

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

If yes, please specify

**Judge controls enforcement procedure from the beginning to its end. If some parts of procedure are entrusted to other persons ( i.e. notaries) they are controlled by a judge.**

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  
 No

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

Yes

Please specify which actors

**Notaries, court clerks, expert witness etc.**

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

**Judge delivers decision upon the motion from the party.**

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?

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?

**Any party can lodge an application to a higher court if his/hers rights to reach decision within reasonable time. Higher court if accepting this motion will order to a lower court in what time decision has to be delivered and decides what amount of money is fair as compensation to the aplicant.**

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

**If any party is misusing its rights judge can impose fines.**

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

**All powers of a judge are stipulated by Law on enforcement.**

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

**Please, see answers under 10. and 11.**

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

**Broad rights to appeal and to postpone the enforcement, lack of trained educated and motivated court clerks, huge number of new incoming cases generated mostly by serious economic situation etc.**

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

**in Croatia enforcement proceedings are under reform. Enforcement proceedings will generally be in charge of private enforcement agents. That could be good path in my opinion if courts will remain as authorities able to control the procedure.**

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. **There is a special law.**

Please specify

No

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

➤ He is responsible for the enforcement?

Yes. **One judge who deals only with enforcement of prison sentences.**

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. **He/she works with prison authorities and oversees their work.**

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. **When the judgment is final, the trial judge informs him about the sentence and then the enforcement is in his hands**

➤ 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. **He can postpone the execution of prison sentence for limited time.**

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

**Judge is deciding on appeal against prison warden decisions. Judge will at least once a year speak with prisoners, warned them about their rights and ways to ensure those rights.**

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

**He oversees community service as well and just recently together with probation office which is new in Croatia.**

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

**None**

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

**None, enforcement of fine payment is in jurisdiction of Ministry of Finance.**

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

**Lack of space in prisons.**

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

**Judge competent for the execution of prison sentence. Prisoner can file complaint to the judge directly.**

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

**There is no enough space in prisons.**

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

**Building one or more prison.**

**Bosnie/Bosnia :**

**A) IN CIVIL AND ADMINISTRATIVE MATTERS**

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

Yes.

Article 1 of the Law on Enforcement Procedure before the Court of BiH („Official Gazette of BiH“, number 18/03) stipulates that the Court of BiH shall enforce claims based on enforceable and authentic documents, namely, enforceable rulings of the Court of BiH and enforceable Court settlements, as well as on the rulings passed in the administrative procedure before the BiH institutions, if they order the payment of a monetary obligation, unless otherwise stipulated by the Law.

Relevant provisions of the entity regulations governing the enforcement procedure stipulate that municipal courts have jurisdiction to enforce rulings of entity courts and administrative authorities.

**2. What are responsibilities of the judge in enforcement procedure?**

The judge is responsible for enforcement in its entirety: the judge examines the motion for enforcement, renders a decision on enforcement, reaches a conclusion governing the procedure and removes any obstacles to the enforcement of the decision. The judge is responsible for hearings when there is a need to schedule a hearing for the settlement of any disputable issues, he gives instructions to the Court enforcement officer, he is in charge of the hearing for sale and payment of creditors, he takes care of the order of priority of payments and the right of third parties in case of a joint ownership over the object of enforcement, and he reaches a conclusion on the enforcement termination.

**3. Is the judge responsible for the enforcement the same judge who rendered the decision?**

No, the decision is rendered by an individual judge who has not been involved in rendering of the enforcement decision.

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

Yes.

**5. Shall this new application end with a court decision?**

Yes, after it has been verified that a court decision can be enforced, that is, that it is final and enforceable.

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

Yes, in the enforcement procedure before the Court of BiH this implies contacts with enforcement judges of the Entity Courts and contacts with the BiH Ministry of Justice for the purpose of having the enforcement decisions delivered to the Ministries of Justice of neighboring countries.

**7. When working with other actors in the enforcement procedure, what are the exact responsibilities of the judge?**

After the decision on enforcement has been rendered, it is delivered to the parties and the bank, provided that the enforcement involves a monetary claim, when the debtor has a bank account. The bank acts upon the decision and terminates the payments, while paying the creditor, but only upon receiving a notification by the Court that the decision is final.

As for the enforcement on debtor's movable and immovable property, considering that the BiH Court and BiH institution decisions are enforceable in the entire BiH, which requires a huge enforcement apparatus (a large number of enforcement officers, equipment), this enforcement is carried out by entity municipal courts.

The Court of BiH judge:

- Commences the proceedings by rendering a decision on enforcement, having the decision delivered to the parties and the court with jurisdiction, and/or the bank in case enforcement of current and other bank account enforcement,
- Follows and coordinates the course of the proceedings, makes intervention if necessary,
- Renders decisions on termination if the enforcement has been completed or if it has become impossible to carry out.

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

Only a judge can be in charge the enforcement.

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

No, but they can file an urging request for a judge to act (to check the reasons due to which the decision was not rendered and notify the party)

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

Only such requests urging his action.

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

At the entity level, judges manage the enforcement procedure in its entirety. They schedule hearings as required and prescribed, and the entire enforcement procedure is under the control of a judge seized of the case. Judge of the Court of BiH does not



have the authority to call the enforcement officer and give him/her instructions because the enforcement itself is carried out by the entity court judge.

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

All authorities are stipulated in the applicable law and they have been established to protect the rights of the parties to the proceedings and third parties. Thus, Article 71 of the Law on Enforcement Procedure before the Court of BiH stipulates that immediately after issuing a decision on enforcement, the Court shall *ex officio* order that a notice on enforcement be entered in the Land Register. This rule was established to the benefit of the third *bona fide* parties.

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

When it comes to physical persons those are: insolvency, that is, the non-existence of property which can be used to settle the claims, the fact that some of the debtors hold residence in a foreign country and the mutual enforcement of court decision is regulated by bilateral agreements only in criminal matters, implying arrests but not the payment of the costs of proceedings. Those costs sometimes amount to more than several thousands of KM, and the issue of payment of those costs remains disputable, that is, it depends, as a rule, on the will of a debtor to cover the costs.

As for the legal entities, the major problem is the change of the seat of legal entities, deregistration of companies and the tracing of legal successors.

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

As for the decisions rendered at the state level, the enforcement should fall under the jurisdiction of municipal courts, according to the seat/residence of a debtor. This is because both movable and immovable property of a debtor is located there.

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

Yes.

**B) IN CRIMINAL MATTERS**

**16. Is the authority responsible for the execution of the decisions specified in the law or in the Constitution?**

Yes

Please specify

No

*The Law of Bosnia and Herzegovina on the Execution of Criminal Sanctions, Detention and Other Measures* stipulates that the Ministry of Justice of Bosnia and Herzegovina and the Institute for Execution of Criminal Sanctions, Detention and Other Measures of Bosnia and Herzegovina are responsible for the execution of criminal sanctions, detention and other measures.

What are the competences of the judge in the execution of sentences:

➤ He is responsible for the execution?

Yes

No

➤ He has others competences as regards the execution?

Yes

No

If yes, please specify

If the sentence of imprisonment is imposed, the judge shall instigate proceedings by rendering a decision to commit the person to serve the sentence. The judge shall call the convicted person, serve him with the committal warrant and inform the person as to when he/she has to report for serving the prison sentence. At the same time, the judge shall inform the institution where the person will serve the sentence.

Under certain conditions stipulated by the law, the judge may issue a decision terminating the execution of the criminal sanction, that is, to replace it by a different criminal sanction.

**17. Is the judge responsible for the execution (if such a judge exists) the same judge who took the decision?**

Yes

No

The judge shall pronounce the criminal sanction and render a decision to instigate the proceedings of execution but shall not execute it himself/herself, nor shall he/she be responsible for the execution.

**18. Does this judge cooperate with others involved in the execution of sentences?**

Yes

Please specify the other persons involved

No

The authorities that are ex officio responsible for the execution of the criminal sanction shall inform the Court on the facts relevant to the execution. It depends on the type of the sanction imposed which authority is responsible for the execution: the Ministry of Justice, Social Welfare Centers...

**19. What are the exact competences of the judge when he works with others involved in the execution procedure:**

➤ He instigates the proceedings?

Yes

No

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

Yes

No

➤ Others competences?

Yes

No

If yes, please specify

**20. What are the powers of the judge to protect the rights of detainees and of third parties in the execution?**

The judge may not ex officio, of his/her own initiative, take actions to protect the rights of prisoners and of the third parties in the execution procedure.

**21. What are the powers of the judge as regards the alternatives to the prison sentence?**

When the convicted person fails to carry out or partially carries out the community work during a set deadline while out of custody, the Court shall render a decision on the execution of the prison sentence for a period proportionate to the remaining community work period.

Under the conditions stipulated by the law, the Court may impose a suspended sentence on the perpetrator of the criminal offense (determine the sentence but at the same time decide that it shall not be executed if the convict does not commit another criminal offense during the time determined by the Court). The Court may revoke the suspended sentence if the convict perpetrates another criminal offense during the probation period, or if established that the person had previously committed a criminal offense, or when the perpetrator does not comply with the terms of the suspended sentence as pronounced by the Court.

The Court may impose on the perpetrator of the criminal offense a suspended sentence including a protective surveillance, and order one of the obligations stipulated under the law as a part of the protective surveillance. If the convict fails to fulfill the obligations imposed upon him by the Court, the Court may issue a warning to the convict or replace previously imposed obligations with other obligations or extend the duration of the protective surveillance within the probation period, or reverse the suspended sentence.

The Law stipulates the conditions under which the Court may impose upon the perpetrator of the criminal offense one of the security measures prescribed by the law, as well as the conditions under which the Court may replace the imposed security measure with another criminal sanction.

**22. What are the responsibilities of the judge as regards the execution of sentences (arrangement of sentence, parole, etc.)?**

Under certain conditions stipulated under the law, after the convicted person has served a certain portion of his/her prison sentence, the Court may render a decision on parole, that is, exempt the convict from serving the remaining portion of the prison sentence.

Once the Court has meted out and imposed the sentence of imprisonment in the duration of no longer than six months, the Court may at the same time, with the consent of the accused, order the replacement of the imposed prison sentence with the community service performed while at liberty. If the convict, upon the expiry of a certain deadline, fails to complete or only partially completes his/her community service, the Court shall render a decision on the execution of the prison sentence in the duration

proportionate to the remaining period intended for the community service performed at liberty.

If the imposed fine cannot be entirely or partially collected within the deadline established in the Verdict, the fine shall not be collected coercively, but the Court will render a decision to replace the fine with a prison sentence.

**23. What are the authorities of the judge as regards the effective payment of fines?**

The Judge does not have any authority in that respect.

**24. What are the main reasons for complaints concerning the rights of prisoners?**

The Court is not responsible for the matters of the execution of prison sentences and it is not in possession of any official and complete information on reasons for prisoners' complaints.

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

The Law guarantees the right of the prisoner to speak in confidence and without the presence of the official Institution staff to the Ministry of Justice inspectors, the state Ombudsmen, relevant state and regional court, counsel of their choice, and to file requests, appeals and other submissions to the responsible authorities in order to protect their rights. In addition, the inspector working in the Ministry of Justice has an ex officio obligation to regularly monitor and report on the observance of the rights of prisoners.

The procedure of processing the complaints is regulated by internal documents of the Ministry of Justice and Ombudsmen.

**26. In your country, what are the main obstacles to the execution of sentences?**

The lack of adequate prison space.

**27. What main changes are needed to improve the effectiveness of the execution of sentences in your country?**

To increase the accommodation capacities of the institutions for the execution of criminal sanctions. To strengthen the staffing and financial capacities of the services in charge of the execution of alternative measures.

**Espagne/Spain :**

A) EN MATIERE CIVILE ET ADMINISTRATIVE
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1. L'autorité chargée de l'exécution est-elle spécifiée dans la loi (constitution, loi, etc.) ?

Oui  
 Non

L'exécution fait partie de la réponse au mandat constitutionnel prévu par la Constitution qui confère au juge à la fois la fonction de juger et aussi de faire exécuter les jugements. Articles 117 et 118 de la Constitution. En conséquence, les parties au procès ont l'obligation d'accomplir les jugements et les autres décisions judiciaires ainsi que d'apporter la collaboration requise à l'exécution de ce qui a été décidé et le juge a l'obligation de veiller à ce que ces conditions soient entièrement remplies.

2. Quelles sont les compétences du juge en matière d'exécution :

- a. Il est chargé de l'exécution ?

Oui. Mais on doit préciser que le rôle des Juges est limitée , a la surveillance de la procédure d'exécution et ne concerne pas a l'exécution elle-même . En fait les Juges ne sont pas les agents d'exécution , cet tâche est confiée , aux agents d'exécution , en somme : le greffier , et les fonctionnaires du tribunal , compétent pour l'exécution . C' est á dire en Espagne les agents d'exécution ne sont pas les huissiers de justice exerçant une profession libérale , ni attaches a une institution public . Sont des fonctionnaires publics au sens ci-dessus dit .

Non

- b. Autres compétences en matière d'exécution ?

Oui

Non

Si oui, veuillez préciser

3. Le juge chargé de l'exécution (s'il existe) est-il le même que celui qui a rendu la décision ?

Oui  
 Non

Selon le libellée de l' article 545 du code de procédure civile espagnole – « Ley de Enjuiciamiento Civil LEC » - c'est le juge de première instance qui a prononcé le jugement , au premier degré , le compétent pour l'exécution ; ci-inclus le cas échéant que leur jugement a été frappe en appel ou en cassation , par un arrêt de la cour d'appel ou par la Cour de cassation . Et par conséquent , leur tribunal c'est le compétent , pour gérer les actes d'exécution .

Lorsque le titre d'exécution revêt un autre caractère, il existe des normes d'attribution de compétence spéciales, mais qui ont généralement trait à la compétence du juge correspondant au domicile du défendeur.

4. Les parties doivent-elles tenter une nouvelle procédure pour que la décision soit exécutée ?

Oui  
 Non

L'action exécutive devra se fonder sur un titre assorti d'exécution.

Seuls sont assortis d'exécution les titres suivants:

1. Le jugement de condamnation ferme. En tout cas il' existe la possibilité d'engager l'exécution provisoire. Dans cet cas, on exécute un jugement même s'il n'est pas encore ferme pour éviter que le créancier puisse voir son droit non satisfait à cause de la lenteur de la procédure (articles 524-537 LEC - code de procédure civile espagnol).

2. Les résolutions et décisions arbitrales.
3. Les décisions judiciaires qui approuvent ou homologuent des transactions judiciaires et des accords obtenus dans le procès, accompagnées, si nécessaire pour attester de leur teneur concrète, des expéditions des pièces correspondantes.
4. Les actes authentiques, à condition qu'il s'agisse d'une première copie; s'il s'agit de la deuxième copie, elle devra être délivrée en vertu d'une ordonnance judiciaire et en citant la personne à l'encontre de laquelle elle s'adresse ou son auteur, ou elle devra être délivrée avec l'accord de toutes les parties.
5. Les polices de contrats commerciaux signées par les parties et le courtier de commerce membre de la chambre des courtiers de commerce qui les contrôle, à la condition d'être accompagnées d'un certificat du courtier en question prouvant la conformité de la police avec les inscriptions qui figurent dans son livre-registre et la date desdites inscriptions.
6. Les titres au porteur ou nominatifs, émis légitimement, qui représentent des obligations échues et les coupons, également échus, de ces titres, pour autant que lesdits coupons soient collationnés avec les titres et ces derniers, dans tous les cas, avec les livres à souche.

5. Cette procédure doit-elle aboutir par une nouvelle décision ?

- Oui, l'ordonnance d'exécution
- Non

6. Le juge travaille-t-il avec d'autres personnes, acteurs dans la procédure d'exécution ?

- Oui  
 Veuillez préciser quelles sont ces personnes

Le greffier, et les fonctionnaires du tribunal. Dans certains tribunaux existent « services communs » pour la signification des actes et la saisie. Il existe aussi dans certains lieux le « Service d'enquête patrimonial » (SAP), normalement en dépendance de l'office judiciaire du Tribunal « doyen ».

Comme on a dit (réponse question 2), en fait les Juges ne sont pas les agents d'exécution, cette tâche est confiée, aux agents d'exécution, en somme : le greffier, et les fonctionnaires du tribunal, compétent pour l'exécution. C'est à dire en Espagne les agents d'exécution ne sont pas les huissiers de justice exerçant une profession libérale, ni attachés à une institution publique. Sont des fonctionnaires publics au sens ci-dessus dit.

- Non

7. Lorsqu'il travaille avec d'autres acteurs de la procédure d'exécution, quelles sont les tâches exactes du juge :

a. Il engage la procédure ?

- Oui
- Non

b. Il contrôle et surveille la procédure (délai par ex.) et le travail effectué par les autres acteurs ?

- Oui
- Non

c. Autres tâches ?

- Oui

Non

Le cas échéant, veuillez préciser

Le débiteur peut s'opposer à l'exécution ordonnée contre lui, soit sur la base de vices de procédures, soit sur la base de motifs de fond se rapportant à la relation juridique considérée.

Les motifs de procédure (applicables à tous les titres d'exécution) sont les suivants:

- Le saisi n'a pas le caractère ou la représentation visée dans la demande.
- Défaut de capacité ou de représentation de l'exécutant ou absence de justification du caractère ou de la représentation présidant à la demande.
- Nullité radicale de l'ordonnance d'exécution parce que le jugement ou la sentence arbitrale ne comporte pas de prononcé de condamnation, parce que le document présenté ne remplit pas les conditions légales exigées pour être assorti d'exécution ou parce qu'une infraction a été commise, au moment d'ordonner d'exécution, aux normes qui réglementent l'action à suivre prévue pour ordonner une exécution.
- Si le titre d'exécution est une sentence arbitrale qui n'a pas été enregistrée devant notaire, le défaut d'authenticité de ce titre.

Au contraire et conjointement avec les motifs qui précèdent, le débiteur peut invoquer des motifs d'opposition à l'exécution dérivés de la relation juridique sous-jacente (matériels). Eu égard au fait que, s'agissant de jugements, il y a eu un procès antérieur ayant offert toutes possibilités de débat, les possibilités d'opposition sont moindres si le titre d'exécution est un jugement.

Ainsi, si le titre d'exécution est un jugement ou une décision judiciaire ou arbitrale de condamnation ou si la transaction ou l'accord obtenu en cours de procès sont approuvés, le saisi peut s'opposer par écrit à l'exécution et ce, dans les dix jours suivant la notification de l'arrêt ordonnant ladite exécution, en alléguant:

- Le paiement ou l'accomplissement des points ordonnés dans le jugement, ce dont il devra apporter la preuve documentaire.
- La caducité de l'action exécutive.
- Les accords et transactions convenus pour éviter l'exécution, pour autant que ces accords et ces transactions figurent dans un document authentique.

Dans ces cas-là, l'opposition formulée ne suspend pas le cours de l'opposition.

Mais si le titre d'exécution est autre que les titres susmentionnés, les motifs d'opposition sont plus nombreux et incluent:

- Paiement, qui peut être justifié par un document.
- Compensation de créance liquide qui résulte d'un document ayant force exécutive.
- Ultra-petita ou excès dans le calcul en numéraire des dettes en espèces.
- Prescription et caducité.
- Remise et atermolement ou promesse de non-réclamation, avec preuve documentaire.
- Transaction, pour autant qu'elle fasse l'objet d'un acte authentique.

En tout cas, une opposition est formulée, le Juge doit prononcer après le contradictoire, un arrêt sur le bien fondée de l'opposition. Contre cet décision rendue au première degré, on peut faire appel par voie de recours, devant une juridiction du degré supérieur, sans effet suspensive.

8. Quelle est la formation de la personne chargée de l'exécution, si ce n'est pas un juge ?



En respectant les rôles respectives , et en tout cas sous la direction du Juge :

- Le greffier doit être titulaire d'une maîtrise en droit , et avoir surpassée un concours .
- Les fonctionnaires du tribunal , doivent avoir surpassé le concours correspondant a leur fonction ( gestion procédurale , démarches de procédure , et aide juridictionnelle ) .

9. Les parties ont-elles un recours si l'exécution n'est pas effectuée dans un délai raisonnable ?

Oui  
 Non

Si oui, quelles peuvent être les sanctions de ce recours ?

Comme on a dit ci-dessus , l' appel par voie de recours contre un arrêt sur le bien fondée de l'opposition , devant une juridiction du degré supérieur , ne produit pas effet suspensif . Et le débiteur doit payer une taux d'intérêt majoré , (article 576 LEC - code de procédure civile espagnol ) .

D'autre côté , lorsque des manquements attribués aux agents d'exécution sont constatés ( surtout lenteur dans l'exécution ) , les autorités juridictionnels de contrôle , peuvent engager des procédures disciplinaires et infliger des sanctions .

Il existe pour les justiciables la possibilité de se plaindre , devant les services d'attention au public des tribunaux d'une durée excessive dans l'exécution . Le Tribunal ou le Conseil de la Justice peut engager un enquête administratif sur cet plaint .

10. Quels sont les pouvoirs du juge pour accélérer l'exécution ?

Le Juge peut imposer , après le contradictoire une amende (sanction pécuniaire ) mise a la charge du débiteur , qui ne porte pas la collaboration ordonnée pour la saisie de leurs biens . Voire un délit de désobéissance au cas où le débiteur ne répondra pas à la réquisition (article 589 LEC - code de procédure civile espagnol) .

Au cas où la partie qui demande l'exécution ne connaîtrait pas les biens dont dispose le débiteur, il peut demander au tribunal de procéder à des mesures de détermination qui se feront par accès à la base de données des divers organismes officiels. Certaines de ces bases de données sont directement accessibles depuis le tribunal, dans le respect des protections des données obligatoires.

Comme on a dit ci-dessus ( réponse question 6 ) , Il existe aussi dans certains juridictions , le « Service d'enquête patrimonial » ( SAP ) , normalement en dépendance du l'office judiciaire du Tribunal « doyen » .

Pour garantir l'effectivité de l'exécution, la loi prévoit certaines mesures selon le type de bien:

- Dans le cas de biens immeubles ou d'autres biens susceptibles d'être inscrits au registre foncière , le tribunal peut ordonner, à la demande de l'exécutant, l'annotation préventive de saisie auprès du registre public correspondant (en général le registre de la propriété relatif aux immeubles).
- Dans le reste des cas, il peut décider les mesures suivantes:
  - Numéraire: consignation; comptes courants: ordre de rétention adressé à l'établissement bancaire; salaires: ordre de rétention au payeur.
  - Intérêts, revenus et fruits: rétention auprès du payeur, mise sous administration judiciaire ou sous dépôt judiciaire.
  - Valeurs et instruments financiers: rétention d'intérêts à la source, notification à l'organe directeur de la Bourse ou du marché secondaire



(s'il s'agit de valeurs cotées sur un marché public) et notification à la société.

- Autres biens meubles: mise sous dépôt.

Par ailleurs et en vue de la garantie de l'exécution, il existe un devoir de collaboration aux actions d'exécution qui touche toutes les personnes et tous les établissements publics et privés (en les avertissant qu'ils peuvent encourir une amende, voire un délit de désobéissance au cas où ils ne répondraient pas à la réquisition, selon l'article 591 LEC - code de procédure civile espagnol). Cela implique qu'ils doivent fournir l'information qui leur serait demandée, qu'ils doivent adopter les mesures de garantie qui leur seraient indiquées avec obligation de remettre au tribunal tous les documents et les données qu'ils auraient en leur possession, sans autres limitations que celles qui leur sont imposées par le respect des droits fondamentaux ou les limites qui, dans certains cas précis, sont expressément imposées par les lois.

11. Quels sont les pouvoirs du juge pour forcer l'exécution ?

Voir ci-dessus réponse question précédent 10 .

12. Quels sont les pouvoirs du juge pour protéger les droits des parties et des tiers lors de la procédure d'exécution ?

C'est nécessaire, pour demander l'exécution, d'avoir recours à un avocat et à un avoué, sauf pour l'exécution de jugements de condamnation inférieure à 900 euros. Au cas échéant d'opposition à l'exécution, le défendeur, doit être assisté aux mêmes conditions par un avocat et à un avoué (au droit procédurale espagnole, cet office privé collaborateur de la Justice, on appelle « Procurador », exercent une profession juridique libérale).

En tout cas, si le droit à la justice gratuite - aide juridictionnelle - est reconnu, cela est également valable pour la phase d'exécution.

Quand on produit la saisie des biens des personnes qui n'ont été ni parties, ni représentées, ni attributaires du crédit comme débiteurs, on ouvre pour ceux une voie de recours extraordinaire au procès d'exécution, qu'on appelle « tercería de dominio » ( tierce opposition, articles 593 à 604 LEC - code de procédure civile espagnol )

13. Dans votre pays, quels sont les principaux obstacles à l'exécution des décisions?

- L'excessive caractère bureaucrate du procédure d'exécution .
- Les grands difficultés pour l'effectivité de la voie d'exécution forcée, par laquelle un créancier fait mettre sous main de justice les biens de son débiteur, en vue de les faire vendre aux enchères publiques et de se payer sur le prix. C'est-à-dire pour la saisie .
- Le défaut performance des moyens qu'on peut mettre en ouvre pour la découverte sur les biens du débiteur, et la concrétion de leur solvabilité .

14. Selon vous, pour votre pays, quels sont les changements principaux nécessaires pour améliorer l'efficacité de la procédure d'exécution? .

- Mesures pour améliorer l'équilibre entre les droits du créancier et du débiteur .
- Simplification des procédures d'exécution; ci inclus la simplification du procédure de saisie, sans diminution des garanties du justiciable

- Instauration de procédures d'exécution simplifiées pour créances de faible montant .
- Modernisation de la procédure d'exécution a fin d'augmenter son efficacité , avec recours aux moyens et outils du « e-Justice » .

15. La procédure d'exécution est-elle la même en matière civile et en matière administrative :

Oui ; mais ne peuvent en aucun cas être saisis , les biens et droits du trésor public . On prévoit des mesures alternatives , pour l'exécution des décisions condamnatoires vers l' administration public . Et existe un procédure spécifique pour l'exécution des décisions rendues contre les administrations publiques ( articles 103 a 113 Loi 29/1998 , du 13 juillet , dit de la « Jurisdicción Contencioso – Administrativa » )

Non

Sinon, veuillez préciser les différences.

B) EN MATIERE PENALE
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16. L'autorité chargée de l'exécution des peines est-elle spécifiée dans la loi (constitution, loi, etc.) ?

Oui

Veuillez préciser 'autorité en charge de l'exécution des peines est le juge.

Selon la Constitution Espagnole la fonction juridictionnelle attribuée au juges consiste à « juger et faire exécuter que qui a été jugé » (article 117.3).

Non

17. Quelles sont les compétences du juge en matière d'exécution des peines :

a. Il est chargé de l'exécution ?

Oui

Non

b. Autres compétences en matière d'exécution?

Oui

Non

Si oui veuillez préciser

Dans certaines grandes villes on a crée des services communs pour l'exécution des peines de plusieurs tribunaux. Ces services sont sous la responsabilité d'un juge qu'on appelle « juge d'exécution des peines ».

18. Le juge chargé de l'exécution (s'il existe) est-il le même que celui qui a rendu la décision ?

Oui

En principe oui. Mais quand il s'agit une peine d'emprisonnement, l'exécution matérielle correspond, bien sûr, à l'administration pénitentiaire, toujours avec la surveillance du « juge de surveillance pénitentiaire » et le control, du tribunal qui a accordé la peine.

Non

19. Le juge travaille-t-il avec d'autres personnes, acteurs dans la procédure d'exécution des peines?

Oui

Il y a un certain nombre de fonctionnaires dans le tribunal. Mais le juge travaille sur la base des dossiers des « équipes d'observation » existant dans les prisons. Ces équipes sont multidisciplinaires, composées, entre d'autres professionnels, par psychologues et travailleurs sociaux.

Veillez préciser quelles sont ces personnes

Non

20. Lorsque le juge travaille avec d'autres acteurs de la procédure d'exécution, quelles sont les tâches exactes du juge ?

a. Il engage la procédure

Oui

Non

C'est le condamné qui peut engager la procédure.

La direction de la prison peut soumettre à la révision du juge qui a rendu la décision les calculs de la durée de la peine.

b. Il contrôle et surveille la procédure (délai par ex.) et le travail effectué par les autres acteurs

Oui

Non

c. Autres

Oui

Non

Le cas échéant, veuillez préciser

La fonction du juge de surveillance pénitentiaire c'est, justement, de surveiller l'activité de l'administration pénitentiaire.

21. Quels sont les pouvoirs du juge pour protéger les droits des détenus et des tiers lors de la procédure de l'exécution ?

Ses pouvoirs consistent à faire respecter la loi, spécialement la « loi de surveillance pénitentiaire » qui établit les droits et les devoirs des emprisonnés, les bénéfices qu'ils peuvent avoir et aussi les sanctions.

22. Quel est le rôle du juge dans les peines alternatives à l'emprisonnement ?

Dans certaines conditions il peut accorder la substitution de la peine d'emprisonnement par une peine alternative et vice versa.

23. Quel est le rôle du juge dans l'application des peines (aménagement, libération conditionnelle, etc.) ?

Surveiller le déroulement de la peine. La libération conditionnelle est proposée par l'établissement pénitentiaire et accordée par le juge.

24. Quel est le rôle du juge pour permettre le paiement effectif des amendes ?

Il accorde des saisines-arrêts et, le cas échéant, les enchères des biens du condamné s'il n'est pas insolvable.

25. Quelles sont les motifs principaux des plaintes concernant les droits des détenus ?

- La dénegation des bénéfices pénitentiaires.
- Les sanctions
- Le mauvais état des prisons

26. Qui est chargé, dans votre pays, des plaintes concernant les conditions de vie en prison ? Quelle est la procédure de traitement de ces plaintes ?

- L'administration pénitentiaire.
- Le juge de surveillance pénitentiaire.

Il y a une procédure spécifique devant le juge de surveillance pénitentiaire qui n'est pas formaliste. Il n'a pas besoin d'avocat. La décision peut être frappée d'appel.

27. Dans votre pays, quelles sont les principaux obstacles à l'exécution des peines?

Les moyens pour les peines alternatives ne sont pas encore suffisants. Leur application exige mettre en place mesures organisatrices et la coordination avec d'autres institutions et autorités, un travail « en réseau » pour lequel le juge n'est pas toujours pré.

Les prisons sont encombrées.

28. Selon vous, pour votre pays, quels sont les changements principaux nécessaires pour améliorer l'efficacité de la procédure d'exécution des peines?

- Plus de moyens pour l'administration pénitentiaire et les juges de surveillance pénitentiaire.
- Renforcement des peines alternatives
- Renforcement la formation des fonctionnaires des prisons
- Amélioration de la qualité de travail des « équipes d'observation » existant dans les prisons.
- Modernisation des prisons.
- Introduction d'une institution pareille à la « probation » qui permet la suspension de la procédure si l'accusé accomplit les conditions fixées par le juge.

### France :

A) EN MATIERE CIVILE ET ADMINISTRATIVE
--

1. L'autorité chargée de l'exécution est-elle spécifiée dans la loi (constitution, loi, etc.) ?

- x  Oui  
 Non

2. Quelles sont les compétences du juge en matière d'exécution :

a. Il est chargé de l'exécution ?

- Oui  
x  Non

b. Autres compétences en matière d'exécution ?

x  Oui difficultés relatives aux titres exécutoires ; contestations qui s'élèvent à l'occasion de l'exécution forcée des jugements

- Non

Si oui, veuillez préciser

3. Le juge chargé de l'exécution (s'il existe) est-il le même que celui qui a rendu la décision ?

- Oui  
 Non

4. Les parties doivent-elles tenter une nouvelle procédure pour que la décision soit exécutée ?

- Oui  
 Non

En principe, il faut s'adresser à un huissier de justice ; cependant une procédure d'exécution forcée ( exemple : saisie immobilière ) doit être engagée en cas d'inefficacité de l'exécution demandée à l'huissier

5. Cette procédure doit-elle aboutir par une nouvelle décision ?

- Oui dans le cas précédent  
 Non

6. Le juge travaille-t-il avec d'autres personnes, acteurs dans la procédure d'exécution ?

- Oui par exemple : huissier de justice  
Veuillez préciser quelles sont ces personnes  
 Non

7. Lorsqu'il travaille avec d'autres acteurs de la procédure d'exécution, quelles sont les tâches exactes du juge :

c. Il engage la procédure ?

- Oui  
 Non

d. Il contrôle et surveille la procédure (délai par ex.) et le travail effectué par les autres acteurs ?

- Oui  
 Non

e. Autres tâches ?

- Oui  
 Non

Le cas échéant, veuillez préciser

Par exemple, indemnisation des procédures d'exécution se révélant injustifiées

8. Quelle est la formation de la personne chargée de l'exécution, si ce n'est pas un juge ? un huissier de justice est un officier ministériel

9. Les parties ont-elles un recours si l'exécution n'est pas effectuée dans un délai raisonnable ?

- Oui  
 Non

Si oui, quelles peuvent être les sanctions de ce recours ? indemnisation des préjudices subis

10. Quels sont les pouvoirs du juge pour accélérer l'exécution ?

11. Quels sont les pouvoirs du juge pour forcer l'exécution ? la prise de mesures conservatoires sur les biens du débiteur

12. Quels sont les pouvoirs du juge pour protéger les droits des parties et des tiers lors de la procédure d'exécution ? la possibilité de statuer selon une procédure contradictoire sur toutes les difficultés d'exécution.

13. Dans votre pays, quels sont les principaux obstacles à l'exécution des décisions? Manœuvres dilatoires ; insolvabilité ou organisation d'insolvabilité des débiteurs

14. Selon vous, pour votre pays, quels sont les changements principaux nécessaires pour améliorer l'efficacité de la procédure d'exécution?

Les juridictions devraient avoir un rôle direct à jouer pour l'exécution de leurs décisions, l'exécution étant alors dirigée par les juges eux-mêmes ou leurs délégués

15. La procédure d'exécution est-elle la même en matière civile et en matière administrative :

Oui

Non

Sinon, veuillez préciser les différences.

Principe traditionnel d'absence de voie d'exécution forcée contre l'administration.

Evolution législative depuis 1980 tendant à une meilleure prise en considération des intérêts des justiciables ( mandatement d'office des condamnations pécuniaires prononcées contre une personne morale de droit public ; pouvoir d'injonction reconnu au juge en certaines matières, par exemple la réintégration d'un agent public après annulation judiciaire de sa révocation ou délivrance d'un titre de séjour à un étranger etc...).

## B) EN MATIERE PENALE

16. L'autorité chargée de l'exécution des peines est-elle spécifiée dans la loi (constitution, loi, etc.) ?

Oui : code de procédure pénale

Veuillez préciser

Non

17. Quelles sont les compétences du juge en matière d'exécution des peines :

f. Il est chargé de l'exécution ?

Oui

Non

g. Autres compétences en matière d'exécution?

Oui aménagement des sanctions pénales

Non

Si oui veuillez préciser

18. Le juge chargé de l'exécution (s'il existe) est-il le même que celui qui a rendu la décision ?

Non

19. Le juge travaille-t-il avec d'autres personnes, acteurs dans la procédure d'exécution des peines?

Oui

Veillez préciser quelles sont ces personnes personnel de police, personnel pénitentiaire, ministère de l'économie et des finances

Non

20. Lorsque le juge travaille avec d'autres acteurs de la procédure d'exécution, quelles sont les tâches exactes du juge ?

h. Il engage la procédure

Oui

Non

i. Il contrôle et surveille la procédure (délai par ex.) et le travail effectué par les autres acteurs

Oui

Non

j. Autres

Oui

Non

Le cas échéant, veuillez préciser : difficultés relatives à l'exécution des peines, aménagement des peines ( semi-liberté, libération conditionnelle etc...)

21. Quels sont les pouvoirs du juge pour protéger les droits des détenus et des tiers lors de la procédure de l'exécution ? statuer selon une procédure contradictoire sur toutes les difficultés relatives à l'exécution des peines

22. Quel est le rôle du juge dans les peines alternatives à l'emprisonnement ? pouvoir de décision et/ou révocation de la mesure d'aménagement

23. Quel est le rôle du juge dans l'application des peines (aménagement, libération conditionnelle, etc.) ? les mêmes pouvoirs

24. Quel est le rôle du juge pour permettre le paiement effectif des amendes ? pouvoir de délivrer une contrainte judiciaire ( emprisonnement dont la durée, fixée par la loi, dépend du montant des amendes dues )

25. Quelles sont les motifs principaux des plaintes concernant les droits des détenus ? mauvais traitements

26. Qui est chargé, dans votre pays, des plaintes concernant les conditions de vie en prison ? Quelle est la procédure de traitement de ces plaintes ? Le procureur de la République peut, après enquête, exercer s'il y a infraction pénale des poursuites.

La victime peut aussi agir en responsabilité civile et indemnisation contre l'administration pénitentiaire

27. Dans votre pays, quelles sont les principaux obstacles à l'exécution des peines? Insuffisance des moyens humains et matériels

28. Selon vous, pour votre pays, quels sont les changements principaux nécessaires pour améliorer l'efficacité de la procédure d'exécution des peines?

Renforcer les moyens des autorités chargées de l'exécution ; développer les mesures alternatives à l'emprisonnement ; rénover profondément les établissements pénitentiaires

**Finland/Finlande :**

A) IN CIVIL AND ADMINISTRATIVE MATTERS

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

Yes, The National Administrative Office for Enforcement under the Enforcement Code

Please specify

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

If yes, please specify

There is a possibility to appeal to a Court of law against the Bailiff's decisions.

Depending on the nature of the case, also remedies of administrative nature can be possible.

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. After the Court's judgment an application for enforcement has to be made if the judgment is not voluntarily complied with.

No

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

Yes, given by the Bailiff.

No

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

Yes

Please specify which actors

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

➤ 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?

Senior District Bailiff: Higher Law Degree from a University (comprising of 300 study points), the same as a judge has to have completed

District Bailiff: Lower Law Degree (comprising of 180 study points) from a University or other suitable Degree or graduation from a high school (gymnasium).

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

Yes

No, but administrative complaints can be made. However, administrative authorities cannot order a schedule for the enforcement proceedings but only pay attention to the undue delay and its reasons.

If yes, what are the sanctions of this appeal?

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

See above

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

See above

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

If appeal is made, actions and decisions taken by the Bailiff can be reversed.

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

In general, the situation is considered to be quite satisfactory. A failure in the enforcement is usually caused by lack of means of the person in question, or that he cannot be caught by the authorities.

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

See above # 13

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

Yes

No

If not, please clarify the differences.

B) IN CRIMINAL MATTERS

15. Is the authority responsible for the enforcement of sentence specified in the law or in the constitution?

Yes, Criminal Sanctions Agency and Legal Register Centre under the Imprisonment Act and the Fines Collection Act

No

16. 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. In some cases, an appeal can be made to a Court of law. Also an administrative demand for rectification or other administrative legal remedies, including an appeal to an Administrative Court can be resorted to. See below under #21, 23, 24 and 26.

No

If yes, please specify

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

Yes

No

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

Yes

Please specify which actors

No

19. 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

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

In general terms, if an appeal is made or administrative legal remedies (like complaint to the Warden) are used, the situation can be corrected for the benefit of the detainee or the third party. Any detailed answer cannot be given as the cases can be of a very different nature.

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

If a person has been convicted to prison by a binding decision of a Court of law, no alternative solutions to prison can be later ordered by a judge.

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

If a person is convicted to prison, the enforcement may be suspended in the judgment within the limits given in the criminal law. Also some other modalities may be given in the judgment, such as solitary confinement. - If a prisoner's release from prison is postponed by the authorities, which is made possible in certain conditions determined in law, an appeal can be made to a Court of law.

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

If the person ordered to pay fines refuses to pay, he can be sentenced to prison by a Court of law on the initiative of the enforcement authorities.

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

In general, living conditions in prisons

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

Administrative complaints to higher officials, like the Warden or the Criminal Sanctions Agency. The Imprisonment Act includes rules concerning also appeal to Administrative court. The Parliamentary Ombudsman also deals with this kind of complaints and makes inspections in prisons on his own initiative.

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

In general, sentences can be enforced without any major obstacles.

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

28. See above # 27.

**Montenegro :**

A) IN CIVIL AND ADMINISTRATIVE MATTERS
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1. Is the authority responsible for the enforcement specified in the law or in the constitution?

Yes

Please specify

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

If yes, please specify

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

No

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

Yes

Please specify which actors

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

➤ 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?

**He must have a degree in laws.**

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?

**The sanctions can be: to charge a judge for his work to the president of the court.  
The president can take the judge's responsibility for his work.**

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

**The power of the judge is to do within a timeframe.**

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

**The same as 10.**

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

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

**There are a great number of law cases and it makes the enforcement slow.**

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

**In my opinion, we could change the enforcement proceedings in this way: to decrease the number of cases and to enable judges to work more effectively and professionally.**

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

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?

**The president of the court supervises and control the work of the prison.**

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

**The judge is independent in the enforcement of sentences regarding the alternative solutions to prison.**

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

**The same as 22.**

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

**He is not directly involved in that process and he doesn't control it.**

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

**The complaints are about the behaviour of the prison keepers.**

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

**The first step for processing such omplaints is the director of the prison appeals to the president of the court and they can complain to the Ministry of Justice.**

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

**There are no obstacles.**

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

The same as 14.

Danemark / Denmark

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 Administration of Justice Act Art. 478 – 600*

No

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

*The enforcement of judicial decisions relating to civil and administrative matters is carried out by the court (of first instance, the city court, with appeal to the Court of Appeal, eventually – upon leave – the Supreme Court). The enforcement is organised within a specialised department. It is, however, part of the court which means that the enforcement procedure is carried out under the responsibility of a judge (in practice another judge than the one having issued the judgment to be enforced). Most cases do not raise judicial questions in the enforcement procedure and are handled not by a judge but other court staff, cf. our reply to question 8. This staff is indeed responsible for the enforcement and may in keeping with the Administration of Justice Act upon delegation have other competences as well.*

He is responsible for the enforcement

Yes

i. No

He has others competences as regards enforcement

Yes

ii. 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

No *(see explanation above)*

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

Yes

*(a mere formality)*

No

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

Yes

No *(except for rare cases)*

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

Yes

Please specify which actors

- iii. No *The designated staff of the court handling the enforcement will cooperate with locksmiths, the police, banks etc. to handle many practical issues relating to the enforcement. When the enforcement has to do with family law e.g. custody of a child, cooperating partners are psychologist, social worker, the police etc. If problems of a judicial nature arises a judge or deputy judge will be in charge.*

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 *It is under all circumstances a judge or other court staff that is in charge of all aspects a matter for court*

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

*A vast majority of the enforcement cases is handled by administrative clerks as stipulated in art. 19 of The Judicial Procedural Law. These are experienced personnel that have been given specific training. A few more complex cases are handled by a deputy judge. The deputy judge has a law degree followed by internal training organised by the Danish Court Administration. Certain matters may be dealt with by a judge.*

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

Yes *The speed or lack of speed in the enforcement procedure<sup>4</sup> does not in itself give a right to appeal. If, however, a decision has been taken to stay enforcement, such a decision may be appealed.*

iv. No

If yes, what are the sanctions of this appeal?

*A decision to stay enforcement may be reversed.*

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

*The judge having made the decision has no power in the enforcement of the decision. As regards the powers of the judge responsible for the enforcement the rules on enforcement in the Administration of Justice Act are meant to be flexible so as to enable the responsible staff with the necessary remedies to secure a swift expedition.*

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

*(See the answer to question 10)*



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

*The judge having made the decision has, cf. the answer to question 10, no power regarding the enforcement of the decision. The powers of the judge and the staff responsible for the enforcement acts on basis of the decision to be enforced and the rules in the Administration of Justice Act, including rules on "beneficium competentiae" and the protection of third parties.*

13. In your country, what are the main obstacles to the enforcement of decisions? *Regrettably a backlog of enforcement cases exists. Lack of resource makes it difficult for the enforcement department in the court to catch up)*

14. According to you, what main changes are needed to improve the effectiveness of the enforcement proceedings in your country? *See the answer to question 13.*

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

Yes

No

If not, please clarify the differences.

B . IN CRIMINAL MATTERS
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16. Is the authority responsible for the enforcement of sentence specified in the law or in the constitution?

Yes

Please specify

*The Act on Criminal Sentence Enforcement places the responsibility on a specified authority, The Danish Prison and Probation Service. See their English language homepage at <http://www.kriminalforsorgen.dk/Default.aspx?ID=29>*

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

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

*n/a*

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

Yes

Please specify which actors

No n/a

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 n/a

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

Yes  
 No n/a

Others competences?

Yes  
 No n/a

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? n/a

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

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

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

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

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

*The Danish Prison and Probation Service is responsible. The procedure for processing complaints about living conditions in prison is not handled by the court. The law on enforcement of criminal sentences establishes in par. 112 nine instances in which the complaint may be brought before the court. This however is only after the case has been tried in The Department of Justice. These nine instances each represent well defined and limited situation and do not constitute a general access to bring a complaint over a living condition in prison before the court.*

27. In your country, what are the main obstacles to the enforcement of sentences?  
*No data readily available*

28. According to you, what main changes are needed to improve the effectiveness of the enforcement of sentences in your country?  
*Due to the limited role of the Judiciary in enforcement of a criminal sentence, we do not have a qualified answer to this question.*

**L'ex République Yugoslave de la Macédoine/"the Former Yugoslave Republic of Macedonia**

**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 Law on enforcement of the Republic of Macedonia (Official gazette 35/2005,50/2006/8/2008 and 83/09)

Please specify:

In the framework of the Strategy for the judicial reforms , passed by the Government of the Republic of Macedonia in 2005, the Ministry of justice has prepared several laws towards improving the efficiency and the independence of the judiciary in the process of the harmonization of the national law with the EU law. The previous law on the enforcement had a lot of procedural obstacles for speeding up the procedure, which situation was in behalf and was very often missused by the side of the debtor, who had a lot of opportunities for postponing of the procedure, thus prolonging the completing of the cases. The new Law on the enforcement passed in 2005, introduced a quite new system of the enforcing of the judgements. The new law intended to release the courts from the huge amount of the enforcement cases that overloaded the courts and the executive judges, also to enhance and to strenghten the position and the procedural gaurrantess of the creditors, and introduced the process of transferring the cases from the courts to the enforcement agents, as a new subjects responsible for the carrying out of the enforcement procedure with a very few competences for the Notaries and the courts in the civil matter. This transfer of the enforcement cases should be completed by 1 st. July 2010.

- a. The Law on the enforcement regulates the rules according to which enforcement agents act for forcible enforcement of a court decision for fulfillment of an obligation, unless otherwise stipulated by another law. The provisions of this Law shall also apply to forcible enforcement of a decision passed in an administrative procedure for the fulfillment of a monetary obligation, unless otherwise stipulated by another law. The provisions of this law are also applied to forced enforcement of the notary titles and other enforcement titles prescribed by law.

Enforcement titles are: an enforceable court decision and court settlement; an enforceable decision and settlement in an administrative procedure if designed for fulfillment of a monetary obligation, enforceable public notary title. Confirmation for enforceability shall be issued by the court, respectively the body that has decided on the request in the first instance. The unfounded confirmation for enforceability shall be rendered invalid with a decision by the same court, respectively the body, upon a request or ex-officio.

A court decision, that should be executed, shall be considered to be a judgment, decision, payment order or other order pronounced by the courts, the elected courts and the arbitrages, while a court settlement shall be considered to be the settlement concluded before these courts. A decision in an administrative procedure, as provided by this Law, shall be considered to be a decision or conclusion reached by a state administration body or a legal entity, passed in the course of the performance of their public authorizations, determined with law, whereas a settlement in an administrative procedure shall be considered to be a settlement concluded in accordance with the Law on General Administrative Procedure. A court decision is enforceable if it has become final and if the time limit for voluntary fulfillment of the debtor's obligation has expired. The time limit for voluntary fulfillment of the obligation shall start to run from the day the decision was delivered to the debtor. The enforcement shall also be carried out on the basis of a court decision that has not become final and a decision reached in an administrative procedure that has not become final, if it is provided by law that the appeal shall not postpone the enforcement of the decision.

- b. The **“enforcement agent”**, **“deputy enforcement agent”** and **“assistant enforcement agent”** denote persons who performs public authorizations determined with law, appointed according to the provisions of this Law, who decide directly on the actions to be taken, within their authorizations, in order to carry out the enforcement decision and take up the enforcement actions;. The enforcement title shall be the ground for enforcement, but also the decision which authorizes enforcement based on an authentic title issued by a Notary, the enforcement shall commence on the request of the creditor. The enforcement of the enforcement title can be carried out only by one enforcement agent. The enforcement of collecting fines and expenses pronounced in civil, misdemeanor, criminal and administrative procedures shall commence upon a request of the Public Attorney of the Republic of Macedonia. During the enforcement the provisions from the Law on Civil Procedure shall apply accordingly, unless otherwise provided by this or other law.
- c. An enforcement agent shall be a person who performs public authorizations, determined with law. and shall be appointed for the territory of a basic court, and shall enforce the enforcement titles of the court or the body which seat is located in territory for which he/she is appointed and during the performance of the enforcement shall take up actions on the overall territory of the Republic of Macedonia. The number of enforcement agents for the territory of the basic court shall be determined by the Minister of Justice, on the basis of previously obtained opinion from the president of the basic court on the number of final and enforceable decisions of the basic court, from the Government of the Republic of Macedonia data on the final administrative decisions pronounced for monetary claims that could be object for enforcement, as well as upon the opinion from the Chamber of Enforcement Agents. A person can be appointed as enforcement agent if he/she fulfils the following conditions: to have completed the Law School; to have at least five years of working experience in legal matters or three years in enforcement matters; to have passed the enforcement agent exam according to the programme proscribed by the Minister of Justice; to have

the equipment and the facilities required and appropriate for carrying out enforcement actions. The Minister of Justice shall appoint the enforcement agent on the basis of a competition that shall be announced by the Ministry of Justice in the "Official Gazette of the Republic of Macedonia" and in at least two daily newspapers. The Minister of Justice shall carry out the selection of candidates that satisfy the conditions for appointment. Against the decision of the Minister of Justice, the candidate who is not appointed for enforcement agent shall be entitled to file an appeal, within 15 days from the day of reception of the decision, to the Second Instance Commission of the Government of the Republic of Macedonia. The seat of the enforcement agent shall be located within the territory of the basic court for which he/she has been appointed. After the giving the solemn statement, the enforcement agent shall deposit his/her signature in the basic court for the territory of which he/she is appointed. The enforcement agent cannot perform public functions or managerial, supervisory and administrative functions in trade companies, state institutes, collection services, trade activities, intermediary, public notary or attorney activities.

- d. According to the Law, the enforcement agents and the deputy enforcement agents in the Republic of Macedonia shall be obligated to join into a Chamber of Enforcement Agents which is an autonomous organization with its own organs, finances and regulation, only the draft tariff and the programme for the continuous training for the final adoption have to be approved by the minister of justice.
- e. The enforcement agent can take up the following actions:- receives requests for enforcement; - performs service of court writ;- performs delivery of orders, minutes, conclusions and other documents that are related to his work;-conducts personal identification of the parties and the participants in the enforcement; - gathers data on the property condition of the debtor for the purpose of the enforcement;- passes orders and conclusions, creates minutes, requests and official notes in accordance with the provisions of this Law;- performs inventory, evaluation, seizure and sell of movable objects, rights and real estate, receives assets from the debtor, transfers into possession, allocates assets;- performs evictions and other enforcement actions necessary to carry out the enforcement, which are regulated with law and sub-regulations;- attaches the movable objects and real estate in order to disable their usage or consummation, by placing a seal of the enforcement agent. *In taking enforcement actions*, the enforcement agent prepares orders, conclusions, minutes, requests, official notes and other documents in form and content prescribed by the Minister of Justice. The documents which do not conform to the prescribed form and content will be considered invalid.
- f. The enforcement agent shall be held liable for all the damage that he/she caused towards third parties, by illegal performance of enforcement actions and by lack of fulfilment of the duties that he/she has as enforcement agent according to this Law. The illegal performance or the lack of performance of the duties specified with this Law shall be

determined with a decision from the president of the court, passed in accordance with the Law. The tariff for award of the enforcement agents shall be passed by the Chamber of Enforcement Agents, based on previous consent from the Minister of Justice.

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 – according to article 77 of the Law on enforcement the judge controls the irregularities of the enforcement

No

If yes, please specify

The competences for the control of the work of the enforcement agents and their executive activities are strictly divided between the Ministry of justice and the courts, and regulated in the Law on the enforcement.

The Ministry of Justice shall carry out a regular supervision of the work of enforcement agents and the Chamber, at least once a year. The Ministry of Justice can perform extraordinary supervision over the work of the enforcement agent at any time ex-officio or upon a request from the president of the court, in accordance with the regulations determined in the Law.

The enforcement agent shall be punished for negligence or disciplinary violation if while working, with his/her behaviour, violates the official duties while carrying out the enforcement actions, or if he/she performs official duties in an illegal manner, or is personally responsible for the delay of the actions, or with his/her behaviour in the private life damages the honour and the reputation of a person with public authorisations. The Disciplinary Committee of the Chamber shall decide in the first instance of the disciplinary procedure.

- a. The members of the Disciplinary Committee shall be elected by the Assembly of the Chamber and shall be composed of five members out of which: three judges from the territory of the basic court for which the enforcement agent is appointed and two members from the Chamber. The initiation of the disciplinary procedure can be made upon a request of the Chamber, the competent court for the territory for which the enforcement agent is appointed, the parties and the participants in the enforcement. Against the decision of the disciplinary committee it shall be allowed to file an appeal to the Minister of Justice. Against the decision of the Minister of Justice the enforcement agent shall be entitled to initiate an administrative dispute. For its decisions, the Disciplinary Committee shall inform the president of the basic court for the territory of which the enforcement agent is appointed and the Chamber.
- b. For the enforcement agent against whom a procedure for severe violation and extremely severe violation has been initiated, in order to protect the

dignity of the profession, upon the request from the Disciplinary Commission, respectively upon information from the court, the Minister of Justice can reach a decision that bans temporarily the performing of the profession up until the completion of the disciplinary procedure. For these decisions, the Disciplinary Committee shall inform the president of the basic court for the territory of which the enforcement agent is appointed and the Chamber.

- c. The Minister, will pass the decision for termination of the function, otherwise the function will stop according to the law. The decision for dismissal of the enforcement agent shall be brought by the Minister of Justice. The enforcement agent has to be given the opportunity to declare himself/herself regarding the reasons for dismissal before the decision is brought. The enforcement agent shall be allowed to file an appeal against the decision from the Minister of Justice, to the Second Instance Committee of the Government of the Republic of Macedonia.

#### **COOPERATION WITH OTHER BODIES WHEN CARRYING OUT THE EXECUTIVE ACTS**

- d. For the purpose of having unobstructed enforcement, the enforcement agent shall be entitled to have access to all information and data from the employer, banks, public books and registers for a specific debtor. The enforcement agent while carrying out the enforcement shall be entitled to ask for data from a state body. The state body shall be obligated to cooperate with the enforcement agent.
- e. With the permission of the president of the basic court in the territory of which the enforcement is being carried out, the enforcement can be carried out regardless the regular time.
- f. The enforcement agent shall be obligated, during the undertaken of enforcement activities in the debtor's apartment, while searching of the clothes that he/she is wearing or when undertaking any other enforcement actions, to treat the debtor and members of his/her household with due respect. For undertaking of the enforcement activities in the debtor's apartment, the enforcement agent shall provide a written approval from the president of the basic court on which territory the enforcement is carried out, where the day when the action will take place will not be stated. The enforcement actions in the debtor's apartment during which the debtor, his/her legal representative, authorized agent or an adult member of his/her household are not present, have to be attended by the police and two adult witnesses.

Enforcement occurring in premises of a legal entity shall be carried out when the enforcement agent, before undertaking the enforcement action, shall request from the person authorized to represent the legal entity to be present during the action himself or to appoint another person.

When the enforcement action is to be carried out in premises that are locked, and the debtor is not present or does not want to open the premises, the enforcement agent shall open the premises in the presence of the police and two adult witnesses.

If the representative of the legal entity refuses to abide by the request of the enforcement agent or if he/she is not in the premises while the enforcement agent is carrying out the enforcement action, the action shall be carried out in presence of the police and two adult witnesses.

If the enforcement agent during the actions cannot provide the presence of the two adult witnesses he/she may invite a public notary.

For the actions undertaken, the enforcement agent shall prepare separate minutes to be signed by the present witnesses and the police. If the actions of the enforcement agent were taken in the presence of a public notary, the public notary shall prepare the minutes in accordance with the Law on Performing Notary Activities.

The enforcement agent shall be authorized to remove any person that is obstructing the actual enforcement, and if the circumstances of the case so require, request police assistance.

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,  
See the reply (1)

The creditor shall submit the request for enforcement of the enforcement title to the enforcement agent in written form, together with the original of the enforcement title. The enforcement agent shall be obligated to act upon the request for enforcement. With the handing in of the enforcement title, whose enforcement is requested, the enforcement agent shall be authorized to choose assets for enforcement and objects belonging to the debtor for the complete enforcement of the enforcement title.

According to the newest amnedements of the Law, enacted in 2009, beside the enforcement agents, certain competences regarding the executice procedure, have the Notaries. The notaries are performing the activities related to passing a decision which authorizes enforcement. The proposal for passing a decision that authorizes enforcement based on authentic title is submitted by the creditor for a money claim which due date has been expired, which can be proved by an authentic title attached to the proposal in original or in a certified copy with a Notary. (for the electricity bills etc) In the decision which obliges the debtor to pay and which authorizes the enforcement based on an authentic title - decision for enforcement, the creditor, debtor, the type and scope of the claim and the time of fulfillment of the obligation should be noted. If the Notary assesses that the proposal for passing a decision that authorizes enforcement based on an authentic title is acceptable and has grounds, he/she will make a decision that authorizes enforcement based on an authentic title



and will submit it to the clients. If the notary assesses that the proposal for passing a decision that authorizes enforcement based on an authentic title is not acceptable or it does not have grounds, he/she will forward the case to the Authorized Court for further proceeding and deciding as if a complaint is being submitted.

The debtor can file an objection against the decision that authorizes enforcement based on an authentic title to the Notary who made the decision, within 8 days from the day the decision was received and will submit the allowed objection and the writs to the Basic Court, for conducting a proceeding regarding the objection and making a decision according to the provisions from the Law on Civil procedure for proceeding upon an objection for a payment order.

The Notary will certify the effectiveness and enforceability of the decision, if he/she does not receive an objection within 8 days, or he/she rejected the objection as untimely or not allowed and shall submit the decision that authorizes enforcement with a certification for effectiveness and enforceability to the Creditor.

- a. The creditor shall submit the request for enforcement of the enforcement title to the enforcement agent in written form, together with the original of the enforcement title.

The enforcement agent shall be obligated to act upon the request for enforcement. And shall be authorized to choose assets for enforcement and objects belonging to the debtor for the complete enforcement of the enforcement title.

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

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

The president of the court, upon a request from one of the parties or participants, can postpone the enforcement, not more than once, for certain period of time, but not longer than 90 days. The president of the court, according to the facts of the case, shall condition the postponement of the enforcement by depositing a guarantee in the amount of the value of the main claim.

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

See the answer of the question 1 (the conditions for appointing of the enforcement agents)

The continuous training of the agents is compulsory and not fulfilling of this obligation is a basis for a disciplinary responsibility. The chamber is organizing the training for each agent according to the Annual programme for training that has to be confirmed by the minister of justice. In parallel, the Chamber has started a cooperation with the Academy for training of judges and prosecutors in jointly organizing trainings for the civil, executive judges and the agents in order to find solutions for improving of the enforcement procedure (for the civil judges is important to issue clear, understandable and enforceable sentences)

The national and international cooperation of the enforcement agents has been organized through the Chamber that has Commissions for education of the agents, for international cooperation etc. This Chamber in Macedonia is very active, it became a member of the International union of the judicial enforcement agents, they have bilateral cooperation with the countries in the region and our agents are present on all the international events. They also have a very good cooperation with the international community in Macedonia, especially with the USAID (the project for implementation of the judicial reforms) which means providing assistance to the Chamber in facilitating the process of the complete transfer of the cases from the courts to the agents. They also cooperate with the CILC (Netherland) regarding the implementation of the project on the reform of the enforcement system in the Balkans that promotes the system of the private execution in the countries that have not been yet introduced such system.

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

Yes

The enforcement agent shall be punished for negligence or disciplinary violation if while working, with his/her behaviour, violates the official duties while carrying out the enforcement actions, or if he/she performs official duties in an illegal manner, or is personally responsible for the delay of the actions, or with his/her behaviour in the private life damages the honour and the reputation of a person with public authorisations.

The initiation of the disciplinary procedure can be made upon a request of the Chamber, the competent court for the territory for which the enforcement agent is appointed, the parties and the participants in the enforcement. Against the decision of the disciplinary committee it shall be allowed to file an appeal to the Minister of Justice. Against the decision of the Minister of Justice the enforcement agent shall be entitled to initiate an administrative dispute. Other issues related to the work of

the Disciplinary Committee shall be regulated with the Bylaws and the other acts of the Chamber.

No

If yes, what are the sanctions of this appeal?

disciplinary responsibility of the enforcement agent

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

According to the Law on enforcement of the Republic of Macedonia the judge do not possess the power to affect the speed of enforcement which is carried out by the enforcement agents

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

According to the Law on enforcement of the Republic of Macedonia the judge do not possess the power to force the enforcement which is carried out by the enforcement agents

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

- a. The party or the participant that considers that there are irregularities committed during the enforcement, can file an objection to the president of the basic court on the territory of which all or part of the enforcement is carried out. The objection, elaborated, argued and supported with appropriate evidence shall be filed within three days after the day of finding out about the irregularity, but not later than 15 days after the conclusion of the enforcement.
- b. The president of the court shall decide upon the objection within 72 hours after the receipt of the objection. If necessary, the president of the court can decide to hear the parties, participants and the enforcement agent. The objection shall be submitted for response to the parties, participants and the enforcement agent, together with the summons that specify the date and time of the hearing of the parties and participants in front of the court, if it was decided to hold a hearing. With the decision the president of the court can either dismiss or accept the objection. The president of the court with the decision with which he/she accepts the objection determines the performed irregularities and declares void the undertaken enforcement actions. The president of the court with the decision cannot stop the enforcement, revoke enforcement actions, or oblige the enforcement agent to take enforcement actions. The party or the participant is entitled to file an appeal against the decision of the president of the court, to the appellate court in the area of which the basic court is located. The appeal shall not postpone the enforcement.
- c. The enforcement agent can ask the court to fine the company, the manager of the company and the managing body of the company, which

obstruct or disable the enforcement, according to the provisions of this Law for enforcement of an action that can be performed only by the debtor. The court shall be obligated to decide upon the request of the enforcement agent within 48 hours, starting from the day of the receipt of the request at the court.

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

Still the insufficient number of enforcement agents. Strict conditions for becoming an enforcement agent which from the other side is important for having a legal and an efficient executive procedure carried out by the competent, skilled and trained executive agents. The problems with the Cadastar that does not cover all the territory of the state and the problems with the unlawful buildings that can not be a object to enforcement.

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

In the opinion of the legal professionals and the public, the new introduced system of a private enforcement procedure is better than the previous one, but the agents daily face huge problems regarding the carrying out the executive acts - problems with the debtors, they often need the assistance of the police etc. A public awareness campaign is needed for promoting the benefits from the new private system of the execution of the civil judgements, that has been improved the efficiency of the execution procedure in general, thus avoiding the long, complicated court procedures with a lot of legal remedies, that were regularly misused by the debtors for prolonging of the procedure. Enhancing the number of the enforcement agents is needed (out of 130 planned agents, about 80 are appointed). Amendments in the Law on enforcement are needed to improve the conditions for better and more efficient performing of the executive acts.

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

Yes

No

If not, please clarify the differences.

In the administrative matters – the administrative bodies themselves enforce the decisions, whereas in the civil matters, it is a duty of the enforcement agent.

a. IN CRIMINAL MATTERS

16. Is the authority responsible for the enforcement of sentence specified in the law or in the constitution?

Yes – Law on enforcement of sanctions (in the further text, LES)

Please specify

The Law on the execution of sanctions (2006) (Article 35) provides function of a “judge for execution of sanctions”. This function is established also by the Law on courts, in the way that in all basic courts shall be appointed a judge who will perform this function.

The judge for execution of sanctions is basically authorised, in case of an enforceable decision, to take measures to ensure that a convicted person sentenced

to imprisonment, fine, security measure or institutional corrective measure in case of a minor is referred to a respective facility/institution, and to take measures for securing the execution of other sanctions as well. At the request of the convicted person for stay of execution of the prison sentence, the respective judge decides on the postponement of the execution of the sentence pursuant to the conditions stipulated in the Law on the execution of sanctions. Also, he decides on the interruption in serving the sentence, decides on the obsolescence of the execution, on the replacement of the fine with imprisonment sentence

The judge is responsible for ensuring the consistent enforcement of the legal position of the convicted person during the serving of the sentence and for conducting supervision in the correctional facilities from the perspective of operating in accordance with the law.

A panel of three judges, decides on requests by convicted person for release on parole, upon the previous opinion from the judge for execution of sanctions

The judge cooperates with the Centres for Social Work in regard to provision of the necessary supervision over individuals released on parole and about the post-penal aid and the execution of the alternative measures

Regardless the fact that this function is regulated by law, it has to be organised as a special department in the court with the necessary assisting personnel; the judges should more often perform their supervisory function of visiting correction facilities, their duty of care for the situation and the status of convicted persons; they should more go into detail into problems related to re-socialisation of convicted persons, and to the supervision of those released from the correction facilities on parole and the control of the post-penal aid. Legislative elaboration of this judicial function is necessary.

No

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

He is responsible for the enforcement?

Yes

The authority competent for the enforcement of a ruling governing a sentence, is a judge for execution of sanctions and is regulated by law, i.e. by two laws: the Law on the execution of sanctions (LES) and the Law on the courts, but it is necessary to elaborate this function more clearly and to define the position, in the same manner as that of those judges working in criminal, civil and other departments of the court, and to develop the department itself as a special organisational unit.

The task of a judge for execution of sanctions is: to undertake measures for enforcement of a sentence, he has a task to refer the person to the correction facility, to decide upon requests of a convicted person for postponing the beginning of the serving of the sentence, may interrupt serving of the sentence, to visit him/her in the correction facility and to exercise a supervisory function, to decide on the post-penal aid and others tasks stipulated in the LES

A Judge for execution of sanctions determined according to the convict's place of permanent residence which is his place of temporary stay shall be competent body to undertake the necessary actions for executing the sentence of imprisonment. The

procedure for sending the convicts is considered as urgent. The court, which has taken the first-degree decision, shall deliver to the competent court for execution of sanction all the data's regarding the convict's personality, which have been obtained during the procedure and which are relevant for the execution of the sentence, together with the decision on execution. A Judge for execution of sanctions is obliged to take the necessary actions to execute the sentence of imprisonment immediately after the reception of the executable decision but at latest within eight days after its reception. When determining the day of convicted person coming to the institution, it should be taken into consideration that the convict should have at least eight or maximum thirteen days left after he has received the prison invitation (referral act). The Judge for execution of sanctions with submission of referral act to the convict, will also inform the institution about the day when the convict should come and will submit a copy of the enforceable and executable verdict with which the sentence was pronounced, an excerpt of the criminal records, as well as other available information on the convict's personality in his disposal. If the convict failed to appear on the determined day for execution of the imprisonment sentence the institution without delay will inform the Judge for execution of sanctions. The Judge for execution of sanctions will issue immediately order to the Ministry of Interior for apprehension of this convict upon which the judge will request from the unit issuing of search warrant, if the convict is concealed or at large, for the purposes of his location and escort to the institution for execution of the imprisonment sentence.

The Judge for execution of sanctions will be informed immediately about the convict's reception in the institution. The institution is obliged to inform the respective Centre for Social Welfare about the convict's reception whether the convict has juvenile children or others whose care is his responsibility only.

Upon the request, postponing the beginning of execution of the sentence of an imprisonment shall be decided by the judge for execution of sanctions who is obliged to bring a decision within three day after the reception of request. Before delivering the decision, the judge may investigate the circumstances stated in the request. The beginning of sentence's execution will be postponed until the decision on the request is not rendered. Against the decision refusing the request for postponing the beginning of execution of the imprisonment sentence, the convict is entitle to lodge an appeal to the Criminal Council of the competent court for execution of sanctions within three days from the day of the reception of the first-degree decision. The appeal postpones the execution of the sentence. The Criminal Council is obliged to decide upon the appeal within the term of three days after the reception of appeal.

Also, the competent Public Prosecutor according to his lawful authorization can request postponement of the commencement of serving the imprisonment sentence, and then the Judge for execution of sanctions will not summon the convict to serve his sentence, but, if he has already called and the deadline to appear in the institution didn't expired, the judge will deliver a decision to postpone the commencement of the execution of sanction. The postponement of the commence of execution of the sentence in the cases will last until the Public Prosecutor does not inform the Judge for execution of sanctions that the execution of the imprisonment sentence can start, respectively until the decision upon Public Prosecutor's legal remedy has not been passed.

Upon request of the convict or upon proposal by the director of the institution, and according to the opinion of the prison medical service and by previous opinion of the competent public prosecutor, the judge for execution of sanctions may interrupt serving of the sentence longer than 30 days for the purpose of healing, if there are no conditions for the healing to be carried out in the institution or the institution shall

refer him to an appropriate health institution. The convict being granted with the interruption of serving his sentence for the purpose of healing, shall be obliged to send a certification on his state of health to the judge of execution of sanctions every month. The judge for execution of sanctions shall revoke the decision for interruption of the sentence, if it is established in the way that the reasons, under which that decision was taken, have been relinquished. A proposal for putting the decision out of force can be submitted by the authorized public prosecutor. With proposal, the public prosecutor can request from the judge for execution of sanctions, to conduct independent medical examinations over the convicted person. Against the decision brought upon the request for the interruption of serving a sentence, the convicted person and the competent public prosecutor have the right to appeal to the criminal council of the court which is competent for execution of the sanction. Also, the correctional institution shall have the obligation to inform the judge for execution of sanctions in any case of escape of the convict

The judge for execution the sentence is also responsible for the enforcement

This judge is also required to monitor the enforcement of the sentence and the manner in which the treatment and the re-socialisation of the convicted person is conducted; to conduct supervision in regard to the lawful conduct of the prison personnel in the correction facilities on the territory of his jurisdiction.

The supervision of the court in executing the sentences regarding the treatment with the convicts as well as in achieving their rights and obligations is conducted by the judge for execution of sanctions within the basic court in the institutions' headquarters.

The director of the correctional institution is obliged to ensure the insight on the necessary documentation to the inspector for execution of the sanctions and to the judge for execution of the sanctions also, to enable them with undisturbed performance of the supervision and also undisturbed conversation with the convicts with or without presence of the prison employees depending on the needs. The inspector for executing sanctions and also the judge for executing the sanctions, will compel a minutes for the made supervision and established situations in the framework on their authorization. If irregularities were established during the supervision the inspector for executing sanctions and judge for executing sanctions will bring a decision for removing the determined irregularities within a fixed term and a for re-establishing the violated rights of the convicts. The inspector for executing sanctions and the judge for executing sanctions will announce in between with regard to the established conditions within the institution and on the irregularities established during the performance of their supervision. The Government of the Republic of Macedonia established a State Commission for performing a supervision in the penitentiary institutions, which is composed of five members selected among judges, penologists, sociological and educative workers, the Ministry of Health, the Ministry of Labor and Social Politics, the Ministry of Economy and from among the scientific and expert workers of other institutions for a period of five years.

After releasing the convicted person from the institution, he can request help and support from the Judge for execution of sanctions. The Judge for execution of sanctions shall cooperate with the Centre for Social Welfare and can issue a written order for undertaking the needed measures and actions for after releasing help which are applied for better socialization of the convicts in their life at freedom as providing an accommodation and food, health treatment, counseling about the

choice of accommodation and stay, arranging his family circumstances, finding an employment, completing of his started vocational training, providing him with money for covering the essential needs, as well as other forms of help and support.

No

He has others competences as regards enforcement?

Yes

No

If yes, please specify

The answer on the question 16

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

Yes

No

As analysed above, the functions of the ruling judge and the judge for execution of sanctions are completely different, separate functions. The ruling judge has, for now, no competences in regard to the enforcement of the sentence he/she has pronounced.

Under the conditions stipulated by the law, either the convict or a member of his closer family may submit a request for release under the bases of parole. A proposal for releasing a convict under the bases of parole may also be submitted by the director of the institution. The parole of the convict shall be decided by the court having taken the judgment in first instance, in a council composed of three judges who shall decide beyond the main hearing. Before deciding on the parole, the first instance court shall request a data, from the institution and the institution's official persons and the convict may be interrogated about the circumstances pertaining the convict's personality, his behavior during the serving of sentence, carrying out of his labor duties and about other circumstances, under which it may be concluded whether the aim of punishment was achieved and especially whether the convict is likely to commit further criminal acts in future. In the decision for parole, the court may determine protective supervision under the convict, which is composed by special measures for aid, care, supervision or protection, which are accomplished by the social body. Against the decision, which has refused the request or the proposal for parole, the convict and the authorized public prosecutor have the right of complaint to the higher court within a term of 8 days.

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

The judge for execution of sanctions unavoidably cooperates with the management of the correction facility in which the sentence is carried out, with the prison personnel or other personnel of the facility in which the correction measure or the security measure is being carried out, with the Centre for Social Work according to the place of residence of the convicted person, and with the Directorate for Execution of Sanctions at the Ministry of Justice.

The judge for execution of sanctions undertakes measures also for the enforcement of fines (Article 212 of the CSEA) and proceeds in the transformation of the fine into a "Detention in lieu of Payment of Fines" and also follows requests and appeals of a convicted person in accordance with the LES, which regulates the enforcement of such a sentence.

The judge for execution of sanctions is in an identical position as the other judges in the basic courts (rights and duties, status), as stipulated in the Law on courts. Hence also the empowerment on the manner of communication with other authorities, which implies that all other authorities (executive, administrative and other) are required to enforce court decision without delay, and to act upon the request of courts immediately, urgently and without delay. In regard to the personnel in the prison in which the sanction is executed or the corrective facilities in which the corrective measure against a minor is carried out, the judge is authorised to conduct supervision as to the lawful execution of the sanctions and to prepare protocols on the ascertained failings, omissions and breaches, requesting their elimination within a deadline he/she stipulates. This is not a matter of revision or supervision, but of relations enabling regular discharge of the duties emanating from the abovementioned laws - namely regular performance of the function and exercise of authorities. Hence, this is not a special procedure, as all other authorities are legally required to act upon the requests of the court.

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

The judge for execution of sanctions like any other judge is required to ensure that the rights and freedoms of the citizens are met and protected as guaranteed by law. The judge for execution of sanctions is responsible for the supervision over the correction facilities as to the manner in which the status of the convicted person is carried out in relation to the guaranteed legal position of the convicted person according to the domestic and international guarantees stipulated in the international conventions and other documents ratified by the Republic of Macedonia, during the serving of the sentence. This is done in the way that in specific time periods, upon his/hers decision, but at least one a year, he/she visits the penal-correctional facility and conducts an assessment as to treatment of the convicted persons, the

application of inadmissible means and methods of force (torture), application of methods of treatment and re-socialisation, the living and working conditions, the protection of rights and amenities and disciplinary measures, etc., and prepares a protocol in which the findings and conclusions are recorded, especially those that refer to a stated breach of the LES and of the status of the convicted person, including guidelines on the manner and deadlines for the elimination of the stated deficiencies, weaknesses and breaches. This procedure creates an obligation for the judge, in the timeframe he/she himself/herself stipulates, to verify whether the management of the correction facility has acted upon his requests and conclusions, whether the defects have been eliminated, etc.

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

The enforcement of alternative measures is regulated in the special Chapter XVIII of the LES under that respective heading (Articles 225 to 239). The LES elaborates the enforcement of the following alternative measures: protective supervision with suspended conviction, community work and house arrest. The law provides opportunities for the person sentenced to imprisonment who has been granted release on parole, to be placed under protective supervision supported by specific obligations with a decision by the judge for execution of sanctions.

The enforcement of alternative measures has been awarded to the Department for Enforcement of Alternative Measures in the respective Centre for Social Work competent according to the place of residence of the convicted person. The Department is composed of the necessary expert staff certified for enforcement of alternative sanctions. The certificates are issued by the Directorate for Execution of Sanctions at the Ministry of Justice. Such an organisation of the Centres for Social Work should be established urgently.

The costs for enforcement of such measures should also be defined precisely in the law.

The judge for execution of sanctions informs (sends an order to) the Centre for Social Work on the enforcement of the alternative measure over the specified person. The Department prepares a Plan and Programme for Enforcement of the Measure in line with the perpetrated act, the person itself and other conditions necessary for its individualisation. Special attention is paid to the obligations and the manner of their performance. The Department maintains records on the measures enforced.

The Department that enforces alternative measures is required to inform the judge for execution of sanctions, every three months in writing of the course of the enforcement of the measure, the achieved effects, and the conduct of the convicted person. If the convicted person refuses to execute the measure, the enforcement authority is obligated within 8 days to notify the court (the judge).

The supervision over the legality in the enforcement of these measures is performed by the court that has pronounced the measure (this means the judge for execution of sanctions) whereas the expert – instructing supervision over the enforcement of such measures is performed by the Directorate for Execution of Sanctions. To this end, the Directorate establishes an inspectorate. The Inspectorate notifies in writing the

judge for execution of sanctions on the conducted supervision. The procedure relating to this component of the supervision is regulated by a special Rulebook adopted by the Minister of Justice.

This means that the judge for execution of sanctions controls the supervision in the enforcement of alternative measures indirectly through the Department for Enforcement of Alternative Measures at the Centre for Social Work and the Inspectorate at the Directorate for Execution of Sanctions at the Ministry of Justice.

On the basis of these reports, the enforcement judge will make a proposal to the judge that has pronounced the alternative measure to re-examine the situation and possibly to decide upon its termination or replacement by another alternative measure, in case the original one did not yield results or if the convicted person refused to accept it or act upon it.

The law elaborates in detail the enforcement of each of the three alternative measures.

This means that the judge can directly influence the manner, the course, the dynamics of and the treatment in the enforcement of such measures, and the conditions under which the measures are enforced. The judge, with his/her active relation, can directly influence the enforcement of these measures, whereas their successful implementation of the sanction is responsibility of the judge for execution of sanctions.

The implementation of alternative measures in the Macedonian penitentiary system is plagued by lack of appropriate staff, staff training and creation of respective departments at the Centres for Social Work who would take up the enforcement of such measures in order to yield the desired and expected quality of the re-socialisation.

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

The judge for the implementation of sentences protects the rights of the convicted persons, controls the regularity of the procedure for implementation of sentences and ensures equality and parity of the convicted persons according to the law etc-see the answers below

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

The enforcement of fines is in the competence of the basic court that has pronounced the sentence, more precisely the judge for execution of sanctions. The enforcement of fines is executed with the delivery of the valid and binding executive ruling to the convicted person. With this delivery of the verdict, the enforcement judge guides the person as to the manner and deadline for the payment of the fine. Difficulties arise when the judge is not in possession of correct data on the place of residence and address of the convicted person, or when the latter avoids receipt of the verdict including the order and the guidelines for its enforcement. If the convicted person does not pay the fine within the deadline prescribed by the judge, the procedure of forced execution of the sentence (collection) is initiated, with the convicted person bearing the costs of the forced collection.

Prior to the forced collection of the fine, the enforcement judge will in writing reprimand and invite the convicted person to pay the fine within 15 days, enclosing an instruction on how to do that. If the convicted person does not pay the fine within this deadline, then the judge initiates its enforcement pursuant to the provisions of the LES. If this procedure fails to secure the enforcement of the sentence, then the fine is substituted by a prison sentence through force taking into custody of the convicted person. Depending on the amount of the fine and evidenced failure to pay the said fine, the judge may order the individual to pay the fine in instalments with a maximum duration of two years. The instalments and the terms and conditions are determined by the sanction enforcement judge. He/she can also extend this deadline for additional three months. The judge is required to monitor the regular payment of the instalments, and this should not be the case, he/she is authorised to decide on a substitution of the fine with a “detention in lieu of payment of fines”. In case of a combined payment of the fine and the costs for the criminal proceedings, the judge will tend to collect first the costs of the proceedings, and only then the fine.

In case of substitution of a fine with a detention in lieu of fine, it is calculated so that one day costs 1,000 denars, with the longest possible duration of the substitute penalty being 6 months. Otherwise, the financial penalty is tallied according to the “day-penalty” principle.

The person sentenced to a fine is entitled, in the course of the enforcement of the penalty, to submitting an objection to the judge for execution of sanctions, but only as regards the validity and enforceability of the ruling.

The delivery of written notifications to parties or convicted persons in court proceedings is a general problem in the Republic of Macedonia and is characterised by a multitude of weaknesses and irregularities, which is also the case in this type of proceedings. The person sentenced to a fine is entitled to appeal in front of the Sanction Enforcement Council in case his/her objection is not accepted.

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

The LES integrates all standards and rules of the United Nations Standards for Treatment of Prisoners and also the European Prison Rules and the CE Conventions and documents regarding protecting the rights of the convicted persons.

- a. The majority of the convicted persons’ complaints are related to the general living conditions. Problems in correction facilities are caused by the high concentration of a large number of prisoners in a small space, the opportunities for work activities are minimal as to the general material condition in the state, and hence the prisons have insufficient activities in the course of the day. More training activities are needed for the prison personnel.

The Directorate for the execution of sanctions is performing the training activities for the prison personnel through their training centre, according to the framework training programme. Recently, jointly with the Academy for training of judges and prosecutors they started cooperation in organizing joint training events for the prison

personnel, the judges for execution of sanctions, other criminal judges, prosecutors and the employees from the Directorate.

- b. The Ministry of Justice, the Department for Execution of Sanctions is preparing a "Strategy for Re-socialisation and Social Adaptation of Persons Serving Prison Sentences" which should be adopted by the Government of the Republic of Macedonia. The strategy proposes measures and steps for resolving the problems in the area of enforcement of sanctions through the penitentiary system and the improvement of the organisation and functioning of the penitentiary system. According to this Strategy, reconstructions, renovations and construction are planned in the correction facilities, aimed at improving the general living conditions of the persons sentenced to imprisonment. About 56 million Euros are planned for this purpose with the national budget and the foreign funds. (EU, World bank)

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

Convicted persons in general and those serving a prison sentence, have at their disposal, in regard to their situation and their treatment in the course of the serving of the sentence, legal means through which they can express their dissatisfaction or breaches of their legal position and status, that are guaranteed through the LES. The means at their disposal are as follows:

In the process of applying the respective legal means, the convicted persons are provided with information and, at request, also with legal assistance by the correction facility services. They can refer, in respect to their requests and objections, to all government authorities in the state, all of this through the management of the facility. They are entitled to receive, in regard to their complaints and objections, responses through the prison management; this system functions relatively well. The facility management is required to register the date, the time of the submission of the application to any authority, and also the time of the receipt of the response or the fact that no response has been received. The convicted person is entitled, in the process, to discretion in relation to the application and the received response.

The convicted person is entitled to an oral and a written complaint to the manager of the Facility within eight days as of the day the person regards as the day when his/her right was violated, and illiterate persons can do this through a protocol with the competent body in the facility. The Manager is obligated to investigate the situation and to respond to the convicted person in writing within eight days.

The person dissatisfied with the action and response of the facility manager is entitled to submitting an application to the Director of the Directorate for Execution of Sanctions within eight days; the Director is obligated to investigate and within 15 days to adopt a decision upon this appeal. The decision of the Director of the Directorate for Execution of Sanctions is final and binding, upon which the convicted person can seek court protection. The convicted person is entitled to court protection also when the facility manager does provide him/her with a response.

The convicted person is entitled also to an application, appeal and objection to the

Ombudsman of the Republic of Macedonia. This institution deals with the problems of convicted persons in correction facilities and the enforcement of sentences by facilitating the right of convicted persons to apply to this authority, by visiting the correction facilities in response to specific applications and by general occasional visits to correction facilities in the form of supervision in order to verify that their remarks and the application of convicted persons are given due weight and being acted upon, etc.

The convicted persons are entitled to applications (submissions in regard to violations of their rights) to the European Court of Human Rights. In regard to such submissions, the Ministry of Justice is required to prepare and submit to this Court the entire documentation necessary for resolving the respective dispute. There is no commenced procedure for violation of prisoner rights (for torture during execution of sanctions) before the ECHR.

Also, the Directorate for Execution of sanctions is conducting a commercial campaign for the raising awareness between the prisoners about their rights (issuing Guidelines for the prisoners' rights and distributes to each prisoner in the state.)

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

see the following answer

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

The factors for improving of the efficiency and speediness in the enforcement of verdicts in criminal cases are:

The new system of the execution through the role and the activities of the judge for the execution of sanctions means enhancing the efficiency in general, because this role in the past was given to the presidents of the courts and them, hence to their huge jurisdiction could have not been strongly dedicated to this issue.

Enhancing the management capacities in handling of the criminal cases, starting from the pre-trial procedure, through the application and securing of the evidence which are to be provided by the respective detection authorities, to the public prosecutor and the prosecution act, all of which should facilitate a speedy and efficient deliberation (here are also the evidences needed for better and speedy execution of the sentence - especially those for the alternative measures, the facts and evidences related to the personnel, family, material and social conditions of the defendant.) More active role of the Ministry of interior and the prosecutors in the obtaining of the evidence needed for the execution of the sanctions (finding the defendants who are avoiding serving the sentence) and adherence with the timeframes provided in the Criminal Proceedings Act for the execution of specific processes in the proceedings, especially the deadlines for preparing and delivery of the ruling; sometimes the serving of the sentence is getting obsolete due to the insufficient activities of the MOI for finding the sentenced defendants who are fugitive.

Better management styles and manners of the presidents of the courts especially as

regards the organisation of the enforcement of the sanctions. This also includes the issues that relate to resolving the problems with the delivery as an issue which frequently causes delays in the processes and misuses by the parties and defence through avoiding the delivery and receipt of written notifications that causes obstacles in the successful execution.

Permanent training for the Judges for execution of sanctions, the presidents of the courts, the Criminal chamber of the court that decides on the certain provisions from the LES (on parole, suspension of the serving of the sentence ect), training on the rights and obligations of the enforcement judge regarding the execution and for better protection of the rights of the prisoners – especially on the protection against ill-treatment and torture-recognizing and detecting the evidences for the torture and other violations of human rights (the records when receiving the prisoner, expertises etc.)

The training of the staff in the penitentiary institutions is performed through their Training centre, financed by the budget and foreign projects, following the training programme adopted by the Directorate for the execution and approved by the minister of justice.

Finalisation of the legislation, especially the LES, which is about to undergo amendments and supplementation in the part of defining the position and status of the enforcement judge and placing at his/her disposal instruments and methods for more successful and more efficient enforcement of sanctions, in this line, especially the creation of rules and organisation for enforcement of alternative measures (possibly a Law on Probation Services).

Improving the organizational structure of the Centre for the social affairs, enough financial resources, equipping them with enough skilled and trained personnel towards better execution of the alternative measures and providing the post penal aid and the measures imposed with the parole, completing the by-laws that regulate these issues.

better organisation of the courts in the part of enforcement of sanctions;

better organisation of the services in the Ministry of Justice whose main function is the part of enforcement of sanctions

The Ministry of Justice, the Directorate for Execution of Sanctions is preparing a “Strategy for Re-socialisation and Social Adaptation of Persons Serving Prison Sentences” which should be adopted by the Government of the Republic of Macedonia soon. Regardless of the title, the strategy proposes measures and steps for resolving the problems in the area of enforcement of sanctions through the penitentiary system and the improvement of the organisation and functioning of the penitentiary system.

The entire penal-corrective system is undergoing amendments and supplementation in the part of the legislation and also synchronisation with the legislation of the states in the European Union. This process of shaping the legislation should be completed.

In this area, of special significance are the amendments to the Law on Criminal

Proceedings, which will resolve the status of the authorities for detection of crime and the prosecution and the police. The system needs to be concluded with the Executive Criminal Legislation as a whole (LES, alternative measures, Probation Act, etc.).

A special problem requiring special attention is the enforcement of sanctions (primarily fines) pronounced for committed misdemeanours with the establishment of a necessary recordkeeping and statistics on such sanctions.

In a similar manner, it is necessary in the basic to establish courts under the sanction enforcement judge's records for the pronounced sanctions that have become valid and binding and executive.

It is of utmost interest in the state, to create conditions and prerequisites for the discharge of the judicial function on the part of courts and judges in an "independent and autonomous" manner. The other two powers need to create conditions for the judiciary to discharge its function independently and to reaffirm itself continuously through this vital feature of his.

Increasing of the capacities and improvement of the penitentiary institutions, more budget resources for creating adequate conditions and programmes for re-socialization with rich social, working, and cultural contents in order to achieve the goal of the imprisonment sentence, to stimulate the convicted persons to accept the treatment and to participate actively in it during the serving of their punishment which is motivated and directed to re-educating and development of positive character traits, attitudes and capabilities, that speed up the successful return to the society.

More institutions with enough space that will enable adequate classification and displacement of separate categories of convicts in separate divisions in different institutions and groups, for the purpose of easier implementation of different kinds of treatment, for preventing the criminal infection and for maintaining the discipline, adequate classification according to the provisions of this Law and in accordance with the court decision, according to the necessity and the type of the required treatment, their age, personal characteristics and other circumstances of importance for the evaluation of the personality of the convicted persons.

to improve the conditions for life and work of the prisoners, for cultural, sports and other activities adequate to their age and abilities, also the convicts should be provided with a work, which will be useful and an appropriate to the way of its performing at freedom in order for the convicts to achieve and develop the working habits, maintain their work capabilities and gain a professional knowledge for work at freedom.

Equipping the penitentiary institutions with qualified staff, opening more positions for educators, teachers, instructors and other qualified job positions, who will be physically and psychologically fit for dealing with supervisory activities in an institution, for the positions commander and commandant in the security units persons with high education, are needed, also being both physically and psychologically fit for dealing with these activities in the security service. It is difficult to find such specialized staff because of the complexity and the hard conditions of



the affairs' nature, as well special conditions under which they are being executed in the immediate contact with the convicted persons with what significantly is being influenced on the decreasing of the working ability.

More economy units in the institutions that will enable better work engagement of the prisoners

Improving and deepening the national cooperation and coordination between all the subjects involved in the execution of sanctions ( The Ministry of justice, Ministry of interior, Ministry of labour and social policy, the courts, the judge for execution of sanctions, the institutions for execution of sanctions) in implementing the national policies in execution of the sanctions based on all democratic recognised international standards and values, adapted to the national conditions.

### Roumanie/Romania

A) EN MATIERE CIVILE ET ADMINISTRATIVE
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1. L'autorité chargée de l'exécution est-elle spécifiée dans la loi (constitution, loi, etc.) ?

- X Oui  
 Non

2. Quelles sont les compétences du juge en matière d'exécution :

a. Il est chargé de l'exécution ?

- X Oui  
 Non

b. Autres compétences en matière d'exécution ?

- X Oui  
 Non

Si oui, veuillez préciser :

*Le V<sup>ème</sup> Livre du Code de procédure civile ( articles 371<sup>1</sup>-580<sup>5</sup>) comprend des dispositions relatives à l'exécution forcée( l'assignation des organes d'exécution, le titre exécutoire, les personnes et les biens soumis à l'exécution forcée, lorsqu'il est possible l'exercice de l'exécution forcée, de cautionnements, l'exécution contre les héritiers, la prescription du droit d'agir relatif à l'exécution forcée, la poursuite des biens mobiles, la distribution du prix, la saisie, la poursuite des fruits et des les récoltes enracinées, la poursuite forcée des biens immobiliers, la libération et la distribution des sommes réalisées par voie d'exécution forcée, la remise matérielle forcée des biens et l'exécution forcée des obligations à faire ou de ne pas faire.*

3. Le juge chargé de l'exécution (s'il existe) est-il le même que celui qui a rendu la décision ?

- Oui  
 Non

*Il y a aussi la possibilité que celui-ci accumule tous les deux pouvoirs, respectivement d'approuver l'exécution après avoir rendu le jugement d'exécution.*

4. Les parties doivent-elles tenter une nouvelle procédure pour que la décision soit exécutée ?

- X Oui  
 Non

5. Cette procédure doit-elle aboutir par une nouvelle décision ?

- X Oui  
 Non

6. Le juge travaille-t-il avec d'autres personnes, acteurs dans la procédure d'exécution ?

- X Oui  
Veuillez préciser quelles sont ces personnes  
 Non

*Le juge travaille avec le greffier.*

7. Lorsqu'il travaille avec d'autres acteurs de la procédure d'exécution, quelles sont les tâches exactes du juge :

a. Il engage la procédure ?

- Oui  
 X Non

b. Il contrôle et surveille la procédure (délai par ex.) et le travail effectué par les autres acteurs ?

- X Oui  
 Non

c. Autres tâches ?

- Oui  
 X Non

Le cas échéant, veuillez préciser

*Le juge chargé de l'exécution a seulement les tâches qui dérivent de l'activité proprement dite de juger. De même, il vérifie à la demande de la personne intéressée la régularité de tous les actes de l'exécution introduits.*

8. Quelle est la formation de la personne chargée de l'exécution, si ce n'est pas un juge ?

*La personne chargée de l'exécution est licenciée en droit.*

9. Les parties ont-elles un recours si l'exécution n'est pas effectuée dans un délai raisonnable ?

- Oui  
 X Non

Si oui, quelles peuvent être les sanctions de ce recours ?

10. Quels sont les pouvoirs du juge pour accélérer l'exécution ?

*Les pouvoirs du juge sont ceux qui découlent de l'activité de juger.*

11. Quels sont les pouvoirs du juge pour forcer l'exécution ?

*Le juge n'a pas d'autres pouvoirs que ceux qui découlent de l'activité de juger (des amendes pour le non-respect des dispositions légales).*

12. Quels sont les pouvoirs du juge pour protéger les droits des parties et des tiers lors de la procédure d'exécution ?

*La voie de la contestation à l'exécution*

13. Dans votre pays, quels sont les principaux obstacles à l'exécution des décisions?

*L'insolvabilité du débiteur.*

14. Selon vous, pour votre pays, quels sont les changements principaux nécessaires pour améliorer l'efficacité de la procédure d'exécution?

*Ces changements sont d'ordre législatif et se trouvent dans le Code de procédure civile.*

15. La procédure d'exécution est-elle la même en matière civile et en matière administrative :

- X Oui  
 Non

Sinon, veuillez préciser les différences.

## B) EN MATIERE PENALE

16. L'autorité chargée de l'exécution des peines est-elle spécifiée dans la loi (constitution, loi, etc.) ?

- X Oui  
Veuillez préciser  
 Non

*Le Titre III du Code de procédure pénale se réfère à l'exécution des jugements pénaux (articles 415- 479), ainsi que la Loi no. 275/2006 relative à l'exécution des peines et des mesures disposées par les organes judiciaires pendant le procès pénal.*

17. Quelles sont les compétences du juge en matière d'exécution des peines :

a. Il est chargé de l'exécution ?

- X Oui  
 Non

b. Autres compétences en matière d'exécution?

- X Oui  
 Non

Si oui veuillez préciser

*Selon l'article 419 du Code de procédure pénale relatif au juge chargé de l'exécution on prévoit que :*

- (1) l'instance d'exécution charge un des ses juges pour effectuer la mise en exécution
- (2) si à l'occasion de l'exécution du jugement ou pendant l'exécution apparaît une chose qui doit être éclaircie ou un obstacle, le juge chargé peut saisir l'instance d'exécution qui va procéder selon l'article 460.

Dans l'article 6 de la Loi no. 275/2006 concernant le juge chargé de l'exécution des peines privatives de liberté et le juge chargé au département des exécutions pénales, on prévoit que :

- (1) l'exécution des peines se déroule sous la surveillance, le control et l'autorité du juge chargé de l'exécution ;
- (2) le président de la cour d'appel désigne annuellement un ou plusieurs juges chargés de l'exécution des peines privatives de liberté pour chaque pénitencier existant dans la circonscription de la cour d'appel ;
- (3) le juge chargé de l'exécution des peines privatives de liberté surveille et contrôle que soit assurée la légalité dans l'exécution des ces peines et exerce les autres pouvoirs établis par la présente loi ;
- (4) le juge chargé de l'exécution des peines privatives de liberté, nommé pour le pénitencier dont la circonscription se trouve un centre de détention et d'arrestation préventive, ou un centre d'arrestation préventive, il surveille et contrôle que soit assurée la légalité dans l'exécution des mesures préventives privatives de liberté et exerce les autres pouvoirs déterminés par la présente loi ;
- (5) pendant la période de l'exercice des pouvoirs du juge chargé de l'exécution des peines privatives de liberté, celui-ci ne peut pas dérouler des autres activités que celles déterminées par la présente loi ;
- (6) le juge chargé du département de l'exécution pénale du cadre de chaque instance d'exécution, nommé annuellement par le président de cette instance, surveille et contrôle que soit assurée la légalité dans l'exécution des peines non privatives de liberté et il exerce les autres pouvoirs déterminés par le Code de procédure pénale, le règlement d'ordre interne de l'instance de jugement et par la présente loi.

18. Le juge chargé de l'exécution (s'il existe) est-il le même que celui qui a rendu la décision ?

- Oui  
 X Non

19. Le juge travaille-t-il avec d'autres personnes, acteurs dans la procédure d'exécution des peines?

- X Oui  
Veuillez préciser quelles sont ces personnes  
 Non

Dans l'article 8 de la Loi no.275/2006 relative au contrôle de l'exécution des mesures de surveillance et des obligations disposées selon le Code pénal, on établie :

- (1) le contrôle de l'exécution des mesures de surveillance et des obligations prévues dans le Code pénal, qui peuvent être disposées dans le cas de suspension de l'exécution de la peine sous surveillance, est assuré par le juge chargé du département des exécutions pénales de l'instance d'exécution, directement ou par l'intermédiaire des conseillers du service de protection des victimes et réintégration

*sociale des infracteurs dans la circonscription où se trouve le domicile, la résidence ou le logement de la personne condamnée.*

- (2) *pendant la suspension de l'exécution de la peine sous surveillance, la personne condamnée peut solliciter assistance et conseil, qui sont accordés, selon la loi par les conseillers du service de protection des victimes et réintégration sociale des infracteurs.*

20. Lorsque le juge travaille avec d'autres acteurs de la procédure d'exécution, quelles sont les tâches exactes du juge ?

a. Il engage la procédure

Oui  
 Non

b. Il contrôle et surveille la procédure (délai par ex.) et le travail effectué par les autres acteurs

Oui  
 Non

c. Autres

Oui  
 Non

Le cas échéant, veuillez préciser

21. Quels sont les pouvoirs du juge pour protéger les droits des détenus et des tiers lors de la procédure de l'exécution ?

*Lorsque la commission pour l'individualisation du régime d'exécution des peines privatives de liberté ou le condamné apprécie qu'il s'impose le changement du régime d'exécution des peines privatives de liberté, ils saisissent chacun le juge délégué de l'exécution des peines privatives de liberté. Il dispose par minute motivée en ce qui concerne le changement du régime d'exécution, seulement après avoir entendu la personne condamnée, à l'établissement de détention, en délai de 15 jours à compter de la réception de la demande ou de la saisine.*

*Lorsque le juge délégué de l'exécution des peines privatives de liberté constate que ne sont pas accomplies les conditions pour le changement du régime d'exécution des peines privatives de liberté, par la minute de rejet, il fixe le délai après d'en expiration, la demande ou la saisine pouvant être formées à nouveau, délai qui ne peut dépasser 6 mois.*

*La minute du juge délégué de l'exécution des peines privatives de liberté se communique à la personne condamnée en délai de deux jours dès sa prononciation.*

*Contre la minute du juge délégué de l'exécution des peines privatives de liberté, la personne condamnée peut introduire contestation au tribunal d'instance dans la circonscription où se trouve le pénitencier, en délai de 3 jours à compter de la communication de la minute*

*La contestation est jugée selon les dispositions de l'article 460 alinéas 2 - 5 du Code de procédure pénale, qui s'appliquent dûment.*

*De même, contre les mesures relatives à l'exercice des droits prévus, mesures prises par l'administration du pénitencier, les personnes condamnées aux peines privatives de liberté peuvent faire plainte au juge délégué de l'exécution des peines*

*privatives de liberté, en délai de 10 jours dès qu'elles ont pris connaissance de la mesure prise.*

*La personne condamnée est entendue, obligatoirement, à l'établissement de détention, par le juge délégué de l'exécution des peines privatives de liberté.*

*Le juge délégué de l'exécution des peines privatives de liberté peut procéder à l'entendement de toute personne afin de déterminer la vérité.*

*Le juge délégué de l'exécution des peines privatives de liberté solutionne la plainte par minute motivée, en délai de 10 jours à compter de sa réception et prononce l'une des suivantes solutions :*

- a) admet la plainte et dispose l'annulation, la révocation ou la modification de la mesure prise par l'administration du pénitencier ;*
- b) rejette la plainte, si elle est mal fondée*

*La minute du juge délégué de l'exécution des peines privatives de liberté est communiquée à la personne condamnée en délai de 2 jours à compter de sa prononciation.*

*Contre la minute du juge délégué de l'exécution des peines privatives de liberté, la personne condamnée peut introduire contestation au tribunal d'instance dans la circonscription où se trouve le pénitencier, en délai de 5 jours à compter de la communication de la minute.*

*La contestation est jugée selon les dispositions de l'article 460 alinéas 2 - 5 du Code de procédure pénale, qui s'appliquent dûment.*

22. Quel est le rôle du juge dans les peines alternatives à l'emprisonnement ?

*Le juge n'a aucun rôle dans les peines alternatives à l'emprisonnement.*

23. Quel est le rôle du juge dans l'application des peines (aménagement, libération conditionnelle, etc.) ?

*En ce qui concerne la libération conditionnelle, elle est octroyée selon la procédure prévue au Code de la procédure pénale, à la demande de la personne condamnée ou à la proposition de la commission pour l'individualisation du régime d'exécution des peines privatives de liberté.*

*La commission pour l'individualisation du régime d'exécution des peines privatives de liberté, avec la participation du juge délégué de l'exécution des peines privatives de liberté, en qualité de président, propose la libération conditionnelle tenant compte de la fraction de la peine effectivement exécutée et de la partie de la durée de la peine qui est considérée comme exécutée sur la base du travail presté, du comportement de l'individu incarcéré et des efforts de réadaptation sociale du délinquant, notamment dans le cadre des activités éducatives, culturelles, thérapeutiques, de conseil psychologique et assistance sociale, de la formation scolaire et professionnelle, des responsabilités confiées, des récompenses accordées, des sanctions disciplinaires appliquées et de ses antécédentes pénaux.*

*Selon l'Arrêté du Gouvernement no. 1897 du 21 décembre 2006 pour l'approbation du Règlement d'application de la Loi no.275/2006 relative à l'exécution des mesures disposées par les organes judiciaires pendant le procès pénal, à l'article 191 est prévue la procédure de la libération conditionnelle.*

*Ainsi, la commission prévue par la loi, avec la participation du juge délégué de l'exécution des peines privatives de liberté, en qualité de président et du chef du bureau d'évidence des détenus, en qualité de secrétaire, examine chaque semaine, à l'établissement de détention, les dossiers individuels des personnes incarcérées qui accomplissent les conditions pour la libération conditionnelle.*

*La commission examine le dossier en présence de la personne incarcérée, occasion de laquelle, elle est renseignée sur les conditions que doivent être accomplies en situation du prolongement de l'exécution du reste de peine en état de liberté.*

*Après l'examen, la commission réalise un procès-verbal motivé, signé par les membres de la commission et par la personne incarcérée. Le procès-verbal contient des mentions relatives aux dispositions de l'article 77 alinéa 2 de la loi.*

*Le procès-verbal d'admission, assorti de documents qui attestent les mentions contenues, est soumis au tribunal d'instance dans la circonscription de l'établissement de détention.*

*Le procès-verbal de rejet et le nouveau délai de réexamen de la situation, qui ne peut pas dépasser un an, est communiqué à la personne incarcérée qui est renseignée, sous signature, qu'elle peut soumettre directement à l'instance la demande de libération conditionnelle.*

*Lorsque la personne incarcérée s'adresse directement à l'instance en demandant la libération conditionnelle, avec la demande, on renvoie aussi le procès-verbal fait par la commission pour l'individualisation du régime d'exécution des peines privatives de liberté, assorti de documents qui attestent les mentions contenues.*

*En vue de la solution de la demande de libération conditionnelle de la personne condamnée ou de la proposition formée par la commission, l'instance peut consulter le dossier individuel de la personne condamnée.*

24. Quel est le rôle du juge pour permettre le paiement effectif des amendes ?

*Le juge n'a pas de rôle dans cette attribution.*

25. Quelles sont les motifs principaux des plaintes concernant les droits des détenus ?

*Les motifs principaux des plaintes concernant les droits des détenus visent les conditions effectives d'emprisonnement, la modalité de constatation des écarts disciplinaires ainsi que les sanctions appliquées.*

26. Qui est chargé, dans votre pays, des plaintes concernant les conditions de vie en prison ? Quelle est la procédure de traitement de ces plaintes ?

*Le juge délégué de l'exécution des peines privatives de liberté. Ses pouvoirs concrets relatifs au changement du régime d'exécution des peines privatives de liberté, ceux contre les mesures relatives à l'exercice des droits, prises par l'administration du pénitencier, les pouvoirs relatifs à la plainte contre la décision de la commission de discipline, dans les conditions exposées, tous visent aussi les conditions de vie en prison.*

27. Dans votre pays, quelles sont les principaux obstacles à l'exécution des peines?

*En Roumanie, le principal obstacle à l'exécution des peines est la soustraction à l'exécution des peines.*

28. Selon vous, pour votre pays, quels sont les changements principaux nécessaires pour améliorer l'efficacité de la procédure d'exécution des peines?

*La procédure d'exécution des peines a été sensiblement améliorée par les nouvelles compétences déterminées à la charge du juge délégué de l'exécution des peines selon la Loi no. 275/2006 qui confère des garanties supplémentaires dans le respect des droits des condamnés pendant l'exécution des peines.*



Suède/Sweden

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 law

Please specify

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

If yes, please specify

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

No

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

Yes

Please specify which actors

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

➤ 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?

He/she is a civil servant in the state agency for enforcement and normally has a degree in law

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?

none

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

none

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

he is not involved

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

Difficulty to find the person in debt

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

It works rather well

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

Yes

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 in law

Please specify

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

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?

Not involved

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

The judge decides what other solution than prison that shall be chosen.

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

None

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

None

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

--

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

The Swedish Prison and probation Service. The decisions of that agency can be appealed to an administrativ court.

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

Difficulties to find the sentenced person

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

In general it works rather well but there are to some extent a lack of places in the prison system

## Slovénie/Slovenia

### 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.

### **Pays-Bas/Netherleands,**

#### **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. 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. Conditional release can be refused by the prosecution if the behaviour of the convicted

person necessitates this. The decisions of the prosecution regarding conditional release (refusal, conditions) can be appealed at the criminal sector of the court. Courts can also get involved if the convicted person fails to meet the imposed conditions once released.

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.

Hongrie/Hungary

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 In the Act LIII of 1994 on Judicial Enforcement

No

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

➤ He is responsible for the enforcement

Yes

➤  No The judge isn't responsible for the result of enforcement of judicial decision

➤ He has others competences as regards enforcement

Yes

No

If yes, please specify :

- only the judge has right to order the enforcement of judicial decisions
- the judge has authority to decide on the most important legal questions during the enforcement procedure ( e.g. succession in rights, suspension of execution, termination of enforcement and restriction)
- legal remedies are adjudicated by judges
- in case a reasonable suspicion of misconduct – inter alia - the chairman of the county court has right to initiate disciplinary process against the executor

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

Yes

No However it isn't prohibited by the law that the judge, who took the decision is same than the judge who has several rights during the enforcement procedure

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 The court of first instance shall issue a certificate of enforcement

No

6. Is the judge working with other actors involved in the enforcement procedure?  
X  Yes  
Please specify which actors

The main actor in the Hungarian enforcement procedure is the executor. He has the right and duty to find the debtor's assets, to secure it and to pay directly to the creditors

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?

X  Yes

No

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

X  Yes

No

➤ Others competences?

Yes

X  No

If yes, please specify

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

The executors have to have an university degree which is not necessarily a law degree. After that they have to take part a special two-year-long course, and pass an exam at the end of it

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

X  Yes

No

If yes, what are the sanctions of this appeal?

The party or another person of concern may file a demurrer of enforcement with the court of origin for authorizing enforcement, in respect of any illegal actions of the bailiff (executor), or for his failure to take action (hereinafter referred to collectively as "enforcement action"). A demurrer of enforcement shall be filed within fifteen days of the contested action and submitted to the bailiff, and the bailiff shall forward it to the court of origin for authorizing enforcement within three working days, together with copies of the documents relating to the contested action. If the party filing the demurrer was informed of such action following this period, or was prevented from filing the demurrer beyond the fifteen-day period, the deadline for filing the demurrer of enforcement shall initiate from the time of gaining knowledge or from the termination of the obstacle. No demurrer of enforcement may be filed against an enforcement action after a period of six months. No justification shall be accepted for failure to file within such period. The court shall adopt a decision concerning a demurrer of enforcement, after having heard the parties if necessary.

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

The judge can order direct instructions, and fine the parties or the executor. According to Section 45/A of Act LIII of 1994 on Judicial Enforcement the court of origin for authorizing enforcement shall fine the judgment debtor or the person or organization obliged to participate in the enforcement procedure for contempt for failure to satisfy the obligations prescribed by law in connection with enforcement, or for engaging in any conduct aiming to obstruct the authority carrying out the enforcement procedure. The fine for contempt may not exceed the enforceable amount. No fine for contempt may be imposed for the sole reason of the judgment debtor's failure to comply with his obligation prescribed in the enforcement order.

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

According to Section 174 of Act LIII of 1994 on Judicial Enforcement The court shall determine by way of a ruling the manner of enforcement, such as

- a) ordering the obligor to pay the cash equivalent of the specific act;
- b) granting authorization to the judgment creditor to perform or to cause to be performed the specific act at the cost and risk of the obligor, and at the same time ordering the obligor to advance the estimated costs of such;
- c) to impose a fine upon the obligor up to 500,000 forints;
- d) enforcing the specific act with police assistance.

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

There are several special procedures which can be started by the parties or third parties. In these procedures the judges have the possibility to protect the rights of parties and third parties. One of these special procedures is the **suspension of enforcement**. According to Section 48 (1)-(3) of the Act LIII of 1994 on Judicial Enforcement the court of origin for authorizing enforcement shall suspend the enforcement procedure if so requested by the judgment creditor, and if such suspension does not injure the rights of any other party. When a lien holder has filed a petition defined in Subsection (1) of Section 114/A and in Section 138/B the court shall suspend the enforcement procedure within three working days of receipt of the petition. The court shall forthwith notify the bailiff concerning such suspension, with the order for suspension attached with the notice. The court of origin for authorizing enforcement may honor the request of the judgment debtor and suspend the enforcement procedure if the judgment debtor is able to substantiate the reason and reasonable cause therefor, and if the judgment debtor had not been previously fined for contempt during the enforcement procedure.

**In the procedure of termination and limitation of enforcement** the court of origin for authorizing enforcement shall terminate or limit the enforcement procedure by decree, if

- a) so requested by the judgment creditor and the termination or limitation does not injure the rights of another party,
- b) so prescribed in specific other legislation.

The court of origin for ordering enforcement shall terminate or limit the enforcement procedure by decree if it has found, on the basis of an authentic document, that the writ of execution has been withdrawn or reversed by a definitive decision. In adopting a decision to terminate the enforcement proceedings, the court shall also decide who is to bear the costs of enforcement.

In the case described above, the court of origin for ordering enforcement may, upon the judgment debtor's request, compel the judgment creditor by decree to return the money (assets), in full or in part, received in the course of enforcement to the judgment debtor, along with the enforcement costs, or the appropriate portion thereof. This provision shall also be applied if the judgment debtor has fulfilled his obligation voluntarily in order to avoid enforcement, and has provided proof therefor. Money (assets) received as support shall not be returned in this manner.

We may mention here the so called **protective measures**. According to Section 185 of the Act LIII of 1994 on Judicial Enforcement if the enforcement order cannot yet be issued on the basis of Section 13 for the enforcement of a claim, but the judgment creditor has substantiated that any delay in the enforcement of such claim is in jeopardy, the court shall order the following protective measures upon the judgment creditor's request:

- a) pledge of security for money claims, or
- b) sequestration of specific things.

A protective measure may be ordered if the claim is based on a resolution on the basis of which a certificate of enforcement could otherwise be issued in accordance with Sections 15 and 16, however it cannot be issued, because

- a) the resolution is not yet definitive or not subject to preliminary enforcement, or
- b) the resolution is already definitive, but the deadline for performance has not yet expired.

A protective measure shall be ordered by the court with jurisdiction to issue the certificate of enforcement on the basis of the decision and if the required conditions are satisfied.

Protective measures may be ordered on the basis of this Section in connection with claims awarded by judgments that are to be recognized in Hungary in accordance with Council Regulation 44/2001/EC.

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

Probably the most problematic part of the Hungarian judicial enforcement is the general rules on the attachment of immovable property. According to Section 140 (1) before the sale of immovable property the bailiff shall establish its appraised value, both vacant and occupied, in consideration of an official tax and value certificate issued within six months to date, or, if so requested by either party, as appraised by an expert appraiser. The tax and value certificate and the expert appraisal shall contain a clause in which to specify whether the property is considered residential.

According to Section 147 the auction shall begin by the bailiff announcing to the bidders the appraised value (reserve price) and the auction conditions, and calling upon the bidders to quote their bids. The reserve price is announced in the amount of the appraised value. If a bid is quoted in the bidding log, the reserve price shall be the quoted offer last published. If the highest price offered does not reach the reserve price, it shall be gradually lowered to half of the appraised value. If a bid has already been quoted in the bidding log, the reserve price may not be reduced. In respect of residential properties, the reserve price can be reduced to seventy per cent, if it is the only residential property of the judgment debtor, it is his residence and it has been for six months prior to commencement of the enforcement procedure.



If the debtor is an off-shore company, the enforcement against it is nearly impossible. There are no special rules concerning their special features. In my opinion this problem can be solved only in international level.

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

This is not a main topic nowadays in Hungary, however, the enforcement proceeding should be improved more effectively. My personal opinion is, that these proceedings are often too slow. Probably there are not enough executors in Hungary, their number must be raised. A more specialised training would be useful for them, as well.

I would change the general rules on the attachment of immovable property. I do not find fair enough that the price shall be gradually lowered to half of the appraised value.

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

Yes The juridical background of the administrative enforcement is the Act of enforcement for court decisions. So the main features of the enforcement are the same.

A significant exception is that generally the costs of administrative enforcement are covered by the State, because this procedure is initiated ex officio. The other difference is that the tax enforcement applies electronic auction for the sale of confiscated goods.

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 These are: The Constitution, XIX. Act of 1998. and law decree 11. of 1979.

Please specify

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

If yes, please specify

The judge decides all kind of enforcement matters, except those which doesn't belong to the competence of the Penal Institution.

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

Yes

X  No

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

X  Yes

Please specify which actors

The judge interferences with police, penal institution, public prosecutor's office, supervisor's office and local government.

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

➤ X  No No, he doesn't start the procedure. The prosecutor and the chief of the penal institution control and supervise the procedure.

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

➤  Yes

X  No

➤ Others competences?

X  Yes

No

If yes, please specify See point 17

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

The protection of the rights of detainees, including third parties belongs to the competence of the prosecutor.

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

The alternative solutions mostly prevent the procedure of the court such as: mediation.

The enforcement of those criminal legal consequences that are not applied by the judge, are supervised by the prosecutor.

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

The judge takes steps for the enforcement of the sentence.

In cases determined by the law the judge disposes about the possibility of conditional imprisonment and excluding from conditional imprisonment.

During the imprisonment decision can be taken both by the will of detainee or by the initiation of the Penal Institution.

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

The judge takes steps toward the Economic Office of the Court in order to collect the fine.

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

26. Who is responsible in your country, for complaints about living conditions in prison?  
What is the procedure for processing such complaints?  
first level- the chief of Penal Institution  
second level- national chief of Penal Institution  
otherwise Judge

It starts by oral or written petition

27. In your country, what are the main obstacles to the enforcement of sentences?  
The lack of volunteer discharge and conscription.

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

It needs promoting measures for volunteering discharge. or instance: 47.§ article of criminal Law

Allemagne/Germany

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:

Sections 704 – 945 of the Code of Civil Procedure Rules (Zivilprozessordnung – ZPO)

No

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

➤ He is responsible for the enforcement

Yes (partly, see below)

No

➤ He has others competences as regards enforcement

Yes

No

If yes, please specify:

In most areas the bailiff (Gerichtsvollzieher) or the registrar (Rechtspfleger) is competent. The registrar is a senior court officer exercising a wide range of functions also beyond enforcement. With respect to the registrar a special statute is applicable (Rechtspflegergesetz).

Certain measures (cf. search of rooms) may not be taken by the bailiff without the concerned party's consent. The judge decides whether such a measure may be taken.

Only in some limited areas the judge is competent for the decision concerning enforcement (e.g. sec. 887 ZPO substitute transactions). The judge is not entitled to give the bailiff and the registrar directions when they exercise their functions.

However the judge (trial court of the first instance) decides on petitions, objections and complaints which affect the mode of enforcement or the procedure to be followed by the bailiff and the registrar in carrying it out (sec. 766 ZPO and sec. 11 Rechtspflegergesetz).

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  
 No

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

Yes  
Please specify which actors  
 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

➤ 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?

Registrar:

3 years at a college of higher education (Fachhochschule), including practical training

Bailiff:

Normally 2 years of special (also practical) training

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?

On such an appeal the judge may for instance decide that certain measures have to be performed.

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

The judge may not directly intervene when the registrar or the bailiff exercise their function.

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

See above answer to question 10.

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

If a third party has a right involved in the enforcement the party may bring an action before a court (cf. sec. 771 ZPO). For other remedies see above answer to question 2.

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

In a substantial number of cases parties do not state fortune correctly or transfer money or certain objects to third persons.

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

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

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

According to sec. 451 Code of Criminal Procedure (Strafprozessordnung – StPO) the sentence shall be executed by the public prosecution office as the executing authority on the basis of a certified copy of the operative provisions of the judgment containing an endorsement of enforceability, to be issued by the registry clerk.

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?

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

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

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

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

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

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?

Islande/Iceland

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

*Act no. 90/1989 um aðför. Not in the constitution. The authority may be called a civil magistrate. Does not have judicial powers.*

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

If yes, please specify

*Disagreement of parties in respect to the enforcement may be referred to court.*

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

No

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

Yes

Please specify which actors

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

➤ 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?  
*Legal training.*

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?

*None*

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

*None*

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

*None, that is except a dispute is sent to the court by the official in charge.*

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

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

*There are no major complaints.*

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

*Act no. 49/2005 um fullnustu refsinga. Not in the constitution. The prison authorities under the supervision of the ministry of justice are responsible.*

No

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

➤ He is responsible for the enforcement?

Yes

No

18. He has others competences as regards enforcement?

Yes

No



If yes, please specify

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

- Yes  
 No

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

- Yes  
Please specify which actors  
 No

21. 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

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

*A detainee in custody may issue a complaint to a judge concerning the conditions of his detention, otherwise none. Prisoners may of cause sue the state for compensation if their rights have been violated.*

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

*None. The prison authorities have that power.*

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

*None.*

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

*None.*

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

For some time now the prisons have been too small. Too few places result in a long period passing between the judgement and the initiation of prison time. Also some of the housing is old and ill equipped to meet modern prison standards. Some complaints concern medical services to prisoners, by law they have equal right to that. Long periods of custody after arrest have been criticized. Recent law limits this period to 12 weeks from arrest to indictment, except in extraordinary circumstances.

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

*Prisoners can themselves issue formal complaints about living conditions in prison, or they can choose a spokesperson to complain on their behalf or they can get a legal council. Human rights groups may complain on a general level. Complaints are made to the prison ward, the prison authorities or to the ministry of justice. The rules of administrative procedure apply.*

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

*A lack of prison facilities and perhaps alternative methods could be used to a further extent.*

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

*As said above, there is a pressing need for building new prison facilities. It is especially bad when young people are made to wait for a long time before they are summoned to serve their sentence. Also there is time to start experimenting with alternative methods, such as electronic surveillance. Judges are also generally of the opinion that the law should be changed in such a way, that decisions about punishment in the form of community services and the like should be taken by the courts and at the time of the sentence being passed, but not, as the law now is, afterwards by the prison authorities.*

Norvège/Norway

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 execution and enforcement of a judgment is not in general regarded as part of the ordinary Courts' judicial activities, but mainly considered to be an administrative task. However, the execution and enforcement procedure is part of the work of the ordinary Courts, as part of their administrative functions. In addition, the execution and enforcement procedures are handled by execution and enforcement commissioners. Thus, pursuant to the Act Relating to Enforcement of Claims Sec. 2-1, the district courts and the commissioner together constitute the execution and enforcement authority. Whether a petition for execution of a judgment is to be filed with either the execution and enforcement commissioner or with the general courts depends upon the matter in question. Where the petition shall be filed with the commissioner, the commissioner's decisions may be appealed to the ordinary Courts.

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

If yes, please specify:

The judge who hands down a decision is not responsible for its enforcement. However, as described in answer (1), the execution and enforcement of a judgment – considered to be an administrative task – may sometimes lie with the general courts

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

- Yes  
 No (see answer (2))

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 (see answer (1))

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

- Yes  
Please specify which actors:

See answer (1). In addition, the police may assist in the enforcement procedure.

- 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

➤ 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?

Although there are no formal education or training requirements for execution and enforcement commissioners, they would normally be jurists, or police officers.

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

- Yes  
 No

Comment: In general, cases regarding enforcement are handled considerably faster than ordinary civil cases. If the competence to handle a claim for enforcement lies with the execution and enforcement commissioner, but the commissioner does not act in response to petition, this lack of action may be appealed to the district courts.

If yes, what are the sanctions of this appeal?

The district court may hand down its own decision, or it may send the case back to the commissioner.

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

No particular powers.

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

Where the competence to execute and enforce a judgment is vested in a judge (see answer (1)), the judge may use the police to force the enforcement.

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

The Act Relating to Enforcement of Claims includes procedural rules and mechanisms to protect the rights of parties and third parties.

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

In general the Norwegian system for enforcement of judicial decisions is functioning effectively. At times, however, lack of funding for execution and enforcement commissioners has resulted in a relatively long average handling time, especially in the larger cities.

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

N/A (see answer (13))

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

Pursuant to the Criminal Procedure Act Chapter 32, the competence to order enforcement of judgements in criminal cases lies with the Public Prosecutor or the

police. The Correctional Services is the authority actually carrying out the enforcement.

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 (but see answer 23)

If yes, please specify

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

N/A

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

N/A

20. When he is working with other actors in the enforcement procedure, what are the exact competences of the judge:

N/A

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

N/A

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

A judge may impose a range of alternative sentences, e.g. community sentence.

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

As a main rule, these powers are vested in the Correctional Services.

However, in the event of a prisoner released on probation (conditional release) being in breach of the terms of probation, the case may be brought before a Court with an application for the prisoner to be recommitted to prison to serve the remainder of his sentence. This also applies where a person sentenced to community service is in breach of the terms of the sentence –such a case may be brought before a Court with an application for the execution of a subsidiary sentence of imprisonment.

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

When imposing a fine, the Court determines a subsidiary sentence of imprisonment. Fines are recovered by the National Collection Agency. In the event of the claim not being met, the Collection Agency may file a petition for enforcement with the enforcement commissioner (or the courts) (see answer (1)). The competence to order the convicted person to serve the subsidiary sentence of imprisonment lies with the police.

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

Complaints have in the recent years mainly been regarding rejected applications for release on probation, and rejected applications for being transferred to a prison with a lower level of security.

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

The Parliamentary Ombudsman is responsible for handling such complaints.

If a complaint falls within the mandate of the Ombudsman, the Ombudsman will assess whether grounds exist for raising the matter with the public administration agency to which the complaint applies. This assessment normally takes between four and ten weeks. If grounds do exist for further investigations the Ombudsman will contact the public administration agency requesting their comments to the complaint. The complainant then has the opportunity to give his or her comments. Finally, the Parliamentary Ombudsman gives his opinion in the case. If the opinion finds in favour of the complainant and the case results in censure of the administration, the administration will normally comply with the findings of the Ombudsman.

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

Up until recently, the time many convicted persons have to wait before serving their sentences ("prison queues"), has been quite an obstacle to enforcement. However, this problem is now about to be solved.

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

### Republic Tchèque/Czech Republic

A) IN CIVIL AND ADMINISTRATIVE MATTERS
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1. Is the authority responsible for the enforcement specified in the law or in the constitution?

**Yes**

Please specify : It is stipulated in Code of Civil Law Procedure, Code of Administrative Procedure and Rules of Execution Procedure

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

➤ He is responsible for the enforcement

➤ **Yes.**

➤ He decides, that execution could be carried out.

➤ He also authorises concrete executor to do it.

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

**No.**

We have judges specialised on execution proceedings.

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

**Yes.**

Party which has a duty according to judgement should perform it voluntarily. If not - it is up to the party which should obtain this performance from the other party (but has not obtain any) to bring an application for an execution of the judgement.

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

**Yes.**

Judge should order an execution of judgement or decision etc.

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

**Not necessarily.**

Only in special cases stipulated by law or in case that judge considers it necessary.

7. When he is working with other actors in the enforcement procedure, what are the exact competences of the judge:

See answer to question No 2.

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

**Yes.**

But only in case that some of the actors bring the complaint or require some cooperation from the part of judge.

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

There are requirements stipulated by law – he has to be graduated in law, has to pass special exams, has to be unblemished, has to have three years practice.

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

**Yes.**

They can 1) either bring a special action for inactiveness of the court  
or 2) to bring a complaint against the person of executor

Ad 1 - Due to the action higher court can order to lower one to act in the case in determined term

Ad 2 - Due to the complaint – an executor could undergo disciplinary proceedings – sanctions differ from fine to removal from the office,

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

He can provide an executor with any information necessary for the execution (mainly about the person who should perform the duty, his property, account etc).

He can initiate the disciplinary proceedings against the passive executor or to authorise another one to substitute him.

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

He orders the enforcement but it is carried out by another person – by executor. In some cases he can force the enforcement by imposing fines to obliged party for obstructing (impeding).

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

He can stop the enforcement, if the law conditions are not met. He can decide on exemption of some things (which must not be subject to execution) from execution.

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

Those who are threatened by execution very often try secretly to transfer their property (money) to other persons or abroad in order to avoid execution.

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

To strengthen an international cooperation in fight against those who transfer their money or property abroad.

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

Generally yes. The procedure differs because of the method of enforcement depending on the subject of the enforcement.

## B) IN CRIMINAL MATTERS

16. Is the authority responsible for the enforcement of sentence specified in the law or in the constitution?

**Yes.**

It's specified in the Code of Criminal Procedure.

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

Generally it is the judge of the court of the first instance who is responsible for an enforcement of judgement. Court clerks can be entrusted with some less important acts by judge.

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

Generally **yes**.

In some cases it can be another judge. For example some decisions concerning the service of imprisonment are done by the court located in the district where is the prison, in which the sentence is being served.

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

**Yes.**

The other actors are – prosecutor, sentenced person, in some cases also and advocate, director of the prison, police etc.



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

**Yes.**

He can decide under the circumstances stipulated by Criminal Code on the releasing from completion the remainder of any sentence, on parole etc. He can also decide on the change of the sentence, for example that the conditionally suspended sentence will be executed in prison. Similarly he can change a fine which has not been paid by sentenced person to imprisonment etc.

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

He is responsible that enforcement of punishment will be done in accordance with law. If is not the not the case he is obliged to make necessary steps either on his own initiative or on the motion of prosecutor or sentenced person.

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

According the Criminal Code judge should prefer if possible alternative solutions – to impose conditionally suspended punishment, house (home) arrest, community service, fine etc.

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

The decisive aspects of the implementation of the sentence are determined by judge's decision.

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

He can allow person who has been sentenced to pay a fine to postponement or to instalments of payment. If sentenced person does not pay having no serious reason, judge can change such a sentence to imprisonment.

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

Reason vary. We face mainly different complaints on conditions of detainees daily life in prison, most serious are presented as alleged violation of their fundamental human rights.

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

It depends on the character of the reason for complaint. It could be solved either by director of prison or by prosecutor authorised to supervise the prison or the court in case of violation of fundamental rights of detainee.

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

Some sentenced person try to avoid their criminal responsibility and punishment by fleeing the country. They usually try to escape to countries which have no treaty on the mutual legal assistance or extradition treaty with the Czech Republic. Even the cooperation on extradition with some countries of the EU is still not smooth.

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

Mainly to increase number of countries having treaties on mutual legal assistance including extradition with the Czech Republic and the EU. Then to harmonize contain of Criminal Codes and Codes of Criminal Procedure within the EU.

Luxembourg:

A) EN MATIERE CIVILE ET ADMINISTRATIVE

1. *L'autorité chargée de l'exécution est-elle spécifiée dans la loi (constitution, loi, etc.) ?*

- Oui  
 Non

2. *Quelles sont les compétences du juge en matière d'exécution:*

a. *Il est chargé de l'exécution ?*

- Oui  
 Non

L'article 677 du Nouveau Code de Procédure Civile dispose ce qui suit:

« Nul jugement ni acte ne pourront être mis à exécution, s'ils ne portent le même intitulé que les lois et ne sont terminés par un mandement aux officiers de justice, ainsi qu'il est dit à l'article 254. »

L'article 13 de la loi modifiée du 4 décembre 1990 portant organisation du service des huissiers de justice dispose ce qui suit:

« **L'huissier de justice** est un officier ministériel qui **a seul qualité**

- pour signifier les actes et les exploits et faire les notifications prévues par la loi et les règlements lorsque le mode de notification n'a pas été réglé par la loi;
- **pour procéder à l'exécution des décisions de justice** ainsi que des actes ou titres en forme exécutoire... »

L'article 692 du Nouveau Code de Procédure Civile dispose ce qui suit:

« La remise de l'acte ou du jugement à l'huissier de justice vaudra pouvoir pour toutes exécutions autres que la saisie immobilière pour laquelle il sera besoin d'un pouvoir spécial. »

Il est à noter que l'huissier de justice opère à la demande et en qualité de mandataire d'une des parties au procès.

Les dispositions légales et réglementaires relatives au mandat s'appliquent aux relations entre l'huissier de justice et son mandant.

L'article 1999 du Code Civil dispose ce qui suit:

« Le mandant doit rembourser au mandataire les avances et frais que celui-ci a faits pour l'exécution du mandat, et lui payer ses salaires lorsqu'il en a été promis.

S'il n'y a aucune faute imputable au mandataire, le mandant ne peut ni se dispenser de faire ces remboursements et paiements, lors même que l'affaire n'aurait pas réussi, ni faire réduire le montant des frais et avances sous le prétexte qu'ils pouvaient être moindres. »

« L'huissier de justice chargé de donner ses soins à une affaire a en principe droit à des honoraires du chef de ces soins, car il est d'usage de rémunérer celui à qui on confie un acte quelconque, lorsque cet acte est relatif à l'état et à la profession de ce dernier et qu'il cherche dans l'exercice d'actes de ce genre tout ou partie de ses ressources. » ( cf. Tribunal d'Arrondissement de et à Luxembourg, 19 février 1902, Pasicrisie Luxembourgeoise, tome 6, page 329).

L'article 1265 du Nouveau Code de Procédure Civile dispose ce qui suit:

« Les avocats à la Cour qui ont occupé dans les causes où il est intervenu des jugements définitifs, seront tenus d'occuper sur l'exécution de ces jugements, sans nouveaux pouvoirs, pourvu qu'elle ait lieu dans l'année de la prononciation des jugements. »

b. *Autres compétences en matière d'exécution ?*

Oui

Non

*Si oui, veuillez préciser:*

L'article 1<sup>er</sup> du Nouveau Code de Procédure Civile dispose ce qui suit:

« En matière civile et commerciale, le juge de paix connaît ... de l'exécution de ses propres jugements... »

L'article 20 du Nouveau Code de Procédure Civile dispose ce qui suit:

« En matière civile et commerciale, le tribunal d'arrondissement est juge de droit commun et connaît de toutes les affaires pour lesquelles compétence n'est pas attribuée expressément à une autre juridiction, en raison de la nature ou du montant de la demande. »

L'article 21 du même code poursuit:

« ... Il connaît exclusivement des demandes en exequatur des jugements rendus par les tribunaux étrangers et des actes reçus par les officiers étrangers. »

L'article 570 du Nouveau Code de Procédure Civile dispose ce qui suit:

« Les tribunaux d'arrondissement siégeant en matière commerciale connaîtront de l'exécution de leur jugement. »

L'article 596 du Nouveau Code de Procédure Civile dispose ce qui suit:

« Si le jugement est confirmé, l'exécution appartiendra au tribunal dont est appel: si le jugement est infirmé, l'exécution, entre les mêmes parties, appartiendra à la Cour d'Appel qui aura prononcé, ou à un autre tribunal qu'elle aura indiqué par le même arrêt... »

L'article 932 du Nouveau Code de Procédure Civile dispose ce qui suit:

« ... le président du tribunal d'arrondissement, ou le juge qui le remplace, ... peut également statuer ( en référé) sur les difficultés relatives à l'exécution d'un jugement ou d'un autre titre exécutoire. »

L'article 941 du Nouveau Code de Procédure Civile dispose ce qui suit:

« ... le président du tribunal du travail ... peut également statuer ( en référé) sur les difficultés relatives à l'exécution de ses propres ordonnances et des jugements rendus par la juridiction du travail qu'il préside. »

« Lorsque l'exécution d'un jugement fait surgir une difficulté, les parties disposent en principe de deux voies dont l'une n'exclut pas l'autre; elles peuvent s'adresser soit au juge des référés, qui statuera provisoirement, soit à la juridiction qui a statué au principal, laquelle tranchera définitivement. » ( Cour d'Appel Luxembourg, 6 novembre 1985, Pasicrisie Luxembourgeoise, tome 26, page 366)

3. *Le juge chargé de l'exécution (s'il existe) est-il le même que celui qui a rendu la décision ?*

- Oui  
 Non

Voir ci-dessus la réponse à la question n°2.

4. *Les parties doivent-elles tenter une nouvelle procédure pour que la décision soit exécutée ?*

- Oui  
 Non

5. *Cette procédure doit-elle aboutir par une nouvelle décision ?*

- Oui  
 Non

6. *Le juge travaille-t-il avec d'autres personnes, acteurs dans la procédure d'exécution ?*

- Oui

*Veillez préciser quelles sont ces personnes:*

Les avocats à la cour et les huissiers de justice des parties ( voir la réponse à la question n°2).

Non

7. *Lorsqu'il travaille avec d'autres acteurs de la procédure d'exécution, quelles sont les tâches exactes du juge:*

c. *Il engage la procédure ?*

Oui

Non

d. *Il contrôle et surveille la procédure (délai par ex.) et le travail effectué par les autres acteurs ?*

Oui

Non

L'article 16 de la loi modifiée du 4 décembre 1990 portant organisation du service des huissiers de justice dispose ce qui suit:

« ... A la requête de toute partie intéressée, le président du tribunal d'arrondissement de la résidence de l'huissier de justice statue sur la taxation des droits et frais. »

L'article 29 de la même loi dispose ce qui suit:

« Le procureur d'Etat veille au maintien de l'ordre et de la discipline des huissiers de justice de l'arrondissement et à l'exécution des lois et règlements qui les concernent.

Il instruit les affaires dont il est saisi sur plainte ou dont il se saisit d'office et les défère au tribunal d'arrondissement, chambre civile, s'il estime qu'il y a infraction à la discipline... »

e. *Autres tâches ?*

Oui

Non

*Le cas échéant, veuillez préciser*

8. *Quelle est la formation de la personne chargée de l'exécution, si ce n'est pas un juge ?*

L'article 2 de la loi modifiée du 4 décembre 1990 portant organisation du service des huissiers de justice dispose ce qui suit:

« Pour pouvoir être nommé huissier de justice, il faut:

1) être Luxembourgeois et avoir la jouissance des droits civils et l'exercice des droits politiques;

2) produire un certificat de moralité délivré par le procureur d'Etat;

- 3) avoir accompli un stage dont les conditions et modalités sont fixées à l'article 3 ci-dessous;
- 4) présenter le certificat de candidat-huissier de justice. »

L'article 3 de la même loi dispose ce qui suit:

« Pour pouvoir être admis au stage, le candidat doit,

soit présenter le certificat de formation complémentaire en droit luxembourgeois prévu par les articles 5 et 8 du règlement grand-ducal du 21 janvier 1978 tel que modifié portant organisation du stage judiciaire et réglementant l'accès au notariat,

soit présenter le diplôme de docteur en droit délivré par un jury luxembourgeois conformément à la loi du 5 août 1939 sur la collation des grades.

Le stage, qui doit être un stage effectif et non interrompu, a une durée d'un an; il doit être effectué dans une étude d'huissier de justice en fonction depuis au moins cinq ans.

L'admission au stage a lieu par décision du ministre de la Justice sur avis du Procureur Général d'Etat et de la Chambre des Huissiers de Justice. »

9. *Les parties ont-elles un recours si l'exécution n'est pas effectuée dans un délai raisonnable ?*

- Oui  
 Non

Si oui, quelles peuvent être les sanctions de ce recours ?

10. *Quels sont les pouvoirs du juge pour accélérer l'exécution ?*

L'article 2059 du Code Civil dispose ce qui suit:

« Le juge peut, à la demande d'une partie, condamner l'autre partie, pour le cas où il ne serait pas satisfait à la condamnation principale, au paiement d'une somme d'argent, dénommée astreinte, le tout sans préjudice des dommages-intérêts, s'il y a lieu.

Toutefois, l'astreinte ne peut être prononcée en cas de condamnation au paiement d'une somme d'argent. »

11. *Quels sont les pouvoirs du juge pour forcer l'exécution ?*

Voir la réponse sous la question n°10 ci-dessus.

12. *Quels sont les pouvoirs du juge pour protéger les droits des parties et des tiers lors de la procédure d'exécution ?*

Saisi sur le fondement des articles du Nouveau Code de Procédure Civile reproduits ci-dessus sous la question n°2, le juge peut prendre toute décision qui lui semble utile.

13. *Dans votre pays, quels sont les principaux obstacles à l'exécution des décisions?*

Si le système fonctionne généralement de façon satisfaisante en ce qui concerne les litiges importants, impliquant des parties solvables, où les avocats des parties s'arrangent normalement entre eux pour que la décision judiciaire soit exécutée volontairement par la partie ayant succombé, le système ne fonctionne pas en ce qui concerne les petits litiges impliquant des gens peu fortunés, le coût de l'exécution dépassant parfois le décuple de l'enjeu du litige.

L'huissier de justice multiplie les actes, le débiteur vu sa situation financière obérée paie par acomptes, le montant d'un acompte ne suffisant généralement pas à couvrir le coût de l'acte accompli par l'huissier de justice, de sorte que le débiteur paie pendant des années et des années sans que sa dette ne diminue et sans que le créancier, dont souvent la situation financière n'est guère meilleure que celle du débiteur, ne reçoive un sous.

14. *Selon vous, pour votre pays, quels sont les changements principaux nécessaires pour améliorer l'efficacité de la procédure d'exécution?*

Dans sa recommandation n°36 relative au coût et à la simplification des procédures de recouvrement de créances par voie d'huissier de justice, annexée à son rapport annuel publié le 29 octobre 2009, le Médiateur ( Ombudsman) conclut:

« ...De par la loi, les justiciables sont obligés, dans certaines procédures judiciaires notamment introductives d'instances et d'exécution, de recourir au service d'un huissier de justice.

Or, plus particulièrement en ce qui concerne l'intervention de l'huissier de justice en matière de recouvrement se pose la question des frais... Dans le cas du débiteur indigent par contre, ces frais seront mis à charge du demandeur qui ne se voit pas seulement spolié de son dû au principal, mais qui de surcroît doit supporter les frais de l'exécution...

Or, depuis la mise en vigueur de la loi modifiée sur l'organisation judiciaire du 7 mars 1980, qui par l'article 186 a aboli le casuel des greffiers, le principe de la gratuité des services rendus par l'administration judiciaire est largement acquis.

Afin d'étendre ce principe également à la procédure introductive d'instance **et à la procédure d'exécution de décisions judiciaires** et plus généralement à toutes les procédures dans lesquelles des textes légaux et réglementaires prévoient obligatoirement l'intervention d'un huissier de justice, procédures qui dans nombre de cas génèrent des frais disproportionnés, **il serait opportun de prévoir, à terme, la fonctionnarisation des huissiers de justice en tant qu'agents de l'administration judiciaire** avec un cadre de personnel propre et correspondant à leur formation... »

15. *La procédure d'exécution est-elle la même en matière civile et en matière administrative :*

Oui  
 Non

*Si non, veuillez préciser les différences.*

Les réponses qui précèdent sub 1 à 14 concernent exclusivement les matières civile et commerciale.

En matière administrative, l'exécution des jugements et arrêts est réglée par le chapitre 6, intitulé « De l'exécution des arrêts et jugements en matière administrative » et comprenant les articles 84 à 87, de la loi modifiée du 7 novembre 1996 portant organisation des juridictions de l'ordre administratif, qui dispose ce qui suit:

« **84.** Lorsqu'en cas d'annulation ou de réformation, coulée en force de chose jugée, d'une décision administrative qui n'est pas réservée par la Constitution à un organe déterminé, la juridiction ayant annulé ou réformé la décision a renvoyé l'affaire devant l'autorité compétente et que celle-ci omet de prendre une décision en se conformant au jugement ou à l'arrêt, la partie intéressée peut, à l'expiration d'un délai de trois mois à partir du prononcé de l'arrêt ou du jugement, saisir la juridiction qui a renvoyé l'affaire en vue de charger un commissaire spécial de prendre la décision aux lieu et place de l'autorité compétente et aux frais de celle-ci. La juridiction fixe au commissaire spécial un délai dans lequel il doit accomplir sa mission. La désignation du commissaire spécial dessaisit l'autorité compétente.

**85.** Au cas où la décision devait être prise par une personne publique décentralisée ou par une autorité déconcentrée, le commissaire spécial est choisi parmi les fonctionnaires supérieurs de l'autorité de tutelle ou du ministère dont relève l'autorité à laquelle l'affaire a été renvoyée.

Dans les autres cas, le commissaire spécial est choisi parmi les membres de la juridiction.

**86.** La décision du commissaire spécial est, selon le cas, susceptible d'un recours en annulation ou d'un recours en réformation.

**87.** Les commissaires spéciaux ont droit à une indemnité. Elle est fixée par la juridiction suivant la nature et la complexité de l'affaire, d'après les bases établies par un règlement grand-ducal. »

## B) EN MATIERE PENALE

16. oui :

- Art. 2 al. 2 de la loi modifiée du 27 juillet 1997 portant réorganisation de l'administration pénitentiaire<sup>1</sup> ;
- Art. 12 de la loi modifiée du 26 juillet 1986 relative à certains modes d'exécution des peines privatives de liberté.<sup>2</sup>

17. Est-il chargé de l'exécution : oui

Autres compétences en matière d'exécution : le procureur général d'Etat (ou son délégué) est responsable de la détermination du traitement pénologique des détenus.

18. non

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<sup>1</sup> Annexe 1

<sup>2</sup> Annexe 2



19. oui :

- Commission pénitentiaire<sup>3</sup>;
- agents de probation du Service Central d'Assistance Sociale ;
- Service psycho-socio éducatif des centres pénitentiaires

20. Il engage la procédure : oui

Il contrôle et surveille : oui

Autres : le procureur général d'Etat détermine les modalités de l'exécution des peines privatives de liberté.

21. Néant

22. Le procureur général d'Etat détermine la nature du *travail d'intérêt général* dans chaque cas individuel de concert avec le Service Central d'Assistance Sociale<sup>4</sup>.

Le procureur général d'Etat dispose de la possibilité de placer un condamné sous *surveillance électronique* en tant que modalité d'exécution des peines privatives de liberté. Le bracelet électronique peut être accordé soit pour éviter au condamné une incarcération et le maintenir dans son milieu social (système *front door*), soit pour faciliter la réinsertion de condamnés détenus (système *back door*).

23. Dans l'application des peines, le procureur général d'Etat est seul compétent pour les peines inférieures à deux ans. Pour les peines supérieures à deux ans, les mesures d'exécution des peines privatives de liberté sont prises par le procureur général d'Etat de l'accord majoritaire d'une commission<sup>5</sup>.

24. Le procureur général d'Etat dispose de la responsabilité du paiement des amendes par l'intermédiaire de l'Administration de l'Enregistrement et des Domaines.

25. Les motifs principaux de plaintes concernant les droits des détenus se réfèrent aux conditions de détention, au régime de détention, au sport et au travail.

26. D'abord, les détenus sont autorisés à présenter des requêtes ou des plaintes au directeur de prison en vertu de l'art. 211 du règlement grand-ducal du 24 mars 1989 concernant l'administration et le régime interne des établissements pénitentiaires<sup>6</sup>. Ensuite, ils sont autorisés à former un recours auprès du procureur général d'Etat<sup>7</sup>. Finalement, aux termes de l'art. 215 du règlement grand-ducal précité, les détenus peuvent adresser des requêtes ou plaintes au chef d'Etat, à la Chambre des Députés, au Gouvernement, au ministre de la Justice, au procureur général d'Etat ainsi qu'aux autorités judiciaires.

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<sup>3</sup> Art. 12 de la loi modifiée du 26 juillet 1986 relative à certains modes d'exécution des peines privatives de liberté

<sup>4</sup> Art. 3 du règlement grand-ducal du 20 septembre 1994 relatif au travail d'intérêt général (annexe 3)

<sup>5</sup> Voir annexe 2

<sup>6</sup> Annexe 4

<sup>7</sup> Art. 212 à 214 du règlement grand-ducal du 24 mars 1989 concernant l'administration et le régime interne des établissements pénitentiaires (voir annexe 4)

Tout citoyen, y compris les détenus, est autorisé à introduire une requête auprès du Médiateur en cas de problème avec une administration en vertu de l'article 2 de la loi du 22 août 2003 instituant un Médiateur.<sup>8</sup>

27. Actuellement, le service de l'exécution des peines privatives de liberté fait l'objet d'un important manque en effectifs. De même, la surpopulation carcérale freine une mise en œuvre efficace du traitement pénologique personnalisé.

28. Un surplus en effectifs améliorerait l'efficacité de la procédure d'exécution des peines. Le procureur général d'Etat (ou son délégué) assure à lui seul, d'un côté, les tâches de la direction générale et la surveillance des établissements pénitentiaires et, de l'autre côté, de l'exécution des peines et du traitement pénologique des détenus. Une réforme au niveau de la division de ces tâches serait utile afin d'assurer un meilleur suivi au niveau des dossiers et de décharger le procureur général d'Etat de la direction générale des établissements pénitentiaires.

### Slovaquie/Slovakia

#### 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.

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<sup>8</sup> Annexe 5

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.

Albanie/Albania

A) IN CIVIL AND ADMINISTRATIVE MATTERS
--

-Under the Constitution of the Republic of Albania, article 142, state organs must execute judicial decisions.

-The authority responsible for the enforcement in civil and administrative matters is specified in the Criminal Procedure Code, in the law "On organizing and functioning of bailiff service" and in the law "On private bailiff service".

-Compulsory execution of a final judicial decision in civil matters requires a law court order, which is initiated by the request of the creditor. It means that the parties have to make a new application for the decision to be enforced.

-This new application comes to an end with a judicial decision.

-The law court order is enforced by public or private bailiff on demand of creditor.

-The parties can submit a complaint to the law court, which has given the order of enforcement, against acts carried out by the bailiff or against his refusal to act. The law court considers the complaint and summons the bailiff as a defendant.

A particular complaint can be submitted against the judicial decision taken by the law court.

-The law court can suspend the enforcement.

-The judge is not responsible for the enforcement of the judicial decision.

-It is a requirement of the law, that bailiff responsible for the enforcement must be graduated from the faculty of law.

-The parties can appeal if the decision is not enforced within a reasonable time.

-The judge doesn't have any powers to speed up the enforcement.

-The judge can summon the parties and third parties in the enforcement to appear before him in order to protect their rights.

-The enforcement procedures for civil and administrative matters are more or less similar. Of the latter, the party concerned can complain to the upper administrative organ besides to the law court.

-One of the the main obstacles to the enforcement of decisions is the large number of these ones. On the other hand, the need for rapid action with respect to the rule of law should be taken into consideration.

-Respecting the rule of law is the main way to improve the effectiveness of the enforcement proceedings.

B) IN CRIMINAL MATTERS
------------------------

-The authority responsible for the enforcement of sentence is specified in the Criminal Procedure Code and the law "On execution of penal decisions".

-The prosecutor gives the court notice of the execution of judicial decision, soon after it is put in action and carried out.

-The law court, which has taken the decision, is competent to consider requests and claims concerning its executing.

-The law court proceeds with execution matters on demand of prosecutor and lawyer.

-The law court, which has taken the decision can decide to postpone executing on demand of prosecutor, the convict and lawyer in certain circumstances.

-The law court, which is located in the territory where execution of judicial decision is put in action, decides on offender's probation, referring to Criminal Code criteria.

-The prisoner can submit his request to the above-mentioned law court. This demand is considered by one judge different from the judge who passed the custodial sentence.

-The law court, which is located in the territory where execution of judicial decision is put in action, can decide that the prisoner should be released from prison in case of his being imprisoned can risk his life.

-The law court, which has taken the decision, is competent to consider requests and claims concerning its executing.

-Procedural check in the enforcement procedure of final judicial decisions is performed by the prosecutor.

The law court, that has taken the judicial decision or that one which is located in the territory where execution of judicial decision is put in action, can ask prosecutor and the institution, where execution is put in action, for notices. The above-mentioned law court can check directly the enforcement procedure, whenever it considers necessary.

-A Supervisory Committee is established beside the Minister of Justice, as a consultative Committee on respecting the law in the enforcement procedure of custodial sentence (a term of imprisonment) and on protecting prisoners' rights.

-As regards the alternative solutions to prison, the judge, soon after the defendant found guilty of an offence upon a verdict, is released by the court without imprisonment, subject to conditions imposed by the court, makes the offender known of being under the supervision of a probation officer and orders him to be in contact with that officer.

-A noncustodial sentence, such as a fine is enforced by bailiff. The prosecutor submits a demand to the law court, which has taken the decision, in order to convert the punishment of the offender, if the latter is found insolvent. The law court can postpone converting till six months.

-The main reasons for complaints of detainees are concerned with living conditions in jail.



-Under the Constitution of Albania,(article 27), liberty of a person may not be limited, except in certain circumstances, such as:

- a. when he is punished with imprisonment by a competent court;
- b. for failure to comply with the lawful orders of the court or with an obligation set by law;
- c. when there is a reasonable suspicion that he has committed a criminal offense or to prevent the commission by him of a criminal offense or his escape after its commission;

-The person whose liberty has been taken away, according to the latter paragraph, must be brought within 48 hours before a judge, who shall decide upon his pre-sentence detention or release not later than 48 hours from the moment he receives the documents for review.

A person in pre-sentence detention has the right to appeal the judge's decision. He has the right to be tried within a reasonable period of time or to be released on bail pursuant to law.

In all other cases, the person whose liberty is taken away extrajudicially may address a judge at any time, who shall decide within 48 hours regarding the legality of this action.

Every person whose liberty was taken away pursuant to article 27 has the right to humane treatment and respect for his dignity.

-General Director of prisons is responsible for living conditions in a prison. The prisoner can address to Supervisory Committee, which considers complaints and verifies the situation and recommends certain solutions to relevant director of prison and make Minister of Justice known about this action.

On the other hand, the prisoner can address to the law district court, within which territory the prison is located.

-Once again, respecting the rule of law is the main way to improve the effectiveness of the enforcement proceedings.

## Monaco

A) EN MATIERE CIVILE ET ADMINISTRATIVE
--

1. L'autorité chargée de l'exécution est-elle spécifiée dans la loi (constitution, loi, etc.) ?

- Oui  
 Non

2. Quelles sont les compétences du juge en matière d'exécution :

f. Il est chargé de l'exécution ?

- Oui

- Non  
g. Autres compétences en matière d'exécution ?  
 Oui  
 Non

Si oui, veuillez préciser

3. Le juge chargé de l'exécution (s'il existe) est-il le même que celui qui a rendu la décision ?

- Oui  
 Non

4. Les parties doivent-elles tenter une nouvelle procédure pour que la décision soit exécutée ?

- Oui  
 Non

5. Cette procédure doit-elle aboutir par une nouvelle décision ?

- Oui  
 Non

6. Le juge travaille-t-il avec d'autres personnes, acteurs dans la procédure d'exécution ?

- Oui  
Veuillez préciser quelles sont ces personnes : **huissiers de justice et avocats**  
 Non

7. Lorsqu'il travaille avec d'autres acteurs de la procédure d'exécution, quelles sont les tâches exactes du juge :

- h. Il engage la procédure ?

- Oui  
 Non

- i. Il contrôle et surveille la procédure (délai par ex.) et le travail effectué par les autres acteurs ?

- Oui  
 Non

- j. Autres tâches ?

- Oui  
 Non

Le cas échéant, veuillez préciser

8. Quelle est la formation de la personne chargée de l'exécution, si ce n'est pas un juge ?

9. Les parties ont-elles un recours si l'exécution n'est pas effectuée dans un délai raisonnable ?

- Oui  
 Non

Si oui, quelles peuvent être les sanctions de ce recours ?

**Une condamnation au paiement d'une astreinte**

10. Quels sont les pouvoirs du juge pour accélérer l'exécution ?

### Une condamnation au paiement d'une astreinte

11. Quels sont les pouvoirs du juge pour forcer l'exécution ?

**Cf réponse 10.**

12. Quels sont les pouvoirs du juge pour protéger les droits des parties et des tiers lors de la procédure d'exécution ?

13. Dans votre pays, quels sont les principaux obstacles à l'exécution des décisions?

### L'insolvabilité et le défaut des débiteurs

14. Selon vous, pour votre pays, quels sont les changements principaux nécessaires pour améliorer l'efficacité de la procédure d'exécution?

### La création d'un juge spécialisé dans l'exécution

15. La procédure d'exécution est-elle la même en matière civile et en matière administrative :

Oui

Non

Sinon, veuillez préciser les différences.

## B) EN MATIERE PENALE

16. L'autorité chargée de l'exécution des peines est-elle spécifiée dans la loi (constitution, loi, etc.) ?

Oui

Veuillez préciser, **oui par le Ministère Public**

Non

17. Quelles sont les compétences du juge en matière d'exécution des peines :

k. Il est chargé de l'exécution ?

Oui

Non

l. Autres compétences en matière d'exécution?

Oui

Non

Si oui veuillez préciser

18. Le juge chargé de l'exécution (s'il existe) est-il le même que celui qui a rendu la décision ?

Oui

Non

19. Le juge travaille-t-il avec d'autres personnes, acteurs dans la procédure d'exécution des peines?

Oui

Veuillez préciser quelles sont ces personnes, **huissiers de justice, police, administration pénitentiaire**

Non

20. Lorsque le juge travaille avec d'autres acteurs de la procédure d'exécution, quelles sont les tâches exactes du juge ?

m. Il engage la procédure

Oui

Non

n. Il contrôle et surveille la procédure (délai par ex.) et le travail effectué par les autres acteurs

Oui

Non

o. Autres

Oui

Non

Le cas échéant, veuillez préciser

21. Quels sont les pouvoirs du juge pour protéger les droits des détenus et des tiers lors de la procédure de l'exécution ?

22. Quel est le rôle du juge dans les peines alternatives à l'emprisonnement ?

Aucun, Le Juge de l'application des peines monégasque ne dispose que d'un pouvoir de contrôle d'une décision préalablement rendue par une juridiction répressive et non d'aménagement d'une peine prononcée

23. Quel est le rôle du juge dans l'application des peines (aménagement, libération conditionnelle, etc.) ?

Le juge de l'application des peines émet un avis suite à toutes demandes de libération conditionnelle dont la décision définitive relève de la compétence du Directeur des Services Judiciaires

24. Quel est le rôle du juge pour permettre le paiement effectif des amendes ?

Les incidents contentieux relatifs à l'exécution des condamnations pécuniaires sont portés devant le Tribunal de Première Instance, jugeant en matière civile, qui peut exercer la contrainte par corps pour assurer l'exécution des arrêts et jugements portant condamnation à des amendes et dommages intérêts

25. Quelles sont les motifs principaux des plaintes concernant les droits des détenus ?

26. Qui est chargé, dans votre pays, des plaintes concernant les conditions de vie en prison ? Quelle est la procédure de traitement de ces plaintes ?

Le Procureur Général ainsi que le Directeur des Services Judiciaires.

27. Dans votre pays, quelles sont les principaux obstacles à l'exécution des peines ?

### **Le défaut du condamné**

28. Selon vous, pour votre pays, quels sont les changements principaux nécessaires pour améliorer l'efficacité de la procédure d'exécution des peines ?

**Désignation d'une parquetier chargé de l'exécution des peines prononcées par les juridictions répressives.**

Bulgarie/Bulgaria

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

Code of Civil Procedure, Code of Administrative Procedure, Judicial System Act, Private Enforcement Agents Act

No

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

➤ He is responsible for the enforcement

Yes

**No** (exception – Article 264 Judicial System Act (see below))

➤ He has others competences as regards enforcement

**Yes**

No

If yes, please specify

– Art. 435 – 440 Code of Civil Procedure - the judge: a/ examines: 1/ appeals against certain enforcement agent's acts; 2/ actions brought by third party whose right has been affected by the enforcement; b/ suspends enforcement;

- Article 264 Judicial System Act - a judge at a district court with no state enforcement agents (there shall be state enforcement agents at the district courts), when designated by the chairperson of the respective court, shall implement enforcement agent's functions

*Code of Civil Procedure*

*Chapter Thirty-Nine*

*REMEDIES AGAINST ENFORCEMENT*

*Section I*

*Appellate Review of Enforcement Agent's Steps*

*Appealable Steps*

*Article 435. (1) The execution creditor may appeal against the refusal of the enforcement agent to perform an enforcement step sought, as well as the stay and termination of the coercive enforcement.*

*(2) The execution debtor may appeal against the decree on a fine and the levy of the enforcement against any property which the execution debtor considers unseizable, the seizure of a movable thing or the eviction of the execution debtor from an immovable, by reason of not being duly notified of the enforcement.*

*(3) The decree on award shall be appealable solely by a person who deposited earnest money before the last day of the sale, and by an execution creditor who entered the sale as a bidder, as well as by the execution debtor, by reason of a failure to conduct due bidding at the public sale or of the property not being awarded to the highest bidder.*

*(4) A third party may appeal against the steps of the enforcement agent solely where the enforcement is levied against corporeal things which, on the day of the garnishment,*

preventive attachment or delivery, if a movable thing is concerned, were in the possession of the said person. Any such appeal shall not be granted if it is established that the corporeal thing was owned by the execution debtor upon imposition of the garnishment or preventive attachment.

(5) A coercive seizure of possession of a corporeal immovable shall be appealable solely by a third party who was in possession of the said immovable prior to the bringing of the action whereunder the judgment is enforced. If the said third party fails to appeal within the time limit for appellate review, the said third party may bring a possessory action.

#### *Lodgment of Appeal*

Article 436. (1) The appeal shall be lodged care of the enforcement agent with the district court exercising jurisdiction over the place of the enforcement within one week after performance of the step, if the party was present at the performance of the said step or if the party was summoned, and in the rest of the cases, within one week after the day of the communication. In respect of the third parties, the time limit shall begin to run as from learning of the step.

(2) A duplicate copy of the appeal shall be served upon the other party, and where the appeal has been lodged by a third party, duplicate copies of the said appeal shall be served upon the execution debtor and upon the execution creditor on the petition whereof the enforcement case has been instituted.

(3) The party which has received a duplicate copy of the appeal may lodge written oppositions within three days. After expiry of the said time limit, the enforcement agent shall transmit the appeal together with the oppositions, if any, and a copy of the enforcement case to the district court, setting forth reasoning on the steps appealed.

(4) The provisions of Articles 260, 261 and 262 herein shall apply, *mutatis mutandis*, in respect of the appeals.

#### *Examination of Appeals*

Article 437. (1) The appeals lodged by the parties shall be examined *in camera*, except where witnesses or expert witnesses must be heard.

(2) The appeals lodged by third parties shall be examined in public session, with the appellant, the execution debtor and the execution creditor on the petition whereof the enforcement case has been instituted being summoned.

(3) The court shall examine the appeal on the basis of the data in the enforcement case and the evidence presented by the parties.

(4) The court shall publish the judgment together with the reasoning thereof within one month after the receipt of the appeal in the court. The judgment shall be unappealable.

#### *Stay of Enforcement upon Appellate Review*

Article 438. The lodgment of the appeal shall not stay the enforcement steps, but the court may decree a stay. In such case, the court shall immediately transmit a duplicate copy of the ruling on stay to the enforcement agent.

## *Section II*

### *Remedy according to Action Procedure*

#### *Contestation of Receivable*

Article 439. (1) The execution debtor may contest the enforcement through an action.

(2) The action of the execution debtor may be founded solely on facts which have occurred after conclusion of the trial in the proceeding whereunder the enforcement title has been issued.

### Remedy of Third Party

Article 440. (1) Any third party whereof a right has been affected by the enforcement may bring an action for declaration that the property whereagainst the enforcement for a pecuniary receivable is levied does not appertain to the execution debtor.

(2) Any such action shall be brought against the execution creditor and the execution debtor.

(3) The execution creditor shall be liable, under the terms established by Article 45 of the Obligations and Contracts Act, for any damages inflicted on third parties through levy of the enforcement against the property which appertains thereto.

3. Is the judge responsible for the enforcement (if exists) the same than the judge who took the decision? (see previous answer; in case of Article 264 Judicial System Act exception – no - the judge responsible for the enforcement is not the same 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  
 **No** (the party receives execution writ)

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

- Yes**

Please specify which actors  
– enforcement agents (state or private) – as far as the judge controls certain enforcement agent's acts upon party's appeal (Art.435 Code of Civil Procedure)

- 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**

➤ 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 - see answer to question N.2 – Art. 435-438 Code of Civil Procedure

8. What is the training of the person responsible for the enforcement if it is not a judge? – higher educational qualification in law, internship undergone and legal competency license to practice law obtained as specified in the Judicial System Act + continuing training

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? - No such powers

11. What are the powers of the judge to force the enforcement? – the judge may quash unlawful refusal of the enforcement agent to perform an enforcement step sought, as well as the stay and termination of the coercive enforcement upon appeal (Article 435 Code of Civil Procedure)

12. What are the powers of the judge to protect the rights of parties and of third parties in the enforcement? The judge is entitled: 1/ to quash certain enforcement agent's acts, when they are unlawful, upon appeal (Art.435 Code of Civil Procedure); 2/ to deliver a judgement - if an action has been brought (Art. 439-440 Code of Civil Procedure); 3/ to suspend the enforcement proceedings (Art.438 Code of Civil Procedure) (see answer to question N.2)

13. In your country, what are the main obstacles to the enforcement of decisions? State enforcement agents at the district courts were the only alternative for parties seeking enforcement until 1.09.2005. The enforcement proceedings often lasted unreasonably long – due to the fact that the enforcement agents were overloaded, the procedure was clumsy, the debtors, making use of it, abused their rights; sometimes practically there was no enforcement at all. Most of the obstacles had been overcome with the entry into force of the Private Enforcement Agents Act (as of 1.09.2005), the actual functioning of the latter and the new Code of Civil Procedure (in force as of 1.03.2008). Parties to enforcement proceedings instituted before 1.09.2005 were entitled either to proceed with the state enforcement agents (responsible for enforcement of judgements before 1.09.2005) or to continue with private enforcement agents chosen by themselves. Thus on the one hand the private enforcement agents' proceedings ended speedily (including because of the financial interest of the private enforcement agents - as the final tax is payable in the end) and on the other hand – the workload of the state enforcement agents rapidly diminished thus allowing speedier handling of pending cases. However, there are still obstacles impeding the enforcement – for example the lack of speedy information about debtor's assets (enforcement agents have no direct access to it and it could take three weeks to receive it from the respective institutions - banks, registers' holders, police, other institutions); obligatory one month stay of the proceedings, provided for possible intervention of the State with claims for public obligations of the debtor (the State shall always be considered as a joint execution creditor for the public obligations owed thereto by the debtor and the enforcement agent shall transmit a communication to the National Revenue Agency on each enforcement commenced and on each distribution, and continue the proceedings 30 days after the notification sent); inadmissibility of enforcement of pecuniary receivables against government institutions (they shall be paid out of the budgetary spending authority of the said institutions provided for this purpose; to this end, the writ of execution shall be presented to the financial authority of the relevant institution; if spending authority is not available, the superior institution shall undertake the measures necessary for a provision for such authority in the next succeeding budget at the latest); inadmissibility of enforcement against any resources on the bank accounts of the municipalities and the



other establishments subsidized by the budget, which have accrued as a subsidy from the central government budget; higher fees for private enforcement agents (the enforcement fees set are equal for state and private enforcement agents; however, as far as an amendment of the Value Added Act was adopted providing that private enforcement agents were “taxable persons”, the latter were obliged to calculate value added tax upon the tax set; thus the private enforcement agents’ proceedings are more expensive (20%) than the state enforcement agents’ proceedings).

14. According to you, what main changes are needed to improve the effectiveness of the enforcement proceedings in your country? – changes, guaranteeing speedier receiving of information about debtor’s assets, shorter term for a possible intervention of the State as a joint creditor or depriving it of this privilege, effective enforcement against state institutions/municipalities (there are European Court of Human Rights judgements against Bulgaria finding infringement of Art.6 ECHR because of lack of enforcement against State institutions - Mancheva v. Bulgaria, Sirmanov v. Bulgaria), no discrimination in terms of fees between enforcement officers of different status but equal competence, etc.

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 – Constitution, Code of Criminal Procedure, Implementation of Penal Sanctions and Detention in Custody Act

- 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

If yes, please specify

The judge examines proposals for:

early release

revocation of recognized work days in case of deprivation of liberty

replacement of the life imprisonment punishment with deprivation of liberty

replacement of the punishment of probation with deprivation of liberty

18. Is the judge responsible for the enforcement (if exists) the same than the judge who took the decision? – see answer to question N.17

- Yes

- No

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

Yes

Please specify which actors - prosecutor, commissions, the Governor of the prison or the correctional institution, the Chair of the Probation Board at the location where the sentence is served /see below answer to question N.20/

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 – the judge examines proposals for:

early release

revocation of recognized work days in case of deprivation of liberty

replacement of the life imprisonment punishment with deprivation of liberty

replacement of the punishment of probation with deprivation of liberty

### **Code of Criminal Procedure**

#### *Proposals for early release*

##### *Article 437*

*(1) Proposals for early release under Article 70 and 71 of the Criminal Code may be made by:*

*1. the district prosecutor, the military prosecutor, respectively, at the place of execution of the punishment;*

*2. the Commission under Article 17 of the Implementation of Penal Sanctions Act .*

*3. (repealed, SG No. 109/2008).*

*(2) The personal file of the person proposed for early release, the other written materials of significance for the correct decision of the case and a list of the persons who have to be summonsed shall be enclosed with the proposal.*

*(3) (Repealed, SG No. 109/2008).*

#### *Court which shall examine the proposal*

##### *Article 438*

*The proposal under Article 437, para shall be examined by the District or Military Court at the location of service of the punishment.*

#### *Procedure for examination of the proposal*

##### *Article 439*

*(1) The court shall hear the proposal in a panel of one, in camera.*

*(2) (Amended, SG No. 109/2008) Participation by the prosecutor and the Chair of the Commission referred to in Article 17 of the Implementation of Penal Sanctions Act shall be mandatory.*

*(3) The presence of the convict shall be mandatory.*

*(4) Upon completion of the collection and verification of evidence, the court shall give the floor to the body that has made the proposal.*

*(5) The prosecutor shall submit a conclusion, if the proposal does not come from him/her.*

*(6) The convict shall be the last to make a statement.*

#### *Ruling of the court*

##### *Article 440*

*(1) The court shall make its pronouncement by reasoned ruling.*

*(2) The prosecutor may file a protest against the ruling of the court, which shall be examined following the procedure of Chapter twenty-two.*

#### *A new proposal*

##### *Article 441*

*If the proposal under Article 437 is not granted by the court, a new proposal may be filed not earlier than three months following the date of pronouncement of the ruling.*

#### *Court which shall make pronouncement on serving the remainder of the punishment*

##### *Article 442*

*Where the early released individual commits a new crime within the probation period, the matters under Article 70, paragraphs (7) and (8) of the Criminal Code shall be resolved by the court which has jurisdiction in the case of the new crime.*

#### *Section II*

##### *Revocation of the validity of work days*

##### *Proposal for revocation*

##### *Article 443*

*A proposal for revocation of recognized work days in case of deprivation of liberty pursuant to Article 41, paragraphs (4) of the Criminal Code may be made by:*

- 1. the district prosecutor at the place of execution of the punishment;*
- 2. the Governor of the prison.*

#### *Examination of the proposal*

##### *Article 444*

*(1) The proposal shall be examined by the District Court at the location where deprivation of liberty is served, sitting in panel composed of one judge and two court assessors.*

*(2) The ruling of the court may be appealed within seven days of its issuance in pursuance of Chapter twenty-two.*

*(3) Should it revoke the ruling, the intermediate appellate review instance court shall resolve the case.*

*(4) Insofar as there are no special rules in this section, the rules of Section I of this Chapter shall apply.*

#### *Section III*

##### *Replacement of the regime of deprivation of liberty with a heavier one*

##### *Proposal for replacement*

#### *Article 445*

*Proposals for replacement of the regime of deprivation of liberty with a heavier than the one determined by court, may be made by:*

- 1. the District Prosecutor at the location where the sentence is served;*
- 2. the Governor of the prison or the correctional institution;*
- 3. the supervisory commission at the place of execution of the punishment.*

*Procedure for examination of the proposal*

#### *Article 446*

*(1) The proposal shall be examined by the District Court at the location where the punishment is served, sitting in panel composed of a judge and two court assessors.*

*(2) The ruling of the court may be appealed within seven days of its issuance in pursuance of Chapter twenty-two.*

*(3) Should it revoke the ruling, the intermediate appellate review instance court shall resolve the case.*

*(4) Insofar as there are no special rules in this Section, the rules of Section I of this Chapter shall apply.*

#### *Section IV*

*Interruption of the execution of a punishment of deprivation of liberty*

*Grounds for interrupting the execution*

#### *Section V*

*Replacement of life imprisonment with deprivation of liberty*

*Proposal for replacement*

#### *Article 449*

*The proposal for replacement of the life imprisonment punishment with deprivation of liberty may be made by the district prosecutor at the place where the punishment is served.*

*Procedure for examination of the proposal*

#### *Article 450*

*(1) The proposal shall be examined by the District Court at the location where the punishment is served, sitting in a panel composed of two judges and three court assessors.*

*(2) The participation of the prosecutor, the Governor of the prison and of the convict shall be mandatory.*

*(3) The court shall make pronouncement by a ruling with reasons. The ruling whereby replacement of the punishment is rejected, shall be subject to appeal in pursuance of chapter twenty-two.*

*(4) Where the proposal under Article 449 is not granted, a new proposal may be made not earlier than two years following the pronouncement of the ruling.*

#### *Section VI*

*Replacement of the punishment of probation with deprivation of liberty*

*Proposal for replacement*

#### *Article 451*

*The following shall be able to make a proposal for replacement of the punishment of probation with deprivation of liberty:*

- 1. The District Prosecutor at the location where the sentence is served;*
- 2. The Chair of the Probation Board at the location where the sentence is served.*

*Procedure for examination of the proposal*

*Article 452*

*(1) The proposal shall be examined by the District Court at the location where probation is served, sitting in panel composed of a one judge and two court assessors.*

*(2) Participation of the prosecutor, the Chair of the Probation Board and of the sentenced person shall be mandatory.*

*(3) The court shall issue a ruling which may be appealed or protested within seven days of being issued in pursuance of Chapter twenty-two.*

*(4) Insofar as this Section contains no special rules, the provisions of Section I of this Chapter shall apply.*

21. What are the powers of the judge to protect the rights of detainees and of third parties in the enforcement? - Judges may familiarise themselves with the work comprehended in implementation of penal sanctions and with detention in custody as a precautionary measure to secure a person's appearance. The authorities implementing penal sanctions shall be obligated to extend full cooperation to judges in the performance of the activity referred to, to afford access to the places of deprivation of liberty and the probation services and an opportunity to interview sentenced persons (Article 6 Implementation of Penal Sanctions and Detention in Custody Act)

29. What are the powers of the judge as regards the alternative solutions to prison? - In case of exceptional or of a great number of attenuating circumstances, where even the mildest punishment provided by law proves disproportionately severe, the court shall substitute: deprivation of liberty, where the lowest limit has not been specified - for probation, and with respect to minors - for probation or public censure; probation - for a fine BGN of one hundred (100) up to five hundred (500) (Article 55 Penal Code). Where the court imposes punishment by deprivation of liberty for up to three years, it may suspend the serving of the imposed punishment for a period of three to five years, provided the person has not been sentenced to deprivation of liberty for a crime of general nature and if the court finds that for the purpose of achievement of the objectives of the punishment, and above all for correction of the convict it is not imperative for him to serve the punishment (Art.66 Penal Code). As regards the implementation of sentences stage – see answer to question N.20 – Article 437-440 Code of Penal Procedure

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

- the initial regime of serving punishment by deprivation of liberty and the type of prison institution where the convict must be placed initially shall be determined by the court in compliance with the provisions of the Penal Code and the special law (Article 41 Penal Code)

- where the court imposes punishment by deprivation of liberty for up to three years, it may suspend the serving of the imposed punishment for a period of three to five years, provided the person has not been sentenced to deprivation of liberty for a crime of general nature and if the court finds that for the purpose of achievement of the objectives of the punishment, and above all for correction of the convict it is not imperative for him to serve the punishment (Art.66 Penal Code).

- the judge examines proposals for early release, revocation of recognized work days in case of deprivation of liberty, replacement of the life imprisonment punishment with deprivation of liberty, replacement of the punishment of probation with deprivation of liberty (see answer to question N.20)

31. What are the powers of the judge as regards the effective payment of fines? – the judge issues an execution writ

22. What are the main reasons for complaints concerning the rights of detainees? - living conditions in prison, access to and quality of medical treatment

23. Who is responsible in your country, for complaints about living conditions in prison? What is the procedure for processing such complaints? - The direct management of the places of deprivation of liberty and the probation services and the control over the operation thereof shall be implemented by a Chief Directorate of Implementation of Penal Sanctions. It is a specialize structure of the Ministry of Justice. Complaints of living conditions shall be directed towards the prison administration and the Chief Directorate of Implementation of Penal Sanctions. However, the detainees could seek compensation for bad living conditions in prison referring to the State and Municipality Responsibility for Damages Act.

24. In your country, what are the main obstacles to the enforcement of sentences? – impossibility to find the convicted who is not under arrest when the sentence becomes final

25. According to you, what main changes are needed to improve the effectiveness of the enforcement of sentences in your country? – changes guaranteeing speedier trial with respect to Article 5.3 ECHR requirement and allowing lawful arrest pending trial, respectively effective imprisonment of the convicted; better co-operation between the institutions with respect to finding convicted released pending trial; better living conditions of the detainees.

### Géorgie/Georgia:

#### 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 if 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 intepretation 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 phsycological 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 judgemnt is adipted.

32. 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.

33. 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.

34. 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.

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

Conditions of the detention

23. 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>).

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

25. 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

**Italie/Italy:**

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.*

### **Pologne/Poland:**

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 **In the law**  
 No

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

- He is responsible for the enforcement  
 Yes  
 No **Rather no**
- He has others competences as regards enforcement  
 Yes  
 No

If yes, please specify

**Usually supervision**

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 **Usually**  
 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 **Bailiff**

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

➤ 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 training of 2 Years.**

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?

**Very limited**

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

**Very limited**

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

**He hears the appeals against the decision on the action of bailiff**

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

**Insolvency**

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

**I would remunerate the bailiff on the basis of his efficiency**

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 **In Law**

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

If yes, please specify **Supervision**

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 **But very seldom the bailiffs**

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?

**He hears the appeals against the decision, in criminal courts there is a special department which deals with enforcement.**

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

**He makes the decision.**

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

He makes the decision.

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

In criminal courts there is a special department which deals with enforcement and effective payment of fines.

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

This issue is under the supervision of Ministry of Justice.

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

The Ministry of Justice.

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

Overcrowded prisons, lack of money.

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

It is a political decision and not up to the judiciary but I would suggest to allocate more money in penology.

### **Estonie/Estonia:**

A) IN CIVIL AND ADMINISTRATIVE MATTERS
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1. Is the authority responsible for the enforcement specified in the law or in the constitution?

- Yes  
 No

The enforcement of court judgments is regulated by the Code of Enforcement Procedure. The enforcement of court judgments is arranged by bailiffs. The legal status of the bailiff is established by the Bailiffs Act.

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 following is in the competence of a court in enforcement proceedings:

- Imposition of fines (upon not fulfilling an obligation in enforcement proceedings);
- Making rulings on the imposition of compelled attendance, detention and arrest regarding persons;
- Grant of search permits;

- Deciding on matters of removal of bailiffs;
- Review of complaints filed against the decisions of bailiffs;
- Adjudication of actions related to enforcement proceedings;
- Appointment and release of compulsory administrators;
- Upon the death of a debtor, designation of a temporary representative for the successor if the estate has not yet been accepted, the successor is not known or it is not known whether the successor accepts the estate;
- Suspension of enforcement proceedings or extension or deferral of enforcement if continuation of the proceedings may be unjustified in respect of the debtor.
- Other tasks provided for in the law.

A court may require a debtor to swear in court that the information submitted to the bailiff concerning his or her assets is correct to the debtor's knowledge.

3. Is the judge responsible for the enforcement (if it exists) the same as the judge who made the decision?

Yes

No

The question is not applicable (see also answer no. 2).

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

Yes

No

Enforcement proceedings are usually commenced on the basis of an application of a claimant.

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

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

A person designated a bailiff must be a citizen of the European Union, who is proficient in spoken and written Estonian, is honest and moral, has acquired a nationally recognised bachelor's degree or professional higher education in the speciality of law or has a respective qualification from abroad and who has worked as an assistant bailiff, sworn advocate, judge, notary public or trustee in bankruptcy at least one year or worked, at least five years prior to applying for the bailiff's position, in a position requiring academic or professional higher education in the field of law and passed the bailiff's exam.

A bailiff is required to undergo periodic in-service training. The evaluation period for in-service training is five years. For each year of the evaluation period, a bailiff must undergo 40 hours of in-service training: in total 200 hours over a five-year evaluation period. At least 75% of the annual volume of the in-service training must be in the field of law.

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?

Should a debtor not agree with the activities of a bailiff in commencing enforcement proceedings, the debtor has the right to file a complaint about the activities of the bailiff. The aim of such a complaint is to challenge the activities or decisions of the bailiff in enforcing an enforcement instrument or refusing to perform an enforcement action, i.e. organisation of enforcement proceedings. First a complaint is filed to the bailiff in question, who shall make a decision on it and if the party to the proceedings does not agree with it, the party has the right to go to a county court. This is not a follow-up to the earlier court proceedings but fully separate proceedings.

The court shall make a decision whereby the bailiff can be required to perform certain activities.

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

A judge cannot influence the speed of the enforcement.

For example the Code of Administrative Court Procedure regulates the entry into force and execution of decision:

§ 96. Entry into force of decision

A court decision enters into force pursuant to the provisions concerning entry into force of the decision made in a civil action.

(14.06.2006 entered into force 01.09.2006 - RT I 2006, 31, 235)

§ 97 (Repealed - 14.06.2006 entered into force 01.09.2006 – RT I 2006, 31, 235)

§ 98. Execution of decision

(1) A decision shall be executed after it has entered into force. A court may set a term for the execution of a court judgment which begins to run upon entry into force of the judgment. A court judgment shall be executed immediately in the cases provided by law, or if the court has ordered the immediate execution of the judgment in the cases provided by law.

(2) If a court restores a term for appeal or a term for cassation, the court shall suspend the execution of the judgment by a ruling. A court shall not suspend the execution of a court judgment if the judgment is subject to immediate execution.  
(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(3) For a failure to comply with a precept contained in a court judgment or a compromise approved by a court, the court shall impose a fine of up to 100,000 kroons on the participant in the proceeding at fault. The imposition of a fine does not release the participant in the proceeding, who failed to comply with a precept contained in a court judgment or a compromise approved by a court, from the obligation to comply with the precept or compromise within a reasonable period of time or deprive the participant in the proceeding, in whose interests the precept is made or the compromise is approved, of the right to request imposition of a new fine by the court for failure to comply with the precept or compromise.

(14.06.2006 entered into force 01.09.2006 - RT I 2006, 31, 235)

(4) A fine for a failure to execute a judgment of the Supreme Court or a circuit court shall be imposed by the court of first instance.

#### § 99. Immediate execution of decision

(1) A judgment shall be executed immediately:

- 1) if the payment of wages is ordered, but not for more than two months;
- 2) if the reinstatement of an official in the service is ordered;
- 3) in other cases provided by law.

(2) On the basis of a request of a participant in a proceeding, a court may order the immediate execution of:

1) a judgment made with regard to a claim arising from § 56 of the Public Service Act (RT I 1995, 16, 228; 1999, 7, 112; 10, 155; 16, 271; 276; 2000, 25, 144; 145; 28, 167; 102, 672; 2001, 7, 17; 18; 17, 78; 24, 133; 42, 233; 47, 260; 2002, 21, 117; 62, 377; 110, 656; 2003, 4, 22; 13, 67; 69; 20, 116);

2) a judgment a delay in the execution of which may cause significant damage to the person in whose favour the judgment was made.

(3) If immediate execution was not adjudicated by a court judgment, an application of a participant in the proceeding for the immediate execution of the judgment shall be heard in a court session and adjudicated by a court ruling. The participants in the proceeding shall be notified of the time and place of the court session; their absence shall not prevent the hearing of the matter.

(14.06.2006 entered into force 01.09.2006 - RT I 2006, 31, 235)

(4) An appeal may be filed against a court ruling specified in subsection (3) of this section.

(15.06.2005 entered into force 01.01.2006 - RT I 2005, 39, 308)

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

A court may, upon failure of a debtor to fulfil the obligation to provide information or comply with the instrument of seizure, impose a fine or detention on the debtor or a third party liable to the debtor.

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

A party to the proceedings has the right to file a complaint to a bailiff concerning a decision or activity of the bailiff in enforcing an enforcement instrument or refusing to perform an enforcement activity. Concerning a decision of the bailiff made about the complaint, a party to the proceedings is entitled to file a complaint with a county court.

A third party who has the right regarding an object of compulsory enforcement which prevents compulsory enforcement, may, for the purpose of protecting their rights, file a claim with a court for the release of property from seizure or for the declaration of compulsory enforcement inadmissible for other reasons. A third party may also file an action if a restraint on disposition made for the benefit of the party is violated in enforcement proceedings.

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

- Seizure and realisation of movables is complicated and time-consuming.
- All bailiffs have too many proceedings under way and therefore they do not have enough time for all claims.
- There are problems with complying with the procedure for communicating with children, because first of all it is complicated to use the measures against the parent of the child and secondly there is a lack of measures to force the parent to follow the communication procedure.

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

On 01.01.2010 a new Bailiffs Act came into force whereby a joint professional association of bailiffs and trustees in bankruptcy was founded, on which the responsibility for in-service training and preparation of a new generation, development of professional information systems and supervision of professional ethics is laid.

In the nearest future, it is planned to increase the number of bailiffs, which should decrease the number of proceedings per bailiff. To simplify and modernise the work of bailiffs, it is planned to develop a new information system of enforcement proceedings.

01.01.2010 a simplified auction procedure for the sale of lower-cost (2,000 euros) movables came into force.

The sale of immovable property and valuable movables (vehicles, etc.) is directed more to the Internet environment to reduce the risks of malevolent collusion between participants and influencing them.

The option of immediate compulsory enforcement also expanded the range of notarised contracts for such financial obligations like contracts for maintenance support (alimony) and real encumbrance entered into the Land Register (only with respect to financial obligations).

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

The Imprisonment Act provides for the procedure for and organisation of execution of imprisonment, detention and custody pending trial. There exist special custodial institutions (prisons).

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

If yes, please specify

It is, for example, within the competence of a court to decide on the release of a prisoner on parole and the court may enforce the unserved time of the sentence of a convicted offender. The content of correspondence of and messages communicated by phone by prisoners may be checked only with the permission of a court and on the bases and pursuant to the procedure provided for in the Surveillance Act. Regarding detention conditions, a prisoner is entitled to file a challenge with the Ministry of Justice. If the result of such resolution of the challenge is not satisfactory for the person who filed the challenge, the challenge can be filed with a court (see also answer no. 26). Additional restrictions may be applied to a person in custody or a suspect or an accused who is imprisoned or serving detention, on the basis of an order of the Prosecutor's Office or court ruling on the bases and pursuant to the procedure provided for in the Code of Criminal Procedure.

18. Is the judge responsible for the enforcement (if it exists) the same as the judge who made the decision?

Yes

No

The question is not applicable (see also answer no. 2).

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

Yes

Please specify which actors

No

Explanation: He has rather different competences, it is not directly the cooperation of the judge in the enforcement of sentences. For instance, to release a prisoner on parole, the prison forwards to the court, *inter alia*, a characterisation providing the estimation of the prison about the probability of the prisoner committing another criminal offence, how dangerous the prisoner is and about the release of the prisoner on parole, and the opinion of the probation supervisor. For example, the director of a prison has the right to

grant a prisoner permission for prison leave under supervision for up to one day if the investigative body, Prosecutor's Office or court, if the court is conducting proceedings in the criminal matter, has granted consent thereto, under essential and urgent circumstances which require the personal attendance of the person in custody.

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

Explanation: He has rather different competences, it is not directly the cooperation of the judge in the enforcement of sentences (see also answer no. 19).

➤ He controls and supervises the procedure (e.g. 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?

Generally speaking, if a prison violates the subjective rights of a prisoner or person in custody (e.g. by a measure, administrative act or general order), there is the procedure for submission of complaints regulated by the law (see answer no. 26 on the role of court). *Inter alia*, the content of correspondence of and messages communicated by phone by prisoners may be checked only with the permission of court and on the bases and pursuant to the procedure provided for in the Surveillance Act.

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

The type and term of the punishment is decided by court. For example, when a court, considering the circumstances of a criminal offence and the identity of the convicted offender, finds that serving the fixed-term sentence in prison by the convicted offender is not purposeful, the court may decide conditionally not to apply the punishment to the convicted offender. In such a case, the sentence imposed shall not be fully or partly enforced if the convicted offender does not commit a new intentional criminal offence during the period of probation imposed by the court. There is the option of the release on parole by subjecting the convicted offender to the supervision of conduct. (Electronic surveillance is the obligation imposed by a court for a fixed term on the convicted offender to obey the control of complying with the restrictions of the freedom of movement by means of an electronic device attached to the body of the convicted offender and enabling the location of the convicted offender.)

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

The court may release on parole a convicted offender who has negligently committed a criminal offence in the second or first degree if the offender has actually served part of the sentence.



The court may release on parole a person serving a life sentence if the convicted offender has served at least thirty years of the sentence.

Also persons suffering from a terminal illness can be released by a court from serving the sentence. At this the court takes into account the circumstances of the criminal offence committed, the identity of the convicted offender and the nature of the illness. If the convicted offender has suffered severe injuries as a consequence of committing a criminal offence punishable with up to five years in prison, the court may release the offender.

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

In case of convicted persons not paying a fine imposed on them, the court shall substitute the fine by detention.

In case of convicted persons not paying a fine to the extent of assets imposed on them, the court shall substitute the fine by detention.

In case of convicted persons not paying the sum of pecuniary penalty imposed on them, the court shall substitute the penalty by detention or community service upon the consent of the offender.

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

As a rule, detainees challenge disciplinary punishments (reprimand, prohibition of short-term or long-term visit, removal from work for up to one month and commission to a solitary confinement cell for up to 45 days) imposed or additional security measures (restriction of a prisoner's freedom of movement and communication inside the prison, prohibition for a prisoner to wear personal clothing or use personal effects or engage in sports, commissioning a prisoner to an isolated locked cell, use of means of restraint) applied. There are numerous complaints of detainees concerning the detention conditions (e.g. compliance of the cell and solitary confinement cell with the requirements, allowing prisoners to have long-term and short-term visits and acquire education and providing prisoners with work, obtaining permission for possession of different audio-video equipment) as well as claims for compensation of proprietary or non-proprietary damage (the primary reason provided by prisoners for the damage occurred is that the prison has demeaned their human dignity).

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

In Estonia a mandatory pre-trial procedure has been established for all complaints, incl. concerning living conditions, of detainees and persons in custody. Challenges are examined both by the Ministry of Justice and the director of the relevant prison. If challenged is an administrative act or measure of the director of a prison, the review of the challenge is within the competence of the Ministry of Justice. In such a case the prison forwards a challenge along with necessary documentation and its positions to the Ministry of Justice. Challenge proceedings end either with a challenge decision or return of the challenge (e.g. when the person filing the challenge fails to remedy shortcomings in the challenge or the date for submission of the challenge has been violated and it is not restored). Complying with the decision on challenge is compulsory for the prison. A challenge must be resolved in 30 calendar days.

Challenges filed on an administrative act or a measure of another prison officer are reviewed by the director of the prison or the challenge is submitted directly to the prison. Only the prison is competent to review claims for compensation of damage in pre-trial proceedings.

After undergoing challenge proceedings, the person filing the challenge assumes the right to go to an administrative court in the same case. The administrative court shall hear the complaint pursuant to the procedure set out in the Code of Administrative Court Procedure and the court judgment is made public by pronouncing it publicly or through the Court Registry within 20 days of the ending of the court hearing. The person filing the complaint has the right to appeal against the judgment to the circuit court if the administrative court has not correctly applied the norms of substantive law, not assessed correctly the evidence or substantially violated the norms of legal proceedings. The judgment of the circuit court can, in its turn, be appealed to the Supreme Court if the circuit court has not correctly applied the norms of substantive law or substantially violated the norms of legal proceedings. The judgment of the Supreme Court shall be based on factual circumstances identified with the decision of the court of lower instance. The Supreme Court does not identify the factual circumstances underlying the complaint.

27. In your country, what are the main obstacles to the enforcement of sentences? There are, for instance, problems with satisfying civil claims against detainees with money on their current accounts. To evade satisfying a civil claim, detainees transfer money to current accounts of third parties. Realisation of civil claims is also problematic due to the fact that detainees, as a rule, do not have any income.

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

The aim of the modern criminal punishment is to change persons who could become law-abiding citizens and safely detain those who cannot be reformed. The application of alternative imprisonment should be made more effective, to ensure the safety of society. Setting such a goal is based on the assumption that the person who committed a criminal offence can be left at large if, in addition to surveillance of the person, work is undertaken to change the person's criminal behaviour. Thus surveillance and promotion of social adjustment should be made more efficient. These measures also help reduce repeated crime by decreasing, at the same time, the expenses of the state on imprisonment. Also work done by prisoners in the prison should more efficiently prepare the persons for their release.

### Lettonie/Latvia:

A) IN CIVIL AND ADMINISTRATIVE MATTER
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1. Is the authority responsible for the enforcement specified in the law or in the constitution?

**Yes.**

Please specify.

Law on Bailiffs regulates the professional activity of sworn bailiffs.

Sworn bailiffs shall perform execution of adjudications of the court and other institutions, as well as other activities prescribed by law. Sworn bailiffs are persons belonging to the court system assigned to regional court and perform duties prescribed by law thereto.

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

If yes, please specify

According to the Civil Procedural Law adjudications by a court and other adjudications set out in this law shall be executed by a bailiff.

Supervision of bailiff activities shall be performed in accordance with the procedures set out by Civil Procedural Law and the Law on Bailiffs.

Activities of a particular bailiff are related with a particular regional court. The chief judge of the regional court may invite sworn bailiffs appointed by the Council of Latvian Sworn Bailiffs and employees of the Council of Latvian Sworn Bailiffs to participate in the examination.

A judge assigned by the chief judge of the regional court shall examine the activities of sworn bailiffs, registration books and execution files at least once a year. According to the effective normative regulatory framework, each regional court is responsible for supervision of professional activities of each bailiff working in the respective territory. This means that professional activities of bailiffs shall be examined for the compliance thereof with the requirements of normative acts to be able to timely establish and prevent any offences committed due to negligence or malicious intentions.

The effective control, its content and quality depends on the president of each regional court and the appointed judges. If persons carrying out the examination are interested in ensuring quality of this task, then such examination do bring results that indicate shortages, deficiencies and offences in the activities of bailiffs, the team is able to provide suggestions to improve the respective activities or submit relevant information to the Council of Latvian Sworn Bailiffs by requesting carrying out an in-depth examination of professional activities. Based on the above mentioned procedures, substantial problems in fulfilling professional duties have been established in the activities of several bailiffs.

Control of regional courts as should no doubt be encouraged. But if such control is preserved, it should be necessary to elaborate common criteria for judges to guide themselves when performing examination. It should be useful to train one or several judges of each regional court in performing examination of bailiffs to ensure high quality results gained from this function.

As far as bailiffs are responsible for execution of court adjudications in administrative cases, everything previously mentioned applies also for administrative procedures.

In addition to that the judges have other competencies which are prescribed below (see questions 11 and 12).

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

Yes

No

Not applicable

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

- Yes  
 **No**

According to the civil procedure a writ of execution shall be drawn up by a court after a judgment or a decision has come into effect, but in case where the judgment or the decision is to be executed without delay, immediately after the judgment is pronounced or the decision taken.

If the execution of the court judgment specifies a time period for voluntary execution and the judgment has not been executed, a court shall issue the writ of execution after the termination of the time period for voluntary execution.

A writ of execution shall be issued to a judgment creditor at their request by the court.

In administrative procedures pursuant to the petition of an applicant the court shall issue to him a copy of a judgment with an endorsement regarding its coming into effect or a copy of the adjudication in which it is stipulated that it is to be executed without delay.

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

- Yes  
 No

Not applicable.

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

- Yes**

Please specify which actors

Sworn bailiffs.

- 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**

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

- Yes**

To a limited extent as prescribed below (see questions 11 and 12).

- Others competences?  
 No  
 **Yes**  
 No

If yes, please specify

He has competencies to force the enforcement and deal with complaints as described below (see questions 11 and 12).

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

Applicants to an office of a sworn bailiff shall be examined by a special examination commission appointed by the Minister of Justice by selecting representatives from the Ministry of Justice, courts, academic staff of institutions of higher education and sworn bailiffs and co-ordinating it with the Council of Latvian Sworn Bailiffs.

Sworn bailiffs may be persons who conform to the following educational criteria:

- a) a second level highest professional education in law and the qualification of a lawyer acquired on the basis of the acquisition of an accredited study programme at an institution of higher education, and
- b) master degree in law.

As to the previous work experience sworn bailiffs may be persons who have acted as assistants to a sworn bailiff for at least two years or for at least five years have worked in such offices of the court system during the fulfilment of duties of which they may have acquired the knowledge required for the work of a sworn bailiff.

The Council of Latvian Sworn Bailiffs shall annually organise a sworn bailiff examination for persons who wish to hold the office of a sworn bailiff.

The Ministry of Justice upon a recommendation of the Council of Latvian Sworn Bailiffs shall determine the procedures for the sworn bailiff examination, the composition of the examination commission, examination questions and the amount of minimum knowledge, as well as specify the examination fee.

Upon an order of the Minister of Justice the examination commission shall also perform the assessment of qualification of sworn bailiffs.

The examination commission shall examine the knowledge of applicants in laws necessary for the professional activities of a sworn bailiff, preparation of statements and proceedings of a sworn bailiff.

If within a time period of one year after the imposition of a disciplinary sanction, a repeat disciplinary sanction related to non-compliance with laws and other regulatory enactments has been imposed on a sworn bailiff in relation to his official activities, the Minister of Justice on his initiative or upon a proposal of the Council of Latvian Sworn Bailiffs shall issue an order regarding examination of the qualifications of the sworn bailiff.

Training of bailiffs is usually organized by the Council of Sworn Bailiffs. The training does not take place on regular basis but rather depends on the needs; for instance, if considerable amendments are introduced in normative regulations applying to activities of bailiffs or if lack of knowledge has been established in a certain field. Training of bailiffs is organized in co-operation with the Latvian Judicial Training Centre where lectures are delivered by teaching staff of universities, judges and other experts.

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

- Yes
- No

The parties cannot appeal, however, they can initiate the execution. The bailiff can use the procedures meant to force the enforcement as described below (see question 11).

If yes, what are the sanctions of this appeal?

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

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

Court judgments and decisions shall be executed after they come into lawful effect, except in cases where pursuant to law or a court judgment they are to be executed without delay. The indication that the judgment and decision shall be executed without delay must be contained in the writ of execution itself.

A writ of execution shall be drawn up by a court after a judgment or a decision has come into lawful effect, but in cases where the judgment or the decision is to be executed without delay, immediately after the judgment is pronounced or the decision taken.

If the execution of court judgment specifies a time period for voluntary execution and the judgment has not been executed, a court shall issue the writ of execution after the termination of the time period for voluntary execution.

A writ of execution shall be issued to a judgment creditor at their request by the court. Judge shall sign a writ.

In administrative procedure the court shall issue a copy of a judgment with an endorsement regarding its coming into effect or a copy of the adjudication in which it is stipulated that it is to be executed without delay pursuant to the petition of an applicant.

Execution documents may be submitted for compulsory execution within 10 years from the day when adjudication by a court or a judge comes into effect, provided that other limitation periods are not provided for by law.

In administrative procedures this period is three years.

Requirements and orders by a bailiff, when executing court judgments and adjudications, are mandatory for all natural or legal persons. If a bailiff's requirements and orders are not executed, the bailiff shall draw up a statement and submit it to a court to decide the issue regarding liability. A court may impose a fine on persons at fault.

A court may imposed a fine on a person (employer) who pursuant to a court adjudication was required to deduct means of support for the maintenance of children and who within the time period prescribed by law has notified the bailiff and the receiver of the means of support, of the dismissal from employment of the payer of the means of support and of his new place of work or residence, if such person had knowledge thereof.

If, in a judgment being executed, resistance has shown, a bailiff shall draw up a statement in respect of this, and in order to eliminate impedance apply for assistance to the police. The statement shall be submitted to the court for it decide the issue regarding the liability of those persons who have resisted the execution of the judgment.

If a debtor does not appear before a bailiff pursuant to a summons, refuses to furnish explanations or does not provide the information prescribed by law, the bailiff may apply to a court for it to decide the issue regarding the liability of such person. The court may take a decision regarding the forced conveyance of the debtor, and impose upon a person a fine.

If it is determined that a debtor has knowingly provided false information, a bailiff shall apply to a court for it to decide the issue regarding the initiation of an administrative violation matter or criminal matter.

If a judgment which imposes on a debtor a duty to fulfil actions which may be fulfilled only by himself is not executed within the time period specified by the court judgment, the statement drawn up shall be forwarded by the bailiff to the court according to the place of execution. The issue regarding failure to execute the judgment shall be decided at a court sitting. Where a debtor does not execute a judgment which imposes on him a duty to fulfil actions which may only be fulfilled by the debtor himself, within the time limit specified by the court, the court may impose a fine on the debtor, stipulating a new time period for the execution of the judgment.

If the debtor a second time and repeatedly violates the time period for the execution of the judgment, the court shall decide the issue at a court sitting and impose a fine on the debtor.

If there is a failure to execute a judgment which imposes on a debtor a duty to perform stipulated actions, which are not connected with the providing of property or of an amount of money, a bailiff shall draw up a statement regarding failure to execute the judgment. If there are set out in the judgment the consequences of failure to execute the judgment, the statement drawn up shall be sent to the district (city) court according to the place of execution in order that it take a decision regarding the application of the consequences set out in the judgment in connection with the facts that the debtor does not perform the stipulated actions.

If the consequences of failure to execute the judgment are not set out therein, the statement drawn up shall be sent to the court which rendered the judgment in the matter, and that court shall decide as to the issue regarding procedures for execution of the judgment. The issue shall be decided at a court sitting.

According to the Administrative Procedure Law, if a court adjudication imposes a duty on an institution to perform specific action or refrain from a specific action and the institution does not fulfil such duty, a pecuniary penalty may be imposed on the head or another official of the institution.

In cases prescribed by law an execution order regarding imposition of a pecuniary penalty may be disputed or appealed to a court.

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

Removal of a bailiff, by submitting a written application to him, may be applied for by a judgment creditor or a debtor if there are facts, which cause well founded doubt regarding the objectivity of the bailiff. The bailiff shall adjudicate the application without delay. A decision by which the application has been left without satisfaction may be appealed to the district (city) court.

A judgment creditor or debtor may appeal the actions of bailiff in executing a judgment or bailiff's refusal to perform such actions to the district (city) court. A complaint shall be adjudicated at a court sitting. On the basis of a petition from submitter of a

complaint a judge may take a decision regarding a stay of execution activities, regarding a prohibition to transfer money to a bailiff or judgment creditor or debtor or the suspension of the sale of property.

A person who considers that he has any rights to the inventoried movable property or immovable property against which recovery is directed or a part thereof, shall bring an action in court in accordance with general jurisdiction over matters. A court in accordance with the procedures shall adjudicate disputes.

A court, which has taken a decision regarding the recognition and execution of an adjudication of a foreign court, on the basis of an application by a participant in the matter may stay the execution of the adjudication of the foreign court, divide the execution into time periods, and amend the way or procedures of execution. An application shall be adjudicated in a court sitting. A complains may be submitted in respect of a court decision.

If there are facts which make the execution of a court judgment difficult or impossible, a bailiff is entitled to submit a proposal for the postponement, division into time periods, varying the form and procedure of execution of the judgment to the court which made the judgment in the matter. The issue shall be decided at a court sitting.

Disputes and complaints in connection with placing in possession of immovable property shall be decided at a court sitting, as well as. The former possessor and a third person may prove their rights only by bringing an action at court.

The complaint of a participant in the administrative proceedings which has arisen in connection with the execution of a court adjudication shall be adjudicated in a court sitting.

If a person considers that an institution is acting contrary to a court judgment, he may submit a complaint to a higher institution. If there is not a higher institution, the private person may apply to a court. Decisions of a higher institution may be appealed to a court.

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

A bailiff shall have the duty to ensure execution of a court decision in any case disregarding the kind of proceedings in accordance with the procedure for execution of judgments established in the Civil Procedural Law. Consequently, it is not possible to single out circumstances that would hamper execution of judgments in civil cases or administrative cases in particular.

There could mentioned circumstances hampering effective execution procedure in general. There are deficiencies established in the norms regulating the procedure of judgment execution. In certain cases normative acts regulating activities of bailiffs are of general character and there is no detailed regulation. There are also some evident contradictions between legal norms providing for different legal regulation for one and the same legal situation.

Efficiency of execution is related with fast and convenient obtaining of the information necessary for execution of judgments. The faster is the method for obtaining of information and the more exhaustive the information is, the greater is the possibility that the judgment is executed. However in practice, there exist certain data carriers that receive request for information and provide information only in writing, which is time and labour-consuming and an expensive method.

Active participation of the debtor and his willingness to fulfil the commitments plays a great role in successful execution of court judgments. The practice shows that in the majority of cases debtors do not collaborate with the bailiff and even take



counteractions against execution of judgments against them. In the result of this, instruments and methods at the disposal of bailiffs are ineffective.

A considerable fall in purchasing power of persons due to the general economical situation in the State has been observed. The above mentioned circumstances influences the ability of persons to settle their debt commitment and also the performing of coercive execution by bailiffs with a positive result.

The Ministry of Justice has gathered information on problems in cases on recovery wherein the recovery implies payment to the State, these cases constituting the majority of cases initiated (judgments in cases on administrative offences to the part on recovery of property, confiscation of property, imposition of fines, as well as levy of State taxes, court fees and other expenses for payment to the State).

In this group of execution matters, the following specific problems have been established: (1) obtaining of information necessary for ensuring execution of decision of courts is encumbered, (2) costs of the recovery procedure, including costs related with obtaining of information necessary for executing recovery, are not proportional with the amount of sum recovered and paid to the State, (3) provided that a sworn bailiff in executive matter, wherein the payment should be made to the State, is not remunerated for the work done but only expenses for execution of the duties are reimbursed, the motivation level of bailiffs to fulfil these duties is very low.

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

It is necessary to proceed with gathering information on deficiencies in normative acts regulating activities of sworn bailiffs and improvement of the execution process.

It is necessary to form the Executive Matters Register, which would allow improving the recovery system in general. This would not only ensure registering and storing data on executing proceedings in a modern registration and treatment system for executive matters, this system being based on technical measures, also provide the possibility to make initiation of recovery procedure within categorise of matters more effective, provided that coercive recovery in these categories shall be initiated based on an executive document issued by the court; as well as it would serve as grounds for the possibility in the future to allow sending fast and convenient automated request requiring minimum financial and labour resources and to obtain information on the debtor and his economic situation.

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

**Yes**

According to the Administrative Procedure Law, if a bailiff has jurisdiction over compulsory execution of a court adjudication, the provisions of the Civil Procedure Law are applicable to such compulsory execution.

Administrative acts imposing a duty on the addressee to pay a specified monetary amount shall be executed on the basis of an execution order, applying the provisions of the Civil Procedural Law regarding recovery of monetary amounts.

**No**

If not, please clarify the differences.

B) IN CRIMINAL MATTERS
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16. Is the authority responsible for the enforcement of sentence specified in the law or in the constitution?

**Yes**

Please specify

The provisions and procedures of the execution of criminal sentences provided for in the Criminal Law regulates the Sentence Execution Code of Latvia.

Criminal sentences, which have been adjudged as basic sentences, shall be executed by:

1. Deprivation of liberty institutions of the Prison Administration of the Ministry of Justice – deprivation of liberty;

2. State Police institutions – custodial arrest;

3. Bailiffs – fines and confiscation of property;

4. State Probation Service – community service.

Criminal sentences, which have been adjudged as additional sentence, shall be executed by bailiffs and institutions supervised by or subordinate to a ministry accordance with their competence.

If a court has adjudged a conditional sentence or a conditional release prior to term from the serving of a deprivation of liberty sentence or custodial arrest, the execution of such adjudication shall be controlled and the behaviour of the convicted person shall be supervised by the State Probation Service.

**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**

If yes, please specify

The judge has limited competencies as described below (see questions 20 – 24).

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**

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

A judgment and decision shall be transferred for execution by the court that rendered the judgment not later than within a term of seven working days following the entering into effect thereof or the receipt of the case from a court of appellate or cassation instance.

A court shall send an order regarding the execution of a judgment and a copy of the decision to the institution on which the duty to execute the judgment has been imposed in accordance with the law regarding the execution of a penalty.

In order to execute a judgment in the part regarding a pecuniary penalty, confiscation of property, and other recoveries of a financial nature, a court shall send writs of execution to a bailiff on the basis of the place of residence of the convicted person or on the basis of the location of his property, or issued to a victim on the basis of his request.

A court of first instance shall control the complete execution of a judgment and decision.

Institutions, which execute court judgment, shall immediately notify the court which has rendered the judgment regarding the execution of the judgment and the location of the serving of the sentence.

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

During the execution of judgment, a convicted person has the right to the protection in court of his lawful interests related to the transferral of a judgment for execution, particularly, the rights:

- 1) to summon a defence council;
- 2) to present a submission regarding release from the serving of a sentence in connection with illness or disability;
- 3) to present a submission regarding conditional release prior to completion of a sentence and regarding other matters related to the execution of a judgment;
- 4) to participate in court sessions and to provide testimony;
- 5) to submit materials that have been prepared in order to adjudicate a matter regarding the execution of a judgment;
- 6) to submit complaints regarding the decisions of a judge.

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

If, in determining sentence – deprivation of liberty for a period not longer than five years, or custodial arrest – a court, taking into account the nature of the committed criminal offence and the harm caused, the personality of the offender and other circumstances of the matter, becomes convinced that the offender, not serving the

sentence, will not commit violations of the law in the future, it may sentence the offender with a sentence that is suspended.

In such case, the court shall decide that the execution of sentence is suspended if, within the term of probation adjudicated by it, the convicted person does not commit a new criminal offence, does not violate public order, and fulfils the obligations imposed by the court and those specified in the regulating laws regarding the execution of criminal penalties.

In imposing suspended sentence, the court shall prescribe a term of probation.

In imposing suspended sentence, circumstances, which the court has found material for not serving the sentence, as well as reasons why relevant obligations have been imposed for the convicted person, shall be set out in the judgment.

In imposing a suspended sentence, the court may place upon the convicted person the following obligations: (1) to allay the harm caused, within specified time; (2) not to change his place of residence without the consent of the State Probation Service; (3) to participate in probation programs in accordance with State Probation Service instructions; (4) not to frequent specified places; (5) to be present at his place of residence at the time specified; (6) to observe other conditions, which the court has recognized as necessary to achieve the purpose of the sentence.

In imposing a suspended sentence, the court may impose, for a convicted person who has committed a criminal offence due to alcoholism, drug, psychotropic addiction or toxic substance addiction, the duty to undergo treatment for alcoholism, drug addiction or toxic substance addiction, with his consent.

A court may fully or partially remove obligations imposed in regard to a term of probation upon a convicted person, upon whom a suspended sentence has been imposed.

If a convicted person upon whom a suspended sentence has been imposed, without justifiable reason does not fulfil the obligations imposed by the court or and those specified in the regulating laws regarding the execution of criminal penalties or repeatedly commits administrative violations for which administrative penalties are imposed upon him, the court pursuant to a submission by the institution which has been assigned supervision of the behaviour of the convicted person, may take a decision regarding serving of the sentence determined for the convicted person, or extension of the term of probation for one year.

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

A court shall adjudge sentence to the extent set out in the section of the Special Part of the Criminal Law as provides for liability for the criminal offence committed, and in compliance with the provisions of the General Part of the Criminal Law.

If a court, taking into account various mitigating circumstances and the personality of the offender, considers it necessary to impose a sentence which is less than the minimum limit for the relevant criminal offence provided for by the Criminal Law, or considers it necessary to impose another, lesser form of sentence, it may reduce the sentence accordingly, setting out the reasons for such adjudication in the judgment.

On the same basis, a court may decide to apply an additional sentence, which has been provided for as mandatory for the relevant criminal offence in Criminal Law.

These provisions are not applicable if the court has found that the criminal offence was committed in aggravating circumstances.

A convicted person who has been sentenced with deprivation of liberty may be conditionally released prior to completion of his basic sentence if there is reasonable ground to presume that after his release from prison he will be able to integrate into the society and will not commit any criminal offence. Taking into account the personality of a convicted person and his behaviour during the serving of sentence, conditional release prior to completion of sentence may be applied if the court has found some conditions stipulated in the Criminal Law. For example, a convicted person has achieved good results in resocialization, has made, as far as possible and on voluntary basis, compensation for financial losses caused by his crime. But in cases where a convicted person has committed a criminal offence due to alcoholic, drug, psychotropic or toxic substance addiction – if he agrees to treatment for alcoholism, drug, psychotropic or toxic substance addiction, etc.

Conditional release prior to completion of sentence may be ordered if the convicted person has actually served particular term of the sentence. For example, not less than half of the sentence imposed for a criminal violation or a less serious crime committed.

A court, in conditionally releasing a convicted person prior to completion of sentence, may, for the period of the unserved sentence, impose on him the obligations set out in Criminal Law.

A convicted person shall be conditionally released prior to the completion of a sentence of deprivation of liberty or custodial arrest by a judge of the district (city) court according to the place of the serving of the sentence, if a submission of the administrative commission of the prison has been received. If a court rejects a submission, such submission may be resubmitted.

If a person who has been conditionally released prior to the completion of a sentence does not, without a justifiable reasons, fulfil the duties imposed by a court or a duties specified in the execution of criminal punishment regulating law, or repeatedly commits an administrative violations for which an administrative penalty has been imposed upon him, a judge may take a decision, on the basis of a submission of the institution to which the control of the behaviour of the convicted person has been assigned, regarding the execution of the part of the sentence not served.

If a person to whom police supervision has been applied violates the provisions thereof in bad faith, the district (city) court according to the place of residence of the convicted person may, on the basis of a submission of a police institution and in the cases specified in Criminal Law, substitute the term of the sentence not served with deprivation of liberty for the same time. A judge may reduce police supervision or revoke such supervision, if a justified submission of an administrative commission of a prison, or a police institution, has been received.

If a person who has been convicted with forced labor evades, in bad faith, the serving of the sentence, a court shall substitute such sentence with custodial arrest in accordance with the provision of the Criminal Law.

Matters that are related to the execution of a sentence specified in a judgment, and doubts and uncertainties that arise in the execution of a judgment shall be decided, on the basis of a submission of the institution, by a judge of the court that rendered the judgment.

If a judgment is being executed outside of the region of operation of the court that rendered the judgment, such matters shall be decided, on the basis of a submission of

the institution, by a judge of the court of the same level in the region of operation of which the convicted person is serving the sentence.

All court decisions that have been taken in the matters related to the execution of a judgment may be appealed to a court of supreme instance.

The administrative commission of a prison shall take a decisions regarding the softening or intensification of the regime for the execution of a sentence of a convicted person, as well as a decision to propose that the court release the convicted person conditionally prior to the term of the sentence. The decisions may be appealed and such complaints shall be adjudicated by a judge of the district (city) court according to the location of the prison.

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

The payment of a pecuniary penalty may be deferred, or divided into periods for a term up to one year, if a convicted person has difficulties paying the pecuniary penalty immediately.

If a pecuniary penalty may not be recovered, a judge shall substitute such pecuniary penalty in accordance with the conditions of the Criminal Law. If a pecuniary penalty is paid while a convicted person serves a sentence of deprivation of liberty, or custodial arrest in place thereof, he shall be released immediately. If, during the term when a convicted person serves a sentence of deprivation of liberty, or custodial arrest, in place of pecuniary penalty, part of the pecuniary penalty is paid, a judge shall reduce the duration of the deprivation of liberty, or custodial arrest, in accordance with the paid part of the pecuniary penalty.

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

Main reasons for submitting a complaint are non-observance of the principle of good administration in prisons and non-compliance of living conditions with requirements of human rights.

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

It follows from the Prison Administration Law complaints of prisoners on living conditions, education, health care, employment and other questions should be examined by the Prison Administration.

An application of a prisoner contesting an administrative act issued by a institution or contesting factual activities shall be examined by the director of the Latvian Prison Administration according to the procedure established by the Administrative Procedure Law.

Appealed administrative acts and actual action shall be adjudicated in court as administrative matters. A district administrative court shall adjudicate an administrative matter in the first instance. Person shall submit applications regarding administrative matters to the court according to the address of the institution whose action is being appealed.

However, examination of complaints is performed by several institutions. Protection of the rights of persons in closed institutions is also the interest of Ombudsman. To perform complex solution of problems in prisons, employees of the Ombudsman's office make monitoring visits, during which documentation, observance of normative acts and implementation thereof is examined, all previous complaints are

summarized, as well as meetings with the personnel and prisoners of the institution take place. After visits, a report is prepared by presenting conclusions and suggestions to the prison administration, the Latvian Prison Administration and the Ministry of Justice.

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

Disregarding the fact whether a court has adopted a decision in civil, administrative or criminal cases, execution of court decisions on a property recovery shall be performed by bailiffs. Consequently, it is not possible to single out circumstances that would hamper execution of judgments in criminal cases in particular. Therefore for the answer see para. 13 above.

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

For the answer see para.14 above.