



Strasbourg, 8 February 2010

CCJE-GT(2010)1

**Consultative Council of European Judges
(CCJE)**

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

QUESTIONNAIRE

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

QUESTIONNAIRE

A) IN CIVIL AND ADMINISTRATIVE MATTERS

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

☒ Yes

Please specify:

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?