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

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

**QUESTIONNAIRE**

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**A) IN CIVIL AND ADMINISTRATIVE MATTERS**

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

☒ Yes

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?

☒ 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?

☒ 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 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?

☒ 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.

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.

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.

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.

10. 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.

11. 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.

12. 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
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13. 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

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

➡ He is responsible for the enforcement?

☐ Yes

- X ☐ No  
➤ He has others competences as regards enforcement?  
X ☐ 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.

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

☐ Yes  
X ☐ No

16. 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

17. 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

18. 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.

6. 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.

7. 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.

8. 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.

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

The circumstances of detention

20. 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

21. 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.

for instance: 47.§ article of criminal Law

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