



**“Support to the effective execution of the judgments of the European Court of Human Rights in Armenia”**

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**Opinion on selected articles of the draft law of the Republic of Armenia on the Compulsory Enforcement of Judicial Acts**

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## **Executive Summary**

This opinion examines the compliance of 16 articles of the draft law of the Republic of Armenia on compulsory enforcement of judicial acts with European standards primarily deriving from the European Convention on Human Rights, relevant case law of the European Court of Human Rights and requirements of monitoring bodies and mechanisms of the Council of Europe, more specifically the Recommendation Rec(2003)17 of the Committee of Ministers of the Council of Europe to members States on enforcement (adopted by the Committee of Ministers on 9 September 2003 at the 851st meeting of the Ministers' Deputies), the CEPEJ Guidelines of 17 December 2009 for a better implementation of the existing Council of Europe's Recommendation on enforcement (CEPEJ(2009)11 REV), and the CEPEJ Good Practice Guide on Enforcement of Judicial Decisions of 11 December 2015 (CEPEJ(2015)10). The opinion is comprised of two main parts. The first part is an assessment of each article and its compliance with European standards. Overall, these articles may be regarded as complying with the European standards, except Article 111 (Compulsory enforcement of the claims for visiting the child and placing the child under the custody of the claimant) for the reasons explained in the report. The second part contains comments and suggestions regarding several articles with a view to improve the existing draft. Overall, the draft may be assessed as positive and aims at broadening the scope of the enforcement actions that are to be carried out by the Armenian compulsory enforcement officers.

## 1. Introduction

The Council of Europe is currently implementing the Project “Support to the effective execution of the judgments of the European court of human rights in Armenia” with a specific focus on the problem of excessive length of proceedings, late or non-execution of national courts’ judgments, effective judicial control over the pre-trial stage of the proceedings, right to freedom assembly, and effective investigations into allegations of ill-treatment and deprivation of life and other possible directions.

This Opinion was requested by the Ministry of Justice on 5 May 2023, in the framework of the above-mentioned project, to assess a selection of provisions of the draft law of the Republic of Armenia on the Compulsory Enforcement of Judicial Acts.

Mr Mathieu Chardon, enforcement agent and Secretary General of the International Union of Judicial Officers (UIHJ), was asked to deliver an opinion on this topic.

The adoption of the new law is expected to have a direct impact on the execution of relevant judgments from the European Court of Human Rights (the European Court), notably under Article 6 of the European Convention on Human Rights (the European Convention). It should in particular contribute to tackling several problems explicitly highlighted by the European Court in *Avakemyan v. Armenia* group of cases.

In the *Avakemyan v. Armenia*<sup>1</sup> case, the European Court, while reiterating that Article 6 § 1 secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal, found that “the Armenian authorities, by failing for several years to take the necessary measures to comply with the final judgments, deprived the provisions of Article 6 § 1 of all useful effect in the present case and that, due to the fact that his claim remained unpaid for an unreasonably long time, they failed to respect his rights under Article 1 of Protocol No. 1 to the Convention”<sup>2</sup> and concluded the “violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention”<sup>3</sup>. The European Court also ruled that “the fact that the applicant was able to obtain an enforceable judgment on the payment of interest in his favour does not constitute an effective remedy for the delay in enforcement since that delay was attributable to the domestic authorities rather than to K”<sup>4</sup>, and hence acknowledged the violation of Article 13 of the European Convention<sup>5</sup>.

Following this decision, the Armenian authorities drafted on 3 October 2017 a communication which was distributed by the Secretariat General of the Committee of Ministers of the Council of Europe<sup>6</sup>. In this communication, the Government of the Republic of Armenia announced a reform of the enforcement procedure, “inter alia, to take actions to guarantee the effective cooperation between Judicial Acts Compulsory Enforcement Service and the State Committee of Real Estate Cadastre to exclude any possible delays during enforcement procedure, for example to provide the Judicial Acts Compulsory Enforcement Service of the RA Ministry of Justice with access to the database of the Real Estate Cadastre of RA Government”, as well

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<sup>1</sup> *Avakemyan v. Armenia*, 30 March 2017, no 39563/09.

<sup>2</sup> §35.

<sup>3</sup> §36.

<sup>4</sup> §45

<sup>5</sup> §46.

<sup>6</sup> DH-DD(2017)1129, 9 October 2017.

as “a set of tools of the compulsory enforcement body”<sup>7</sup>, and “to take all the required steps to prevent further similar violations found”<sup>8</sup> as well as having initiated “a range of practical discussions involving stakeholders (Real Estate Registry, Compulsory Enforcement Service and Department of Legal Support of the Ministry of Justice) concerned”<sup>9</sup>, which led to the drafting of two packages of legislative amendments of the law on Compulsory Enforcement of Judicial Acts, one of them being “mostly aimed at improving the whole enforcement process including the improvement of the mechanisms of the effective domestic remedy, i.e. to accelerate the enforcement proceedings or to obtain redress for any damage created by the delay in those proceedings”<sup>10</sup>.

The draft law of the Republic of Armenia on Enforcement Procedures (hereinafter ‘the Draft Law’) reflects the on-going work carried out since.

This opinion was drafted with regards to:

- The Council of Europe’s Convention for the Protection of Human Rights and Fundamental Freedoms of 4<sup>th</sup> November 1950.
- Recommendation Rec(2003)17 of the Committee of Ministers of the Council of Europe to members States on enforcement (adopted by the Committee of Ministers on 9 September 2003 at the 851<sup>st</sup> meeting of the Ministers’ Deputies), hereafter referred to as “Recommendation 17”.
- The case law of the European Court of Human Rights, including *Avakemyan v. Armenia* (no 39563/06) and the cases referred to in « Jurisprudence européenne en matière d’exécution, de signification et d’exécution », 2<sup>e</sup> édition, 2023, by Natalie Fricero and Guillaume Payan, UIHJ Publishing.
- The communication of the Government of the Republic of Armenia (Action Plan of 3 October 2017), distributed by the Secretariat General of the Committee of Ministers of the Council of Europe<sup>11</sup>.
- The Council of Europe’s European Commission for the Efficiency of Justice (CEPEJ) Guidelines of 17 December 2009 for a better implementation of the existing Council of Europe’s Recommendation on enforcement (CEPEJ(2009)11 REV), hereafter referred to as “the CEPEJ Guidelines on Enforcement”.
- The CEPEJ Good Practice Guide on Enforcement of Judicial Decisions of 11 December 2015 (CEPEJ(2015)10) hereafter referred to as “the CEPEJ Good Practice Guide on Enforcement”.
- The bi-annual CEPEJ Reports on the Efficiency of Justice, including parts relating to the execution of court decisions.
- “Enforcement of Court decisions in Europe”, by J. Lhuillier, D. Lhuillier-Solenik, G. Nucera, J. Passalacqua, CEPEJ Studies n°8, Council of Europe, 2008.

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<sup>7</sup> §6.

<sup>8</sup> §7.

<sup>9</sup> §8.

<sup>10</sup> §8.

<sup>11</sup> DH-DD(2017)1129, 9 October 2017.

- Chapters 8, 9, 15 and 19 (16 Articles) of the draft law of the Law of the Republic of Armenia on the Compulsory Enforcement of Judicial Act, hereafter referred to as “the draft law”.
- The online meeting of 31 May 2023 between Mathieu Chardon, International Expert, hereafter referred to as “the international expert”, and Elina Gheghamyan, Adviser to the Ministry of Justice of the Republic of Armenia, Vahagn Dallakyan, Expert of the Compulsory Enforcement Service of the Republic of Armenia, Anna Yeghiazaryan, Council of Europe’s Project Coordinator (Strasbourg), and Gayane Hovhannisyan, Council of Europe’s Senior Project Officer (Yerevan).
- The round table discussions on the Law of the Republic of Armenia on Enforcement Proceedings organised on 6 and 8 June 2023 in the framework of the Project “Support to the effective execution of the judgments of the European Court of Human Rights in Armenia”, implemented under the Council of Europe Action Plan for Armenia for 2023-2026.

It also took into account:

- The Global Code of Enforcement drafted by the International Union of Judicial Officers (UIHJ) in 2016.
- The Global Code of Digital Enforcement drafted by the UIHJ in 2021.

## **2. Legal assessment of the Chapters 8, 9, 15 and 19 of the draft law of the Republic of Armenia on the Compulsory Enforcement of Judicial Acts vis-à-vis its compliance with European standards**

The assessment covers 16 Articles from five chapters of the draft law:

- Chapter 8 – General rules for application of compulsory enforcement measures (Articles 47 to 55).
- Chapter 9 – Interim stage of the enforcement proceedings (Article 61).
- Chapter 15 – Special rules for compulsory enforcement of monetary claims against certain debtors (Article 88).
- Chapter 19 – Rules for compulsory enforcement of the claims to perform certain actions or to prohibit the performance of certain actions (Article 109).
- Chapter 21 – Liability in enforcement proceedings (Article 123 to 125).

### **2.1 Chapter 8 – General rules for application of compulsory enforcement measures (Articles 47 to 55)**

#### **2.1.1 Article 47 – Compulsory enforcement measures**

Article 47 of the draft law describes the scope of compulsory enforcement measures, providing compliance with Article III.1.b<sup>12</sup> of Recommendation 17 and Article 33 of the CEPEJ Guidelines on Enforcement<sup>13</sup>, as the compulsory enforcement officers of Armenia oversee the enforcement of judicial decisions and other enforceable titles or documents, and the implementation of all the enforcement procedures provided for by the law. This includes enforcement on all types of debtors' assets and revenues, obligations imposed on a debtor, including those conducted instead or on behalf of the debtor, physical coercion, and possible enforcement actions in certain cases against persons who are not debtors. Article 47 is also in line with § 36 (Diversification of types of enforcement procedure)<sup>14</sup> of the CEPEJ Good Practice

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<sup>12</sup> "Enforcement should be carried out in compliance with the relevant law and judicial decisions. Any legislation should be sufficiently detailed to provide legal certainty and transparency to the process, as well as to provide for this process to be as foreseeable and efficient as possible".

<sup>13</sup> "§33. Enforcement agents, as defined by a country's law, should be responsible for the conduct of enforcement within their competences as defined by national law. Member states should consider giving enforcement agents sole competence for:

- enforcement of judicial decisions and other enforceable titles or documents, and
- implementation of all the enforcement procedures provided for by the law of the state in which they operate."

<sup>14</sup> "Member states could be equipped with a legislative arsenal comprising enforcement procedures geared to all the types of obligations liable to be established in an enforceable title (obligations to pay, to do or to refrain from doing) and the varied composition of people's assets (moveable or immoveable assets, tangible or intangible assets, registered or non-registered assets)."



Guide on Enforcement. Article 47 also incidentally complies with Articles 29 (*Flexibility of the enforcement measure*)<sup>15</sup>, and 31 (*Enforcement in kind*)<sup>16</sup> of the Global Code of Enforcement.

Article 47 clearly appears to comply with the requirements of the European Convention, as well as Recommendation 17 and the CEPEJ Guidelines on Enforcement.

### **2.1.2 Article 48 – Obtaining information about debtor**

Article 48 concerns the information about the debtor. It clearly sets the right for the compulsory enforcement officer to access information on the debtor and his/her assets required to the performance of enforcement actions. Access to information on the debtor and his/her assets are vital to comply with the requirements of Article 6 of the European Convention. Provisions on this issue are mentioned in Recommendation 17 (Article III.6<sup>17</sup>) and the CEPEJ Guidelines on Enforcement (Articles 40 to 46). They are also incidentally mentioned in Article 9 of the Global Code of Enforcement<sup>18</sup>.

Notwithstanding the observations of the international expert<sup>19</sup>, Article 48 appears to comply with the requirements of the European Convention, as well as Recommendation 17 and the CEPEJ Guidelines on Enforcement<sup>20</sup>.

### **2.1.3 Article 49 - Acting on behalf and instead of the debtor**

One of the problems which caused delays in the enforcement proceedings in the *Avakemyan v. Armenia* case was that the only identified asset of the debtor was a house she had inherited, but which could not be attached by the compulsory enforcement officer because she had not properly registered it<sup>21</sup>. This led the European Court to conclude that “*It must therefore be*

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<sup>15</sup> “States must organize their enforcement systems by adapting them to the interests of the creditor and the economic and social situation of the debtor. For this reason, they must diversify the enforcement measures so that the judicial officer or enforcement agent may choose among them in keeping with the circumstances.”

<sup>16</sup> “When a judge directs to the performance or non-performance of an obligation, he must be able to accompany his judgment with a constraint measure.”

<sup>17</sup> “The search and seizure of defendants’ assets should be made as effective as possible taking into account relevant human rights and data protection provisions. There should be fast and efficient collection of necessary information on defendants’ assets through access to relevant information contained in registers and other sources, as well as the option for defendants to make a declaration of their assets.”

<sup>18</sup> “States must make provision that all relevant bodies, both public and private, shall disclose as quickly as possible to the professionals instructed with enforcement all information that they hold about the domicile, registered office or principal place of business of the debtor, as well as about the elements constituting its assets. These bodies may not withhold information by invoking professional confidentiality.”

<sup>19</sup> See hereafter §3.1.2. of this report.

<sup>20</sup> “States must make provision that all relevant bodies, both public and private, shall disclose as quickly as possible to the professionals instructed with enforcement all information that they hold about the domicile, registered office or principal place of business of the debtor, as well as about the elements constituting its assets. These bodies may not withhold information by invoking professional confidentiality.”

<sup>21</sup> As § 17 mentions: “In particular, the Administrative Court found that both the refusal of the Real Estate Registry to register K.’s ownership rights and the non-enforcement by the bailiff of the judgment of 3 May 2005 owing to a lack of funds on the part of K. had been groundless as K.’s ownership of the house had been recognised by the final court judgment of 24 October 2007.”

considered that, according to the Administrative Court, no obstacles to the enforcement of the judgment of 3 May 2005 existed after the judgment of 24 October 2007<sup>22</sup>.”

Moreover, in the *Safanov and Safanova v. Ukraine* case<sup>23</sup>, the European Court has also recently held that the “non-enforcement by a state body of judgments ordering it to undertake administrative registrations” constituted “a breach of Article 6 § 1 of the Convention on account of the non-enforcement of the judgments at issue<sup>24</sup>”. Also, according to the case-law from the European Court, the execution of a judicial decision should not be prevented, invalidated, or excessively delayed<sup>25</sup>.

It is understood that Article 49 - as well as Articles 50 and 51 – of the draft law come from the requirements of the *Avakemyan v. Armenia* case. The authority given by Article 49 to the compulsory enforcement officer to act on behalf and instead of the debtor for the purpose of compulsory enforcement act subject to enforcement will provide simpler and faster enforcement. As rightfully mentioned in Article 49.5, “actions that, by their nature, may only performed with the personal participation of the debtor, as well as the actions deriving from the public authorities of state and local self-governance bodies”, are not concerned.

Article 49 should also be considered in the light of the *Bousiou v. Greece* case<sup>26</sup>, where the European Court held that “in principle, it is not unreasonable for the administration to ask the interested parties for additional documents so that it can comply as soon as possible with a court decision requiring it to take certain measures<sup>27</sup>”, which explains the wording “to a reasonable extent” of Article 49.1.

Article 49 complies with Article III.1.c. of Recommendation 17<sup>28</sup> as it encourages the debtor to comply with the court decision. It also complies with Articles 33<sup>29</sup> and 35<sup>30</sup> of the CEPEJ Guidelines on Enforcement.

Article 49 appears to comply with the requirements of the European Convention, as well as Recommendation 17 and the CEPEJ Guidelines on Enforcement.

#### **2.1.4 Article 50 - Performing actions and implementing prohibitions through counterparties of the debtor and registering bodies**

The analysis made on Article 49 also applies to Article 50 although it concerns counterparties to the debtor. This is the case for example when the employer does not comply with his/her obligation to operate the attachment on the salaries of the debtor. Article 50 provides a direct action by the compulsory enforcement officer, “upon his or her decision” to “oblige the

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<sup>22</sup> § 33 of the European Court Judgment of 30 March 2017.

<sup>23</sup> 18 June 2020, no 24391/10.

<sup>24</sup> §§ 51 & 53.

<sup>25</sup> Grand Chamber, *Immobiliare Saffi v. Italy*, 28 July 1999, no 22774/93, § 74.

<sup>26</sup> 24 October 2013, no 21455/10.

<sup>27</sup> § 34.

<sup>28</sup> “The parties should have a duty to co-operate appropriately in the enforcement process”.

<sup>29</sup> Implementation by the enforcement agents of all the enforcement procedures provided for by the law of the state in which they operate.

<sup>30</sup> “Enforcement agents should be obliged to perform their role whenever they are legally required to do so except in cases of impediment or where they are related by blood or marriage to a party.”

counterparty of the debtor to perform certain actions or to refrain from performing certain actions<sup>31</sup>". Referring to the *Avakemyan v. Armenia* case, registering bodies are directly cited<sup>32</sup>.

Article 50 appears to comply with the requirements of the European Convention, as well as Recommendation 17 and the CEPEJ Guidelines on Enforcement.

### **2.1.5 Article 51 - Measures preventing or attesting the performance of prohibited actions**

In the *Safanov and Safanova v. Ukraine* case, the European Court is "mindful of the fact that the enforcement of judgments which incorporate rulings of a non-pecuniary nature may sometimes take more time than is the case for the payment of money awarded under a court judgment (see, for instance, *Tonyuk v. Ukraine*, no. 6948/07, §§ 38 and 40, 1 June 2017)<sup>33</sup>". The execution must, moreover, be complete, perfect, and not partial<sup>34</sup>. Indeed, once a final domestic decision is issued by the national courts, it must be implemented with reasonable clarity and consistency by the public authorities, in order to avoid as much as possible legal uncertainty and uncertainty for the subjects of law concerned by its application<sup>35</sup>.

Consequently, Article 51 covers another aspect of non-pecuniary claim enforcement cases, which would include for instance the prohibition of a person to enter a geographical territory (for example where the spouse resides). Article 51.1 entitles the enforcement agent to "apply reasonable and proportionate measures preventing or attesting the performance of actions prohibited for the debtor and other persons, by engaging, upon necessity, persons assisting in the enforcement proceedings".

As regards compliance of Article 51 with Recommendation 17 and the CEPEJ Guidelines on Enforcement, the assessment made above in Article 49 also applies.

Article 51 appears to comply with the requirements of the European Convention, as well as Recommendation 17 and the CEPEJ Guidelines on Enforcement.

### **2.1.6 Article 52 - Entry into a residence or other premises for carrying out enforcement actions**

According to Article 57 of the CEPEJ Guidelines on Enforcement, "it is the responsibility of the enforcement agent to take all reasonable and necessary steps in enforcement and to decide which enforcement action is most appropriate". When an enforcement measure is required on the debtor's assets at his/her domicile or held by other persons, the right to enforcement enshrined in the *Hornsby v. Greece* case based on Article §1 of the European Convention

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<sup>31</sup> Article 50.1.

<sup>32</sup> Article 50.2.

<sup>33</sup> §51.

<sup>34</sup> *Sabin Popescu v. Romania*, 2 March 2004, no 48102899, §§ 68-76; *Matheus v. France*, 31 March 2005, no 627/00, §58.

<sup>35</sup> *Apanasewicz v. Poland*, 3 May 2011, no 6854/07, § 73.

should not conflict with Article 8 of the European Convention which protects the right to respect for private and family life.

Article III.1.g. of Recommendation 17 states that “during the enforcement process, a proper balance should be struck between claimants’ and defendants’ interests, bearing in mind, in particular, the provisions of both Articles 6 and 8 of the European Convention. Where appropriate, the interests of third parties should also be taken into account. When the enforcement process concerns family law matters, the interests of the members of the family should be taken into account; in addition, when the enforcement process concerns, in particular, the rights of children, the best interests of the child should be a primary consideration, in accordance with international and national law”.

For that purpose, Article 52 makes a clear distinction between the measure carried out at the domicile of the debtor (Article 52.1) and the measure carried out at the premises held by other persons (Article 52.2 to 52.5).

When the measure needs to be carried out at the residence or other premises owned by the debtor, the compulsory enforcement officer has full authority to enter, including by means of opening the residence or other premise (Article 52.1).

As regards residence or other premises held by other persons, in the absence of consent of the concerned persons, the compulsory enforcement officer may enter the residence of premises upon the authorisation of the court (Article 52.2), through the procedure described in Article 52.3 to 52.5. Article 52.5 specifies that the court decision rendered on the application may be appealed against, however the enforcement of the decision may not be suspended upon the judicial act of the Court of Appeal.

Article 52 appears to strike a right balance between the specific requirements of Articles 6 and 8 of the European Convention and comply with those mentioned in Recommendation 17 and the CEPEJ Guidelines on Enforcement. Incidentally, it seems to be in line with Article 2 of the Global Code of Enforcement<sup>36</sup>.

### **2.1.7 Article 53 - Search against a person, property and documents**

Information on the debtor’s location and assets are key elements to ensure an efficient and effective enforcement.

Recommendation 17 provides that “The search and seizure of defendants’ assets should be made as effective as possible taking into account relevant human rights and data protection provisions. There should be fast and efficient collection of necessary information on defendants’ assets through access to relevant information contained in registers and other sources, as well as the option for defendants to make a declaration of their assets<sup>37</sup>”. Recommendation 17 also provides for the most effective and appropriate means of serving

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<sup>36</sup> First sentence: “The debtor is answerable for his debts on all his goods wherever these are to be found.”

<sup>37</sup> Article III.6.

documents (for example, personal service by enforcement agents, electronic means, post)<sup>38</sup>.

In § 23 of the *Miholapa v. Latvia*<sup>39</sup> judgment, the European Court rules that the principle of equality of arms requires a fair balance between the parties, in order to be able to present one's case in a situation which is not too disadvantageous in relation to the adversary and that "these principles aiming at the whole of the procedural law of the Contracting States, they also apply to the particular field which is the service of legal documents on the parties".

Articles 40 to 46 of the CEPEJ Guidelines on Enforcement deal with information accessible to the enforcement agent to facilitate his/her mission, duty to provide information from all state bodies, data protection and multiple use of information.

In line with these provisions, Article 53 of the draft law authorises the compulsory enforcement officer to declare search against a person, property, and documents of that person (Article 53.2), and describes the conditions required and the competent authorities to conduct these searches.

Article 53 appears to comply with the requirements of the European Convention, as well as Recommendation 17 and the CEPEJ Guidelines on Enforcement.

### **2.1.8 Article 54 - Restriction on the right of a person in search to exit from the territory of the Republic of Armenia**

Focus should be made here on European case law on measures restricting the freedom to leave the country to encompass the use of Article 54.

In the *Battista v. Italy* case<sup>40</sup>, the European Court observed that it did not previously have the "occasion to consider measures restricting the freedom to leave the country on account of the existence of particularly significant debt to third party, such as maintenance payments<sup>41</sup>" and recalled previous cases<sup>42</sup> examined under Article 2 of Protocol N°4 of the European Convention<sup>43</sup> (Freedom of movement). Regarding interference with freedom of movement, the European Court stated that "it therefore must be determined whether that interference was "in

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<sup>38</sup> Article III.2.d.

<sup>39</sup> 31 May 2007, no 61655/00.

<sup>40</sup> 2 December 2014, no 43978/09.

<sup>41</sup> §35.

<sup>42</sup> Pending criminal proceedings, enforcement of criminal sentences, criminal conviction of the applicant, pending bankruptcy proceedings, refusal to pay customs penalties, failure to pay taxes, failure to pay judgment debts to private persons, knowledge of "State secrets", failure to comply with military service obligations, mental illness of the person concerned, court orders prohibiting minor children from being removed to a foreign country...

<sup>43</sup> Article 2 - Freedom of movement.

1 - Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2 - Everyone shall be free to leave any country, including his own.

3 - No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of ordre public, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

4 - The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society.

accordance with law”, pursued one or more of the legitimate aims set out in Article 2 § 3 of Protocol No. 4, and whether it was “necessary in a democratic society for the achievement of such an aim<sup>44</sup>”. With regard to the lawfulness of the measure, the European Court reiterated “its settled case-law according to which the expression “in accordance with law” not only requires that the impugned measure should have some basis in domestic law, but also refers to the quality of the law in question, requiring that it should be accessible to the person concerned and foreseeable as to its effects (see *Rotaru v. Romania* [GC], no. 28341/95, § 52, ECHR 2000-V). In order for the law to meet the criterion of foreseeability, it must set forth with sufficient precision the conditions in which a measure may be applied, to enable the persons concerned – if need be, with appropriate advice – to regulate their conduct<sup>45</sup>”. In the *Battista v. Italy* case, the applicant was refused to leave the country for lack of paying maintenance obligations which he required to pay for his children. The European Court noted that the interference “clearly had a legal basis in national law<sup>46</sup>, to “ensure that the parent fulfils his or her obligations towards his or her children<sup>47</sup>” and considered that “the imposition of the impugned measure was intended to guarantee the interests of the applicant’s children and that in principle it pursued a legitimate aim, namely the protection of the rights of others – in the present case, the children’s right to receive the maintenance payments<sup>48</sup>”. But the European Court also observed that “the national courts did not consider it necessary to examine the applicant’s personal situation or his ability to pay the amounts due, and applied the impugned measure automatically. There seems to have been no attempt to balance the rights at stake. The only factor taken into consideration was the property interests of the maintenance recipients<sup>49</sup>. The European Court also referred to the existence of civil-law cooperation at European and international level on the issue of the recovery or maintenance payments<sup>50</sup> and that the restriction imposed on the applicant did not ensure payment of the sum due in maintenance<sup>51</sup>. On those grounds, the European Court concluded that there had been a violation of Article 2 of Protocol No 4<sup>52</sup>. The European Court also insisted on the necessary limited duration of the restrictions, “justified and proportionate in view of the circumstances” and that “they may not extend for long periods measures restricting an individual’s freedom of movement without regular re-examination of their justification<sup>53</sup>”.

Article 54 of the draft law describes the procedure followed by the compulsory enforcement officer when enforcing a judicial act containing the restriction of a person in search to exit the territory of the Republic of Armenia, through a court proceeding, as well as how and when this restriction is lifted.

This Article clearly falls into the scope of Article 33 of the CEPEJ Guidelines on enforcement as it concerns the implementation of an enforcement procedure provided for by the law of the state in which the enforcement agent operates.

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<sup>44</sup> §37.

<sup>45</sup> §38.

<sup>46</sup> §39.

<sup>47</sup> §39.

<sup>48</sup> §40.

<sup>49</sup> §44.

<sup>50</sup> §45.

<sup>51</sup> §46.

<sup>52</sup> §49.

<sup>53</sup> §42.

However, Article 54 should also be reviewed in the light of Article 2 of Protocol No 4 of the European Convention. The condition relating to “the accordance with law” is met in Article 54.1 (“where the prohibition on his or her exit from territory of the Republic of Armenia is provided for by a judicial act”. As regards the condition relating to what is “necessary in a democratic society in the interests of national security or public safety, for the maintenance of ordre public, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others”, and to the justification “by the public interest in a democratic society”, Article 54.2 refers to a situation where “the act subject to enforcement, containing a non-monetary claim, is impossible to be enforced without personal participation of the person in search, and all measures — permissible by law — undertaken by the compulsory enforcement officer to detect the person in search were useless”. To the opinion of the international expert, this condition meets the overall requirements of Article 2 of Protocol No 4 of the European Convention but could be subject to challenge before the European Court, but as can be any legal provision.

Finally, as regards the duration of the restriction, §§ 4 and 5 of Article 54 of the draft law provide guarantees of compliance with European case law. Moreover, the person concerned with the restriction has the right to challenge the decision restricting his/her right to leave the territory of the Republic of Armenia.

Article 54 appears to comply with the requirements of the European Convention, as well as Recommendation 17 and the CEPEJ Guidelines on Enforcement.

### **2.1.9 Article 55 - Physical coercion**

Article 55 describes the condition under which the compulsory enforcement officer shall be entitled to apply physical coercion (physical force and special means) against the debtor and other persons, in observance of the conditions and limits for imposition thereof as prescribed by law : where these persons hinder the execution of enforcement actions, as well as where it is aimed at expulsion or settlement, if it is impossible to ensure enforcement through other measures.

Article 55 clearly falls into the scope of Article 33 of the CEPEJ Guidelines on Enforcement as it concerns the implementation of an enforcement procedure provided for by the law of the state in which the enforcement agent operates.

Article 55 appears to comply with the requirements of the European Convention, as well as Recommendation 17 and the CEPEJ Guidelines on Enforcement.

## **2.2 Chapter 9 – Interim stage of the enforcement proceedings (Article 61).**

### **2.2.1 Article 61. Adjourning, deferring the enforcement, establishing and changing the method or procedure for enforcement**

Article 61 considers the possibility for the parties to enforcement proceedings to “ask the compulsory enforcement officer to adjourn or defer the enforcement of an act subject to

enforcement, to establish or change the method or procedure for enforcement<sup>54</sup> and the conditions in which these measures can be implemented, including through an application submitted to the court of first instance.

There are many references in Recommendation 17<sup>55</sup> and the CEPEJ Guidelines on Enforcement<sup>56</sup> relating to the cooperation of parties in the enforcement process and the role of the enforcement agent in the process.

Article 61 appears to comply with the requirements of the European Convention, as well as Recommendation 17 and the CEPEJ Guidelines on Enforcement.

## **2.3 Chapter 15 – Special rules for compulsory enforcement of monetary claims against certain debtors (Article 88)**

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<sup>54</sup> §1.

<sup>55</sup> *III.1.c. the parties should have a duty to co-operate appropriately in the enforcement process; in addition, and, in particular, in family law matters, the relevant authorities should facilitate this co-operation.*

*III.1.f. there should be no postponement of the enforcement process unless there are reasons prescribed by law. Postponement may be subject to review by the court;*

*III.1.g. during the enforcement process, a proper balance should be struck between claimants' and defendants' interests, bearing in mind, in particular, the provisions of both Articles 6 and 8 of the ECHR. Where appropriate, the interests of third parties should also be taken into account. When the enforcement process concerns family law matters, the interests of the members of the family should be taken into account; in addition, when the enforcement process concerns, in particular, the rights of children, the best interests of the child should be a primary consideration, in accordance with international and national law.*

*III.4. The attempts to carry out the enforcement process should be proportionate to the claim, the anticipated proceeds to be recovered, as well as the interests of the defendant.*

<sup>56</sup> *7. Enforcement should strike a balance between the needs of the claimant and the rights of the defendant. Member states are encouraged to monitor enforcement procedures, control court management and take appropriate actions to ensure procedural equality of the parties.*

*8. The enforcement process should be sufficiently flexible so as to allow the enforcement agent a reasonable measure of latitude to make arrangements with the defendant, where there is a consensus between the claimant and the defendant. Such arrangements should be subject to thorough control to ensure the enforcement agent's impartiality and the protection of the claimant's and third parties' interests. The enforcement agent's role should be clearly defined by national law (for example their degree of autonomy). They can (for example) have the role of a "post judicial mediator", during the enforcement stage.*

*56. The ultimate cost of enforcement should be in due proportion to the remedy sought. States should endeavour to provide an effective enforcement procedure for all level of debts, either large or small.*

*57. It is the responsibility of the enforcement agent to take all reasonable and necessary steps in enforcement and to decide which enforcement action is most appropriate. Where costs are considered irrelevant or wrongfully incurred these costs should be borne by the enforcement agent.*

*58. Member states which grant legal aid should verify the relevance of the costs incurred, so that the community does not have to bear unjustified costs.*

*59. Where an enforcement agent has a duty to offer proper advice, he/she should be required to explain clearly to claimants their situation and the relevance of the action they suggest be taken.*

*67. Member states may ensure that the legal framework of enforcement is not unnecessarily prolonged. Member states are encouraged in particular to take measures to ease the procedural enforcement framework to give enforcement agents the necessary autonomy to choose for themselves, without prior authorisation, the procedural steps that are the most appropriate for the case in question.*

*70. Priority should always be given to reaching agreement between the parties in order to coordinate enforcement timeframes. Where the parties agree between themselves a timeframe for enforcement then any procedures put in place by the Member state should not preclude these agreements from taking effect.*



### **2.3.1 Article 88. Enforcement of monetary claims filed against the Republic of Armenia and communities**

Article 88 clearly indicates how enforcement of monetary claims filed against a state and communities are regulated in the Republic of Armenia.

Firstly, as it is generally the case in other countries, the “Property of the Republic of Armenia, including monetary means shall not be subject to levy, except for the property pledged for securing the claim of the claimant<sup>57</sup>”.

Secondly, the law provides for a mechanism ensuring the payment of these monetary claims (payment of the monetary means to the claimant by the competent state or local self-government body, and in case of impossibility, issuance of a transferable promissory note to the claimant for a term of up to one year<sup>58</sup>), except for § 6, and describes the related process in §§ 3 to 5.

Enforcement against the state and communities, such as state-owned companies, gives rise to numerous and sometimes recurring European case law, including pilot judgments on the grounds of violations of Articles 6 and 13 (Right to an effective remedy<sup>59</sup>) of the European Convention. The most spectacular of these decisions are probably *Yuriy Nikolayevich Ivanov v. Ukraine*<sup>60</sup> case, and related *Burmych and others v. Ukraine*<sup>61</sup> case (also they mostly relate to non-pecuniary obligations), as they concern myriads of similar applications. However, in these two cases, the problem at stakes was not so much the domestic law but the non-compliance of Ukraine with domestic law.

Article 88 provides detailed explanation on how the creditor can obtain enforcement of monetary claims filed against the Republic of Armenia and communities, as well as the role of compulsory enforcement officers in the process, in compliance with the requirements of the European Convention, Recommendation 17 and the CEPEJ Guidelines on Enforcement.

Article 88 appears to comply with the requirements of the European Convention, as well as Recommendation 17 and the CEPEJ Guidelines on Enforcement.

## **2.4 Chapter 19 – Rules for compulsory enforcement of the claims to perform certain actions or to prohibit the performance of certain actions (Articles 109 and 111)**

### **2.4.1 Article 109 - General provisions on compulsory enforcement of the claims to perform certain actions or to prohibit the performance of certain actions**

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<sup>57</sup> §1.

<sup>58</sup> §2.

<sup>59</sup> *Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.*

<sup>60</sup> 15 October 2009, no 40450/04.

<sup>61</sup> 12 October 2017, no 46852/13.

As regards compulsory enforcement of the claims to perform certain actions or to prohibit the performance of certain actions, Article 109 explains the two stages of the procedure. Firstly (Article 109.1), the enforcement agent establishes a “reasonable time period for the debtor to fulfil these claims (including to terminate the prohibited actions), where no such time period was established under the act subject to enforcement or the established time period expired”, with the possibility to “extend the time period established thereby, where circumstances have emerged which attest as to the need for a longer time period for the fulfilment of the obligation”. Then, Article 109.2 describes the second stage (enforcement in case of non-compliances with Article 109.1). Finally, Article 109.3 covers the possible need for protection for the debtor’s property in the process.

The procedure described in Article 109 follows the requirements of Recommendation 17<sup>62</sup> and the CEPEJ Guidelines on Enforcement<sup>63</sup>. Incidentally, Article 109 also follows the prescription of Article 28 (Autonomy of the judicial officer and the enforcement agent)<sup>64</sup> of the Global Code of Enforcement.

Article 109 appears to comply with the requirements of the European Convention, as well as Recommendation 17 and the CEPEJ Guidelines on Enforcement.

#### **2.4.2 Article 111 - Compulsory enforcement of the claims for visiting the child and placing the child under the custody of the claimant**

Claims for visiting the child and placing the child under the custody of the claimant are very sensitive issues everywhere, as it concerns the direct interest of children who obviously need the most careful and strongest legal and effective protection possible.

Article 111 clearly emphasises this protection (“priority given to the best interests of the child”) and excludes from the outset “any use of physical or psychological coercion against the child by any entity of enforcement proceedings<sup>65</sup>”. Whenever possible and applicable, the compulsory enforcement officer shall also take into consideration the child’s opinion in the process, within the limits of the claim specified in the act subject to enforcement<sup>66</sup>. Finally, the participations of guardianship and curatorship in the process are covered in Article 111.3, in line with the requirements of Article 16 of the CEPEJ Guidelines on Enforcement<sup>67</sup>. As participants in the enforcement process, Article 111 §1 also applies to them. This means that these entities cannot exert any use of physical or psychological coercion against the child either. Hence, in situations where only physical or psychological coercion would ensure the enforcement of the court decision, due to this provision, enforcement cannot be carried out.

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<sup>62</sup> In particular, Article III (1.a. and 1.b), and Article IV (2 and 5).

<sup>63</sup> Article 33.

<sup>64</sup> “The judicial officer or the enforcement agent autonomously implements the measure most appropriate to the rights of the creditor and the basic rights of the debtor.”

<sup>65</sup> §1.

<sup>66</sup> §2.

<sup>67</sup> “Social workers should be particularly available in cases where children or other vulnerable persons are concerned by the enforcement procedure.”

This appears at first sight to be in line with Article III.1.§ g of Recommendation 17<sup>68</sup>. However, other arguments should be discussed.

As mentioned in this report, the states must ensure the proper enforcement of court decisions in compliance with Article 6 and Article 8 of the European Convention. Article 13 of the Global Code of Enforcement rules that “The State must upon its responsibility guarantee the assistance within a reasonable period of time the assistance of the forces of public order to the professional persons instructed with the enforcement of enforceable titles who request same.”

However, enforcement is not always possible. In the *Bordeianu v. Moldova* case<sup>69</sup>, the appropriateness of a measure is examined by the European Court depending on the speed of its implementation. The procedures for handing over the child must be carried out urgently, because the passage of time can have irreversible consequences on the relationship between the child and the parent who does not live with him.

The European Court admits that a change in the relevant circumstances can justify the non-execution of a final decision regarding the reunification of a parent with his/her child. However, having regard to the positive obligations of the state and the general requirement of the rule of law, such a change of circumstances cannot be caused by the inability of the national authorities to adopt all the measures that might reasonably be necessary to facilitate the execution of such decisions.

Therefore, the State's obligation is to undertake, reasonably, the necessary and appropriate enforcement measures. However, in this procedure, the child's interest and his psycho-emotional state remain paramount.

In *Saggio v. Italy*<sup>70</sup>, a case with an insolvent debtor, the European Court discussed the possibilities of the state authorities to refuse to assist the enforcement process with the police force in case of risk of disturbing public order. The Court considered that the authorities could refuse the assistance of public force to evict strikers from the factory which they illegally occupied, in consideration of the current difficult social climate, and that the refusal of the authorities to cooperate in the execution of the decision did not affect the validity of the right to a court guaranteed by Article 6 § 1 of the European Convention. However, this situation is different from the sensitive case of claims related to visiting the child and placing the child under the custody of the claimant, where the law should provide provisions or solutions to ensure the full enforcement of the court decisions.

In the opinion of the international expert Article 111 appears to comply with the requirements of the European Convention, as well as Recommendation 17 and the CEPEJ Guidelines on Enforcement, apart from the provision mentioned in §1 (exclusion of any use of physical or psychological coercion against the child by any entity of enforcement proceedings) unless a solution is provided.

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<sup>68</sup> “During the enforcement process, a proper balance should be struck between claimants’ and defendants’ interests, bearing in mind, in particular, the provisions of both Articles 6 and 8 of the ECHR. Where appropriate, the interests of third parties should also be taken into account. When the enforcement process concerns family law matters, the interests of the members of the family should be taken into account; **in addition, when the enforcement process concerns, in particular, the rights of children, the best interests of the child should be a primary consideration, in accordance with international and national law;**”

<sup>69</sup> *Bordeianu v. Moldova* (No. 49868/08), 11 January, 2011, §§ 67, 68, 69 .

<sup>70</sup> *Saggio v. Italy*, 25 October 2001, no 41879/98, §35, *F.L. v. Italy*, 20 December 2001, no 25639/94, § 34

## **2.5 Chapter 21 – Liability in enforcement proceedings (Article 123 to 125).**

### **2.5.1 Article 123 - Default penalty for failure to fulfil the non-monetary claim (astreinte)**

This Article explains the principle of astreinte (monetary default penalty) and describes its mechanism, which derives from the French legislation and aims to oblige the debtor to fulfil the non-monetary claim established by the final judicial acts rendered under civil cases or administrative cases. Article 123 (§§ 5 to 7) specifies the scope of the astreinte and the cases where it is not applicable, relying on two separate and consecutive levels: initial astreinte and final astreinte.

While complying with clearly defining the rights and duties of the defendant<sup>71</sup>, this measure specifically aims at encouraging the defendant to participate in the enforcement process<sup>72</sup>, striking “a balance between the needs of the claimant and the rights of the defendant<sup>73</sup>”, and ensuring that “the legal framework of enforcement is not unnecessarily prolonged”<sup>74</sup>. Incidentally, Article 123 falls under the scope of Articles 10<sup>75</sup> (Alternative or participatory enforcement) and 31<sup>76</sup> of the Global Code of Enforcement.

Article 123 appears to comply with the requirements of the European Convention, as well as Recommendation 17 and the CEPEJ Guidelines on Enforcement.

### **2.5.2 Article 124 - Amount of astreinte and calculation thereof**

The draft law has chosen to fix a set amount for the initial astreinte and its duration<sup>77</sup>. This choice led to an observation by the international expert<sup>78</sup> but has the merit to be extremely clear for all parties and fall under all Council of Europe’s requirements.

The final astreinte is determined by the judge, who is given great latitude, in consideration with the circumstances which are clearly described in §§ 4 and 5. Its calculation and carrying out is also clearly described in §§ 6 to 10.

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<sup>71</sup> Article III.2.c. of Recommendation 17.

<sup>72</sup> §15 of the CEPEJ Guidelines: “Measures should be taken to ensure that the parties are able to understand the process of enforcement in which they are involved, and, where possible, have the option of participating in the proceedings without the need for legal representation.”

<sup>73</sup> §7 of the CEPEJ Guidelines on Enforcement.

<sup>74</sup> §67 of the CEPEJ Guidelines on Enforcement.

<sup>75</sup> “In order to adapt the enforcement to the situation of the creditor and the debtor, states must allow the active participation of the parties to the enforcement.”

<sup>76</sup> “When a judge directs to the performance or non-performance of an obligation, he must be able to accompany his judgment with a constraint measure.”

<sup>77</sup> Article 124. §§ 1 & 2.

<sup>78</sup> See hereafter § 3.5.2. of this report.

In line with Article 123, Article 124 appears to comply with the requirements of the European Convention, as well as Recommendation 17 and the CEPEJ Guidelines on Enforcement.

### **2.5.3 Article 125 - Procedure for imposing final astreinte, changing amount thereof and terminating astreinte**

Article 125 provides detailed and clear provisions on applications for imposing final astreinte (§1) and procedural means (§§ 2 to 7).

In line with Articles 123 and 124, Article 125 appears to comply with the requirements of the European Convention, as well as Recommendation 17 and the CEPEJ Guidelines on Enforcement.

## **3. Key Recommendations towards finetuning the text of the draft law of the Republic of Armenia on the Compulsory Enforcement of Judicial Acts.**

### **3.1 Chapter 8 – General rules for application of compulsory enforcement measures (Articles 47 to 55).**

#### **3.1.1 Article 47 – Compulsory enforcement measures**

Article 47.1. provides a list of seven distinct compulsory enforcement measures. In this list, § (1) and § (3) could merge into a single § (1): *“(1) levy of execution on debtor’s property, including in the possession of other persons;”*

*Article 47.1. could then read:*

*“1. Compulsory enforcement measures shall be as follows:*

- (1) levy of execution on debtor’s property, including in the possession of other persons;*
- (2) levy of execution on debtor’s revenues;*
- (3) obliging the debtor, and in the cases provided for by law — also other persons, to perform certain actions or prohibiting them from performing certain actions;*
- (4) fulfilling the obligation instead of the debtor, where obligation does not imply that it may be fulfilled with the personal participation of the debtor;*
- (5) measures preventing the debtor or other persons from performance or attesting the exercise thereby of prohibited actions;*
- (6) physical coercion.”*

#### **3.1.2 Article 48 – Obtaining information about debtor**

There could be a stronger link between Article 48 and Articles 40 to 42 (*Information accessible to the enforcement agent*) of the CEPEJ Guidelines on Enforcement. Emphasis could also be made on information on debtor’s assets and not only on his location as currently referred to in Article 48 §1.

This section also supports access to information on the current and former marital status of the debtor, that identifying the spouse (including former spouse). Access to information on another party than the debtor should be considered in the light of Article 8 the European Convention.

Likewise, Article 48 § 3 could better reflect the “duty to provide the information to the enforcement agent, within an agreed time-limit if such information is compatible with data protection legislation” referred to in Article 43 of the CEPEJ Guidelines on Enforcement.

The draft law could include the need for the compulsory enforcement officers to respect confidentiality as mentioned in Article 45 of the CEPEJ Guidelines on Enforcement.

The draft law could also include the possibility for the enforcement agent to reuse the information on the defendant’s assets in subsequent procedures that involve the same defendant, according to Article 46 of the CEPEJ Guidelines on Enforcement<sup>79</sup>.

Finally, attention should be drawn on §§ 41 (Persons authorised to receive information resulting from investigations into assets), 42 (Investigations into debtors’ assets), and 43 (Investigations into debtors’ liabilities) of the CEPEJ Good Practice Guide on Enforcement.

### **3.1.3 Article 49 - Acting on behalf and instead of the debtor**

“Execution of a judgment given by any court must (...) be regarded as an integral part of the “trial” for the purposes of Article 6 of the European Convention”<sup>80</sup>. Furthermore, enforcement should be carried within a reasonable time<sup>81</sup>. States should take all necessary measures to comply with these requirements. In that respect, the possibility mentioned in Article 49 of the draft law for the compulsory enforcement officer to act on behalf and instead of the debtor is innovative and aims at complying with these requirements and ensuring the right to enforcement of the creditor. However, there should be a balance between the rights of the creditor and those of the debtor. Moreover, the question of impartiality of the compulsory enforcement officer is at stakes in the process. Guarantees should be discussed, for instance in bylaws or regulations on how the compulsory enforcement officer is appointed for this purpose, by whom (court, head of the Federal Enforcement Service or Head of the local office), and how he/she is supervised.

### **3.1.4 Article 50 - Performing actions and implementing prohibitions through counterparties of the debtor and registering bodies**

The same remarks as those made under Article 49 also apply.

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<sup>79</sup> “Member states are invited to consider allowing enforcement agents to reuse information on the defendant’s assets in subsequent procedures that involve the same defendant. The reuse of information should however be subject to clear and precise legal framework (i.e. setting strict timeframes for data retention, etc.).”

<sup>80</sup> *Hornsby v. Greece*, 19 March 1997, no 18357/91, § 40.

<sup>81</sup> Compare *Burdov v. Russia*, 7 May 2002, no 59498/00, § 35.

### **3.1.5 Article 51 - Measures preventing or attesting the performance of prohibited actions**

The same remarks as those made under Article 49 also apply.

### **3.1.6 Article 52 - Entry into a residence or other premises for carrying out enforcement actions**

Attention should be drawn on § 37 (Access of enforcement agents to private premises)<sup>82</sup> and § 38 (Enforcement operations involving third parties)<sup>83</sup> of the CEPEJ Good Practice Guide on Enforcement.

### **3.1.7 Article 53 - Search against a person, property and documents**

No remark.

### **3.1.8 Article 54 - Restriction on the right of a person in search to exit from the territory of the Republic of Armenia**

No remark.

### **3.1.9 Article 55 - Physical coercion**

No remark.

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<sup>82</sup> "Access of enforcement agents to private premises. In order to carry out certain enforcement operations, enforcement agents should be able to access private premises in which the assets subject to the enforcement order are located, including premises used as dwellings. To this end, the national legislation could foresee the possibility, for an enforcement agent, to request and to obtain the assistance of the law enforcement agencies. The absence or obstruction of the occupiers of such premises must not form any obstacle to the performance of enforcement measures or protective measures. However, the possibility of forced entry into private premises for enforcement purposes should be subject to legal safeguards (for example, the requirement to have an enforceable title, the possible presence of witnesses ensuring that the enforcement operations are properly conducted or the need for the enforcement agent to take care to close up the entry through which they gained access)."

<sup>83</sup> "Enforcement operations involving third parties. It should be possible for enforcement operations to be carried out on any premises where the assets to be recovered are situated. Provisions could be made in particular for the forced implementation of enforcement measures on assets even if they are held by third parties, including on premises that they use as dwellings. Placing assets in a third party's dwelling must not provide a means for recalcitrant debtors to evade enforcement measures or protective measures."

### **3.2 Chapter 9 – Interim stage of the enforcement proceedings (Article 61).**

The draft law could consider going further to what is specified in Article 61, to fully comply with Article 8 of the CEPEJ Guidelines on Enforcement<sup>84</sup>, in particular as regards the role of the compulsory enforcement officer as a “post judicial mediator” during the enforcement stage”.

Attention should also be drawn on § 46 (Involvement of debtors in enforcement procedures) of the CEPEJ Good Practice Guide on Enforcement).

### **3.3. Chapter 15 – Special rules for compulsory enforcement of monetary claims against certain debtors (Article 88)**

#### **3.3.1 Article 88. Enforcement of monetary claims filed against the Republic of Armenia and communities**

No remark.

### **3.4 Chapter 19 – Rules for compulsory enforcement of the claims to perform certain actions or to prohibit the performance of certain actions (Articles 109 and 111)**

#### **3.4.1 Article 109 - General provisions on compulsory enforcement of the claims to perform certain actions or to prohibit the performance of certain actions**

No remark.

#### **3.4.2 Article 111 - Compulsory enforcement of the claims for visiting the child and placing the child under the custody of the claimant**

To comply with Articles 6 and 8 of the European Convention, the Armenian law should provide a specific solution for enabling the enforcement of the claims for visiting the child and placing the child under the custody of the claimant with regards to the exclusion by any entity of enforcement proceedings of any physical or psychological coercion against the child. On the one hand, physical or psychological coercion against the child would occur in case the child is in a threatening situation for his/her life or for the defence of his/her best interest. On the other

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<sup>84</sup> “The enforcement process should be sufficiently flexible so as to allow the enforcement agent a reasonable measure of latitude to make arrangements with the defendant, where there is a consensus between the claimant and the defendant. Such arrangements should be subject to thorough control to ensure the enforcement agent’s impartiality and the protection of the claimant’s and third parties’ interests. The enforcement agent’s role should be clearly defined by national law (for example their degree of autonomy). They can (for example) have the role of a “post judicial mediator”, during the enforcement stage.”



hand, it is not acceptable to consider that the non-enforcement of the judicial claim could encourage desperate claimants to use private justice<sup>85</sup>, or to have recourse to child abduction.

### **3.5 Chapter 21 – Liability in enforcement proceedings (Article 123 to 125).**

#### **3.5.1 Article 123 - Default penalty for failure to fulfil the non-monetary claim (astreinte)**

In the French judicial system where the *astreinte* was firstly instituted, the initial *astreinte* is set by the judge in relation with the obligation. The aim for the judge is to strike the right balance between the importance of the obligation, the urgency of the remedy, and the amount of the *astreinte*. If the *astreinte* is manifestly overstated and disproportionate to the measure on which it is based, the debtor of the obligation will endure a deep feeling of injustice which will lead to the opposite effect of that sought. Conversely, if the amount of the *astreinte* is undervalued, it will have no impact on the person who is the subject of it, which will make it ineffective with regard to its purpose of encouraging the debtor to perform his duties.

The issue of the fix amount of the initial *astreinte* was raised by the international expert during the round table discussions on the Law of the Republic of Armenia on Enforcement Proceedings of 6 June 2023 with the Armenian authorities which stated that it had been thoroughly discussed and the decision to choose a set amount for the initial *astreinte* was to ensure clarity and avoid judicial contest on the grounds of its amount.

The international expert understands this position but considers that the objective of effectiveness of the *astreinte* is then only partially achieved, leaving everything to be settled during the second phase of the *astreinte* (final *astreinte*).

#### **3.5.2 Article 124 - Amount of *astreinte* and calculation thereof**

See comment hereabove (3.5.1.).

#### **3.5.3 Article 125 - Procedure for imposing final *astreinte*, changing amount thereof and terminating *astreinte***

See comment hereabove (3.5.1.).

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<sup>85</sup> See Recital 6 of Recommendation 17: “Aware of the risk that without an effective system of enforcement, other forms of “private justice” may flourish and have adverse consequences on the public’s confidence in the legal system and its credibility;”.

#### **4. Conclusion**

The 16 Articles assessed in this opinion offer several concrete answers to improving the efficiency of the Armenian enforcement system in civil and commercial matters, in particular relating to the obtaining information about the debtor, the possibility for the compulsory enforcement agent to act on behalf and instead of the debtor, the search against a person, property and documents, restriction on the right of a person in search to exit from the territory of the republic of Armenia, the possibility to adjust the enforcement procedure, measures relating to enforcement of monetary claims filed against the Republic of Armenia and communities, and astreinte.

These positive steps show the willingness and efforts of the Armenian authorities to provide solutions, including innovative ones, to better comply with the requirements of the Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms, Recommendation Rec(2003)17 of the Committee of Ministers of the Council of Europe to members States on enforcement (adopted by the Committee of Ministers on 9 September 2003 at the 851st meeting of the Ministers' Deputies), and the Council of Europe's European Commission for the Efficiency of Justice Guidelines of 17 December 2009 for a better implementation of the existing Council of Europe's Recommendation on enforcement (CEPEJ(2009)11 REV).