



1^{er} Forum mondial sur l'exécution – 1st Global Forum on Enforcement - Strasbourg – 10 Dec. 2014

The CEPEJ Guidelines on Enforcement

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In the Wide Europe, that of the 47 member states of the Council of Europe, the advent of a harmonised profession of enforcement agent is on. It predicts undoubtedly the face of the harmonised judicial officer at global level. This harmonising work is the fact of the Council of Europe.

For its part, the International Union of Judicial Officers (UIHJ) has invested in Eastern Europe after the fall of the Berlin Wall and the collapse of the Soviet bloc. The purpose was to sensitise States to the need to organise an effective system to enforce court decisions. The UIHJ has ensured the promotion of a judicial officer liberal, independent, and liable with a high level of training. Today, this model is in place in 19 of the 28 Member States of the European Union¹ and 26 of the 47 member states of the Council of Europe².

With the *Hornsby v. Greece* on 19 March 1997, the execution of a court decision in a reasonable time is part of the right to a fair trial referred to in Article 6 § 1 of the European Convention of Human Rights man. This - historical - date marked the recognition of an aspect of law that has always seemed obvious to judicial officers: a decision that cannot be enforced is useless. The Council of Europe has since addressed issues related to the execution of court decisions and enforcement professionals in its member states and - now - beyond its borders. Multiple missions in which the UIHJ was associated to were held and led to significant changes.

Meanwhile, in the European Union, the EU summit in Tampere on 15 and 16 October 1999 marked the kick-off of the creation of an area of freedom, security and justice.

Aware of the need to go even further, the Council of Europe has developed a reflection on the efficiency of justice by creating in 2002 the European Commission for the Efficiency of Justice (CEPEJ). At the same time, with the assistance of the UIHJ, the Council of Europe has developed Recommendation Rec(2003)17 on the execution of court decisions, which was adopted by the Committee of Ministers on 9 September 2003. This "Recommendation 17" marks the first step of the standardisation of the profession of judicial officer in Europe.

Regarding enforcement officers, the CEPEJ has published a study in 2008 on the execution of court decisions in Europe. This work was conducted by a research team from the University of Nancy (France) and the Swiss Institute of Comparative Law, led by Jullien Lhuillier, with the assistance of the UIHJ.

¹ Belgium, Bulgaria, Cyprus, Czech Republic, Estonia, France, Greece, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Portugal, Romania, Slovakia, United Kingdom.

² Albania, Belgium, Bulgaria, Cyprus, Czech Republic, Estonia, France, Georgia, Greece, Hungary, Ireland, Latvia, Lithuania, Luxembourg, FYRO-Macedonia, Moldova, Monaco, Netherlands, Poland, Portugal, Romania, Serbia, Slovakia, Switzerland, United Kingdom.



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This study led to the constitution by the end of 2008 by the CEPEJ of a working group on enforcement, the CEPEJ-GT-EXE. This working group was composed of experts from Germany, Croatia, Greece, Monaco, the Netherlands, the United Kingdom and the Russian Federation. The experts included four judicial officers including members of the UIHJ: John Marston (United Kingdom) - who became chairman of the working group - and Karl-Heinz Brunner (Germany).

The working group was completed by the UIHJ as an observer, in the person of its current president, Leo Netten, and me. The importance of the work of this group steered John Stacey, then Vice-President of the CEPEJ, and Georg Stawa, now vice-president, to join in all the work. Finally Mr Lhuillier, who had directed the Nancy research team, was responsible for developing the synthesis of the contributions.

When we met in Strasbourg to start working, President Stacey asked the following questions: how to ensure that enforcement of court decisions is effective, fast, at a reasonable cost while respecting the principles set by the European Convention on Human Rights and the Council of Europe as regards human rights and fundamental freedoms? Who should carry out enforcement actions? How should they be conducted?

The Guidelines on enforcement were designed to specifically address these issues and foremost allow a better implementation of Recommendation 17 on enforcement.

These Guidelines, prepared by the working group on enforcement were adopted by the CEPEJ at its 14th plenary meeting on 10 December 2009, precisely five years ago today. They were then adopted on 17 December 2009 by the Committee of Ministers of the Council of Europe. That is to say by all the 47 member states of the Council of Europe.

While not being compulsory, they nevertheless are intended to be gradually integrated into the legal systems of these countries. As we shall see later in the presentation of the report by the UIHJ on the enforcement of court decisions in the world, no country is currently fully in line with all the 82 points forming the CEPEJ Guidelines.

Let us look now into some of the key points of the enforcement Guidelines. After an introduction on the methodology, principles and objectives of enforcement and court processes, the text is organised into three main sections, followed by a glossary:

- I – Preparation of Enforcement
- II – Realisation of Enforcement
- III – Supervision, Control and Disciplinary Proceedings

We will address these Guidelines under the dual objective they have set:

- Strengthening the quality and efficiency of enforcement proceedings;
- Strengthening the quality and efficiency of enforcement agents.



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1. Strengthening the quality and efficiency of enforcement proceedings

First, a balance must be struck between the interests of claimants and defendants.

1.1. Balance between litigants

On the principles and objectives of enforcement, *“there needs to be effective but fair enforcement processes”*. (Item 6) *“Enforcement should strike a balance between the needs of the claimant and the rights of the defendant”*. (Item 7)

It is necessary to *“ensure that information is available on the enforcement process”*, provided that *“rights of the parties are safeguarded”*. (Item 9)

Children or vulnerable persons should also be protected: *“Social workers should be particularly available when children or other vulnerable people are concerned with the enforcement proceedings”*. (Item 16)

The defendant should be encouraged *“to comply with the court order voluntarily”* and should be warned that *“in case of non-compliance enforcement measures could be used, including, if appropriate, further costs”*. (Item 19)

Second, the enforcement process should be transparent.

1.2. A transparent enforcement process

“Transparency of the activities of the court and those of the enforcement agent at all stages of the process” should be ensured. (Item 9)

There should be effective communication *“between the court, the enforcement agent, the claimant, and the defendant”*. (Item 10)

All those involved in the enforcement proceedings should have *“access to information on the ongoing procedures and their progress”*. (Item 10)

Third, access to information should also concern that relating to the defendant.

1.3. Access to information on the defendant

“Notices to parties concerning the enforcement of judicial decisions or enforceable titles or notarised or other documents are an essential aspect of the law of enforcement. Due notification of parties is a



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necessary element of a fair trial, in the sense of Article 6.1 of the European Convention on Human Rights". (Item 17)

The creation of "standard documents" drawn up by the Member States "to notify parties" and relating to "the different stages in the enforcement process and to any possible remedies allowing enforcement to be challenged" is proposed. (Item 18)

Finally, "Member states are strongly encouraged to draw up together European quality standards regarding the information that needs to be provided to the parties and to the general public with respect to enforcement procedures". (Item 74)

The CEPEJ also encourages the secure establishment of a "unique multi-source restricted access database about debtor' attachable assets (i.e. ownership rights over a vehicle, real estate rights, payable debts, tax returns, etc.)". (Item 41)

Fourth, information about the defendant should be protected.

1.4. Data protection

The claimant should have access to information on the defendant as part of the enforcement process, including access to public registers, to identify "the defendant and his whereabouts". (Item 39)

But this access should only be possible "subject to the freedom of information and data protections laws of the national state" and "upon production of sufficient proof of interest (i.e. judgment or another enforceable title). (Item 39)

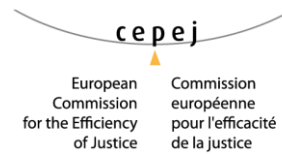
In the same sense, "Member states should provide the defendants with effective legal means to ensure that any inquiry about their personal assets is justified". (Item 41)

Fifth, enforcement fees should be clear and predictable.

1.5. Clear and predictable enforcement fees

The "public" character of enforcement fees is put forward: "Member states are encouraged to require that any procedural document clearly indicate the amount of the action and provide for sanctions in the event of non-compliance (i.e. invalidity of documents failing to comply with the requirement, etc.)". (Item 52)

A balance should be struck between the cost of the measure and the amount of the debt and the risks associated with the absence of result of this measure.



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“Where the defendant’s financial situation is known to the enforcement agent and he recommends a particular enforcement process he should inform the claimant about the type of action envisaged and the likely resulting costs at the beginning of and at each stage in the procedure”. (Item 53)

“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”. (Item 59)

Sixth, the time lines for enforcement procedures should be reasonable and foreseeable.

1.6. Reasonable and foreseeable time lines for enforcement procedures

“The time lines for enforcement procedures should be reasonable and member states should not impose any arbitrary cut-off deadlines for enforcement to end”. (Item 63)

“Clear and precise criteria regarding the reasonable nature of the duration” of the procedure should be set by states (Item 64) and *“databases should be compiled in collaboration with enforcement professionals and should be made as broadly available as possible”*. (Item 65)

“Member states should provide for an accelerated and emergency enforcement procedure in cases where a delay could result in an irreversible damage (i.e. cases within the province of a family court, cases of defendant absconding, eviction, deterioration of assets, etc.)”. (Item 69)

The defendant should be able to *“take action to challenge enforcement measures within a reasonable timeframe, provided this does not unjustifiably halt or delay the enforcement proceedings”*. (Item 68)

In case of complaint regarding *“misconduct against an enforcement agent”*, the enforcement process should not be hampered or delayed, *“except where there is judicial intervention”*. (Item 71)

Finally, enforcement procedures should be supervised and monitored.

1.7. Supervision and monitoring of enforcement procedures

“Each authority should provide for the adequate supervision (having regard to any relevant case law of the EctHR) of the enforcement process” providing that reports *“allow for verification that the judgment has been executed or (if not) that genuine efforts have been made within a reasonable time whilst respecting the equality of the parties”*. (Item 12)

Meanwhile, *“In order to undertake quality control of enforcement proceedings, each member state should establish European quality standards/criteria aiming at assessing annually, through an independent review system and random on-site inspection, the efficiency of the enforcement services”*. (Item 75)



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Enforcement activities should be “*assessed on an ongoing basis*”, “*by a body external to the enforcement authorities*” (Item 78), provided that “*the arrangement for monitoring the activities of enforcement agents does not hamper the smooth running of their work*”. (Item 79)

Now we will look into the second part of this presentation: strengthening the quality and the efficiency of enforcement agents.

2. Strengthening the quality and efficiency of enforcement agents

First, the enforcement professional should have a high level of qualification.

2.1. A qualified enforcement professional

“*For the fair administration of justice, it is important that the quality of enforcement should be guaranteed. Member states should accredit enforcement agents only if the candidates concerned are of a standard and training commensurate with the complexity of their tasks*”. (Item 25)

Initial training should exist. “*A high quality of training of professionals is important for the service of justice and to increase the trust of users in their justice system*”. (Item 25)

“*Enforcement agents should also be required to follow compulsory continuous training*”. (Item 26)

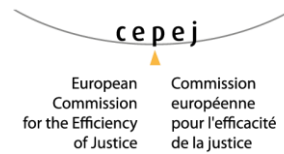
The CEPEJ recommends setting down “*common minimum standards for instructors in the different member states*”. (Item 27)

The list of topics that could be addressed in training is provided for (Item 28):

“*Initial and continuous training could encompass:*

- *the principles and objectives of enforcement;*
- *professional conduct and ethics;*
- *stages in the enforcement process;*
- *the appropriateness, organisation and implementation of enforcement measures;*
- *the legal framework;*
- *role-playing and practical exercises as appropriate;*
- *assessment of trainees' knowledge;*
- *international enforcement of judicial decisions and other enforceable titles.”*

Second, the enforcement agent profession needs to be organised.



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2.2. An organised profession of enforcement agent

The CEPEJ imposes no particular status, independent, liberal, state employed or semi-state employed. However, *“Enforcement agents' status should be clearly defined so as to offer potential parties to enforcement procedures a professional who is impartial, qualified, accountable, available, motivated and efficient”*. (Item 31)

The profession should be organised *“in a professional body representing all members of the profession, thereby facilitating their collective representation and the gathering of information”* (Item 29), with compulsory membership of this *“representative body”*. (Item 30)

To allow for optimal working conditions, *“Where enforcement agents are state employees, they should enjoy appropriate working conditions and sufficient human and material resources. For example, enabling staff to work with access to functioning modern communication and IT equipment (computers, telephones, fax machines, Internet connections, job-specific upgradeable IT systems) and with appropriate means of transport sufficient to allow them to perform their role as effectively as possible”*. (Item 32)

Similarly, *“Where enforcement agents are state employees, the state should ensure that they receive appropriate remuneration, particularly in the light of their level of training, experience and the difficulties inherent in their task”*. (Item 37)

“Where enforcement agents are independent professionals, they should be obliged to open a non-attachable account specifically intended for depositing funds collected on behalf of clients. This account should be subject to inspection. They should also be required to take out professional and civil liability insurance. Enforcement agents should benefit from social insurance cover.” (Item 36)

Third, countries need to ensure optimum geographical distribution of enforcement agents within a country.

2.3. Optimal geographical distribution

Regarding enforcement agents each State should *“ensure the widest possible coverage for all potential parties”* and to *“pay close attention to the distribution, both geographical and case-type, of all the authorities concerned”*, so that every part of the jurisdiction has *“adequate coverage for each type of enforcement activity”*. (Item 13)

Specifically, *“Where enforcement agents carry on their profession as a private practice, member states should ensure that there is sufficient competition and clearly defined geographical competence”*. (Item 14)

Fourth, rights and obligations of enforcement agents should be clarified.



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2.4. Rights and obligations of enforcement officers

“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.”* (Item 33)

“Enforcement agents may also be authorized to perform secondary activities compatible with their role, tending to safeguard and secure recognition of parties' rights and aimed at expediting the judicial process or reducing the workload of the courts. These may be, among others:

- *debt recovery;*
- *voluntary sale of moveable or immovable property at public auction;*
- *seizure of goods;*
- *recording and reporting of evidence;*
- *-serving as court ushers;*
- *provision of legal advice;*
- *bankruptcy procedures;*
- *performing tasks assigned to them by the courts;*
- *representing parties in the courts;*
- *drawing up private deeds and documents;*
- *teaching.”* (Item 34)

These two paragraphs are particularly important. They set down two principles:

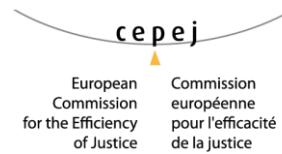
- In each country there should be a single enforcement professional responsible for carrying out all enforcement measures;
- This professional should also be able to perform secondary activities compatible with their role, tending to safeguard and secure recognition of parties' rights and aimed at expediting the judicial process or reducing the workload of the courts.

Among the duties of enforcement agents is the guarantee of rights and obligations of claimants and defendants. They should act with *"impartiality"* and their role should be *"clearly defined by national law"* (Item 8). The enforcement agent should have the opportunity to *"make arrangements with the defendant"* and *"have the role of a "post judicial mediator" during the enforcement phase"* (Item 8).

He should ensure effective information of the defendant about his/her rights and obligations. *“To this end, member states should determine conditions for a secure method for the service of documents”.* (Item 20)

And *“where notices generate rights or obligations, it is the duty of the enforcement agent to ensure that the parties are served with adequate notice in a timely manner”.* (Item 21)

Fifth, enforcement agents should be beyond reproach.



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2.5. Flawless enforcement agents

Ethics is one of the CEPEJ recommendations. *“Enforcement agents should be subject to clearly stated rules of ethics and conduct, which could be set out in professional codes of conduct. These codes of conduct should inter alia contain professional standards regarding:*

- *information to be given to parties by enforcement agents concerning the enforcement procedure (grounds of action, transparency and clarity of costs, etc.)*
- *the rules governing the formulation of notices to parties (enforcement agents' social role, duty of advice, etc.)*
- *professional ethics (behaviour, professional secrecy, ethical criteria governing the choice of actions, etc.)*
- *smooth enforcement (predictability and proportionality of costs and lead-times, co-operation between enforcement services, etc.)*
- *procedural flexibility (autonomy of enforcement agents, etc.)”*. (Item 38)

In this sense, *“Enforcement agents must bear a responsibility for maintaining confidentiality when secret, confidential or sensitive information comes to their attention in the course of enforcement proceedings. In case of a breach of this duty, measures of disciplinary liability should be applicable, along with civil and criminal sanctions”*. (Item 45)

“Breaches of laws, regulations or rules of ethics committed by enforcement agents, even outside the scope of their professional activities, should expose them to disciplinary sanctions, without prejudice to eventual civil and criminal sanctions”. (Item 80)

Finally, *“An explicit list of sanctions should be drawn up, setting out a scale of disciplinary measures according to the seriousness of the offence”*, including disbarment or "striking off" for *“the most serious offences”*. (Item 82)

Finally, to be effective, enforcement should be facilitated to enforcement agents.

2.6. Assistance to enforcement agents

“All of the stakeholders that are likely to be involved in enforcement processes (police, experts, translators, interpreters, local authorities, risk insurers, child care experts, etc.) should have sufficient legal status to help the enforcement agent”. They *“should be promptly available, in case their help is necessary for the enforcement of a judgment”*. (Item 16)

Each State should allow the enforcement agent *“speedy and preferably direct access to information on the defendant’s assets. Member states are encouraged to consider making such information available to the enforcement agent by Internet through a secured access, if possible”*. (Item 40)



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Access for the enforcement officer to the multi-source database referred to in item 41 should be restricted to *“that data pertaining to the pending enforcement procedure and be subject to thorough control”*. (Item 41)

The enforcement officer should be able to *“reuse information on the defendant’s assets in subsequent procedures that involve the same defendant”*, providing that the reuse is *“subject to a clear and precise legal framework (i.e. setting strict timeframes for data retention, etc.)”*. (Item 46)

Ladies and gentlemen, the Guidelines on enforcement are a symbol and mark a historic step for the profession of judicial officer in the world.

A symbol.

Through their involvement in the development of the guidelines, the profession of judicial officer court has entered a new era. The CEPEJ Guidelines show that the profession of judicial officer is at the heart of the area of freedom, security and justice.

A historic step.

The Guidelines on enforcement are in perfect harmony with all the ideas developed by the UIHJ for many years, which is obviously not the result of chance but of the long working cooperation between the two institutions. The guidelines fully integrate the principle of the programme of the multi-field judicial officer presented at the International Congress of judicial officers in Washington in May 2006.

The Guidelines provide a clear insight on enforcement agents, their status, organisation, training, skills, powers and responsibilities.

Why is this document, which is not binding, so important? Its first quality is that it comes from this major institutional organisation that is the Council of Europe. Its second quality is that it is a true paradigm of the profession of judicial officer and of enforcement principles. And its third quality - at least in the eyes of the UIHJ - is that it is in all respects consistent with the ideas promoted by our organisation for many years.

When they were adopted unanimously by the Council of Europe, they became *de facto* a standard for all member countries, a standard to which they will turn as part of the reforms of their legal systems. And for countries in other continents interested in the standards of the profession of enforcement agent, it is obviously through the prism of the CEPEJ Guidelines that they will look. Without the shadow of a doubt, it is clear that the Guidelines form the global standard document for the profession of judicial officer.

That is why, throughout the world, the UIHJ ensures the dissemination and promotion of the Guidelines on enforcement. To this end, many of our members have already provided translation in their language.



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As a conclusion, I therefore appeal to the 60 countries represented here today in the Council of Europe. Please spend the necessary time to discover and absorb the CEPEJ Guidelines. When it comes to enforcement of court decisions, they are the cement with which each state will comply with the requirements of the European Convention on Human Rights and help improve the rule of law around the world.