



Position Paper – The Judicial Officer in Europe  
December 2010

## **Position Paper**

# **The judicial officer in Europe**

**Presented by the International Union of Judicial Officers**

**December 2010**

Created in 1952, the purpose of the UIHJ is to represent its members to international organizations and ensure collaboration with national professional bodies. It works to improve national procedural law and international treaties and makes every effort to promote ideas, projects and initiatives which help to move forward and elevate the independent status of judicial officers.

The UIHJ is a member of the Economic and Social Council of the United Nations. The UIHJ is involved in the work of the Hague Conference on Private International Law, specifically in the planning of conventions relating to the service of documents and enforcement. It is a permanent observer member of the European Commission for the Efficiency of Justice (CEPEJ) of the Council of Europe and took an active part for this reason in the development of its Guide Lines of 17 December 2009 on execution of legal decisions. It took part in the work which led to the update of (EC) Regulation n°1348/2000 of 29 May 2000 on the service of judicial and extrajudicial documents in civil and commercial matters. It also participated in the reflections aiming at opening the European Judicial Network in civil and commercial matters of the European Commission to legal professions. Furthermore, it currently takes part in the work of the Forum Justice group set up by the European Commission as well as its e-Justice project.

The European Court of Human Rights established that the 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 of Human Rights. The same court recognized that judicial officers work in the interest of a good administration of justice, which makes them an essential element of the Rule of law.

In a global world largely dominated by economy, it matters that lawyers fulfill their role by reinforcing the presence and the prestige of the law. As regards enforcement law, the UIHJ intends to use its wide experience and its influence to ensure the efficiency of enforcement of legal decisions everywhere where that will be possible.

This action fits the idea of a triple necessity to improve access to justice, co-operation between legal authorities and effectiveness of justice on which is based the European strategy on e-Justice.

In unanimously adopting on 10 December 2009 during its 14th plenary meeting, the Guide Lines for a better implementation of Recommendation Rec(2003)17 of 9 September 2003 of the Council of Europe on enforcement, the CEPEJ drew the professional contours of the European judicial officer.



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Three elements are essential and fully aligned with the objectives of the UIHJ:

- The status of the judicial officer and his training
- The associated activities
- Tariff

## 1. Status and training

Extract from the CEPEJ Guide Lines on enforcement:

*“14. 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.*

*25. 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. 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.*

*26. Enforcement agents should also be required to follow compulsory continuous training.*

*27. It is recommended that links be forged between national training institutions. Member states should ensure that enforcement agents are given appropriate training curricula and should set down common minimum standards for instructors in the different member states.*

*28. Initial and continuous training could encompass:*

- *the principles and objectives of enforcement;*
- *professional conduct and ethics;*
- *stages in the enforcement process;*
- *the appropriateness, organization 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.”*

The rule of law must apply and enforce standards and should possess the means to maintain the law in its territory.

One way of maintaining this is none other than the judicial officer, an instrument of compliance.

The judicial officer is a court officer, who was given the task from the state to implement enforceable titles with a monopoly. He thus enjoys a delegation of public power that specially enables him to enforce judgments and other enforceable titles, if necessary with the police. His dual capacity, owner of a parcel of public authority under the status of a liberal profession, is both a guarantee of independence, accountability and efficiency. These parcels of public power which cannot be given to foreign private companies explicitly exclude judicial officers, regulated professionals, from the scope of the Bolkestein directive. By their status as officers, the judicial officers guarantee a quality public service.

The training of the judicial officer, who shall be a jurist of high level, his status and ethics, guarantee an equal treatment of all creditors and at the same time, guarantee the rights of the debtor.

As an element of legal certainty, he intervenes to protect litigants.  
Legal security is the right to a judge.

The right to a judge is the right to a judicial decision.



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The right to a judicial decision is the right to its enforcement.

The right to its enforcement is the right to a judicial officer.

The State must determine the distribution of professionals across the country by ensuring proximity to defendants because the judicial officer is an officer of justice that is to say, a lawyer whose mission is intended to facilitate the conduct of the trial and ensure the proper administration of justice by making the link between the litigant and the judge with full independence and impartiality, thus ensuring a good image of justice.

## 2. Activities

### Extract from the CEPEJ Guide Lines on enforcement:

*“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.*

*34. 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 immoveable 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”*

The liberal judicial officer is a reassuring authority in terms of performance and service. There is trust in his professionalism: trust from the judge, trust from the creditor, and trust from the debtor.

The liberal professional offers from this point of view all guarantee. Indeed, his status as a public and ministerial officer assures unquestionable legitimacy. He becomes somehow the "eye" of the judge, his agent and though not hierarchically under his authority, he is still invested with authority as a kind of delegation that the judicial authority gives him to perform the tasks that justice, for various reasons cannot complete.

Only legitimate to carry out his core activities that are enforcement of court decisions and service of documents, he must, through appropriate training, provide "peripheral" services to the defendant as defined by Article 34 reproduced above.

The judicial officer must be a multi-field professional avoiding the fragmentation of activities in which the litigant loses both time and money.



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### 3. Tariff

Extract from the CEPEJ Guide Lines on enforcement:

*“4.4. Remuneration*

*37. 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.*

*2. Costs of enforcement*

*2.1. Regulation of costs*

*47. Each member state is encouraged to introduce regulations governing the level of enforcement costs to ensure effective access to justice notably through legal aid or schemes allowing for the waiver of costs or a postponement of their payment, where such costs are likely to fall to the parties. The parties should be protected to ensure that they will pay only the costs determined by law.*

*48. Where, within the same member state, there are enforcement agents working in both the private and public sector, the state should avoid any discrimination in terms of the costs for the debtor between enforcement agents of different status but equal competence.*

*2.2. Transparency of enforcement costs*

*50. Where enforcement costs are likely to fall to the parties, the member states should ensure that the latter are informed as fully as possible about the enforcement costs (enforcement fees and the performance fees due upon successful completion). This information should be made available to the parties not only by the enforcement agent but also by the courts, consumer organisations, procedural codes or via the official Internet sites of the judicial and professional authorities.*

*51. In recognition of the growing mobility of persons and services in Europe, there is an increasing need for international enforcement of court decisions. The transparency of enforcement costs should therefore go beyond mere domestic level: the member states should agree to set up a data base of the amounts charged for the procedural acts most frequently performed and make it as broadly available as possible, with the aim of giving persons in other member states access to each country's structure of charges*

*2.3. Clarity and predictability of enforcement fees*

*52. Enforcement fees should be public. 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.).”*

Pricing the activities of the judicial officers specified by law is a necessity based on the equality of all before the law. Financial equity is one of the basic rules of justice.

To avoid drift, the independence of the judicial officer may also take an economic dimension and can acquire it through a regulated tariff.

Although located in the heart of the relationship that may exist between the creditor and the debtor, the judicial officer must remain totally independent from the parties. It is superfluous to the customer of the judicial officer to search for the best price since there is a predetermined tariff which protects the profession and thus the citizens from the practice aiming at introducing an inequality between them that would be intolerable within the Rule of Law.

By the existence of regulated tariffs, the judicial officer is protected from the risk of an economic dependency imposed by too strong customers or by other judicial officers who would not then be tempted to lower their fees.



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**ANNEX**

Country	Number of judicial officers	Population (Millions)
Austria	36	8,3
Belgium	550	10,7
Bulgaria	162	7,6
Czech Republic	121	10,4
Cyprus	Only service of documents	0.8
Denmark	466 court judicial officers	5.5
Estonia	98	1.3
Finland	88 huissiers et 681 « adjoints »	5.3
France	3000	64.5
Germany	4200	82
Greece	2100	11.2
Hungary	198	10.3
Ireland	31 Sheriffs or Registrars	4.4
Italy	3500	60
Latvia	112	2.2
Lithuania	123	3.3
Luxemburg	12	0.5
Malta		0.4
The Netherlands	353	16.5
Norway	50	4.8
Poland	620	38.1
Portugal	412	10.6
Romania	393	21.5
Slovakia	268	5.4
Slovenia	45	2
Spain	8900 Procuradores	45.8
Sweden	250	9.2
United Kingdom		61.6
England and Wales	63	
Scotland	54	



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