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Survey of Legislative Frameworks for the Enforcement of Judgments
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SURVEY OF LEGISLATIVE FRAMEWORKS
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INTRODUCTION

Establishing the rule of law in the post-socialist states of Central and Eastern Europe involves the adoption of constitutions, laws, and regulations that provide the basis for institutions of democratic governance and market-oriented economic activity. This process also requires transforming widely held negative attitudes toward the law that unfortunately continue to impede its implementation and enforcement. Clearly, the countries of Central and Eastern Europe have made significant progress in repealing socialist-era legislation and drafting new laws in accordance with international and regional standards over the past decade. Implementation and enforcement, however, remains an outstanding challenge for many countries as they continue to transition from authoritarian rule and centralized economic planning. As a result, many international organizations, technical legal assistance providers, and development specialists are contemplating measures to assist in the development of fair and efficient systems for the enforcement of judgments.

A system for the fair and efficient enforcement of judgments in civil cases is an important feature of a modern and reliable judiciary. How judgments are enforced is particularly salient because the failure to enforce judicial decisions and court orders undermines the rule of law and violates the right to a fair trial as set forth in Article 6 of the European Convention on Human Rights (ECHR). According to the European Court of Human Rights in Hornsby v. Greece (1997), the right to a fair trial would be “illusory if a …domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party.” The Court affirmed this principle in subsequent rulings, such as Estima Jorge v. Portugal (1998), and Burdov v. Russia (2002).

Enforcement of judgments is also an important issue because it is inextricably linked to judicial independence and how the court system is perceived by the general public. Constitutional guarantees of the separation of powers and judicial independence enable judges to protect individual rights and freedoms enshrined in law. However, these constitutional guarantees and legal protections lose their significance when judicial decisions are not enforced. Moreover, if individuals lack confidence in the enforceability of judgments, they may be less likely to rely on courts to resolve disputes and may turn to other unofficial or private ways seeking justice as a result. Over time, failure to effectively enforce judgments will undermine credibility of the legal system and the rule of law.

In addition to promoting the rule of law, protecting individual rights and freedoms, and securing public confidence in the judiciary, fair and efficient enforcement of court decisions is requisite to economic growth, business development, and attraction of foreign direct investment.

Concern over legislative and institutional impediments to the fair and efficient enforcement of judicial decisions prompted the Committee of Ministers of the Council of Europe, on 09 September 2003, to adopt Recommendation Rec(2003) 17 on Enforcement. In this Recommendation, the 45 member states of the Council of Europe are advised to “facilitate the efficient and cost-effective enforcement of judicial decisions, as well as of other judicial or non-judicial enforceable titles, as
appropriate."\(^1\) Recommendation Rec(2003)17 also identifies 15 guiding principles intended to assist member states develop and evaluate legislative frameworks for enforcement of judgments in civil matters, including commercial, consumer, labor, and family law.

The ABA/CEELI Survey of Legislative Frameworks for the Enforcement of Judgments provides an overview of legislation from nine Central and East European countries: Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Macedonia, Romania, Serbia and Montenegro, and Slovakia. These frameworks are viewed through the prism of ten indicators or factors primarily derived from the guiding principles on enforcement set forth in Council of Europe Recommendation Rec(2003)17. Each individual factor highlights a specific component of a fair, efficient, and effective system of judicial enforcement including: enforceable titles; enforcement procedures; rights and duties of parties; prevention of procedural misuses and abuses; judicial review; enforcement fees; rights and duties of enforcement agents; enforcement agent qualifications and training; ethics and discipline; and resources and compensation.

By identifying and discussing current approaches to enforcing judicial decisions in Central and Eastern Europe, the survey is intended to serve as a resource to legislators and policy-makers working on harmonizing legal frameworks with standards set forth by the Council of Europe. In this regard, the survey offers a textual analysis of legislative frameworks for the enforcement of judicial decisions and makes laws and other normative acts available on the accompanying CD-ROM. Together, this information should also prove to be a useful resource to international organizations, technical legal assistance providers, and development specialists, because apart from country-specific information on laws on the enforcement of judgments, it highlights problematic issue areas that must be addressed in order to ensure the fair and efficient execution of judicial decisions.

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\(^1\) *Id.* Also, on 09 September 2003, the Council of Europe adopted Recommendation (Rec)16 on execution of administrative and judicial decisions in the field of administrative law. In this recommendation, member states are called upon to “ensure effective execution of administrative and judicial decisions in the field of administrative law.”
INTRODUCTION

This report provides an analysis of Albanian legislation on enforcement in light of the guiding principles of the Council of Europe Recommendation on Enforcement of September 9, 2003. While the provisions of the Recommendation are not legally binding for Albania, because it is not a member of the Council of Europe, they may, nevertheless, serve as a useful “diagnostic tool” that may help relevant authorities identify the strengths and weaknesses of Albania’s current legislation on enforcement.

This report analyses various aspects of Albanian legislation on enforcement through the prism of ten criteria (hereinafter referred to as “factors”) that ABA/CEELI developed using the guiding principles of the CoE Recommendation on Enforcement.

This report is structured into two parts. Part I (factors 1 through 7) analyses the general enforcement framework and enforcement procedures existent in Albania, while Part II (factors 8 through 10) assesses the provisions relevant to the activity, the rights and duties of enforcement agents.

Overall, Albania has a well-developed legislative framework governing the enforcement of judgments process. The enforcement procedures are set forth in the Civil Procedure Code that entered into force on June 1, 1996 (Articles 510-617) and the Civil Code, which entered into force on November 1, 1994 (Article 605). The activity, as well as the rights and duties, of bailiffs are governed by the provisions of the Law on the Organization and Functioning of the Bailiffs Service #8730 of January 18, 2001, the Regulation on the Organization and Functioning of the Council of the Bailiff’s Service #82 of January 7, 2002, the Ministry of Justice Directive on Maintaining Documentation and Accounting on the Bailiff’s Office Activity, the System of Taxes and the Activity of Stamps of October 3, 2002, and the Decision of Council of Ministers #424 on Salaries of Employees of Budget Institutions of June 11, 2001.

The above-mentioned legislative acts are referenced, as appropriate, throughout this report. The English translation of these acts or excerpts from them is attached to this report.

ISSUES OF CONCERN

Existent legislation neither contains explicit provisions regarding the manner in which enforcement documents are served, nor requires debtors to provide information on their incomes and assets. The Civil Procedure Code does not describe the procedure of search and seizure of debtor’s goods and does not require that a balance be struck between the interests of the debtor and the creditor. Enforcement procedures maybe too lengthy and inefficient for ensuring that the debtor’s goods be sold promptly, so that the highest market value be obtained and costly and unnecessary depreciation be avoided.
Legislation on bailiffs fails to require that candidates for the positions of bailiffs take examinations before being appointed, which makes the selection process arbitrary. More detailed provisions on bailiffs’ ethics are necessary, along with more detailed stipulations on bailiffs’ working conditions and resources.

**PART I. ENFORCEMENT PROCEDURES**

**Factor 1. Enforceable Titles**

*All enforceable titles are exhaustively defined and listed. The manner in which enforceable titles become effective is also clearly defined.*

Article 510 of the Civil Procedure Code of Albania clearly lists the existent enforceable titles. The Code, however, does not provide definitions for such titles.

**Factor 2. Enforcement Procedures**

*Enforcement procedures are clearly defined and easy to follow by the enforcement agents.*

Although the Civil Procedure Code defines and describes the enforcement procedures and the actions that bailiffs are required to take during different stages of the enforcement process, more detailed and clear provisions may be required in some instances. Although from the provisions of the Code it appears that the enforcement procedures are easy to follow by the bailiffs, information about their practical implementation is needed for an accurate and final conclusion on this issue.

The provisions of the Code describe the procedures characteristic for different stages of the enforcement process, as well as the procedures for enforcement on different types of debtor’s goods (movable, immovable, etc.) and different types of obligations.

The Code defines the courts authorized to issue the order of execution (Article 511), bailiffs’ territorial authority (Article 516), and the moment in time when the execution may commence (Article 519) are all defined by the Code.

The Code also addresses enforcement on heirs (Article 520), enforcement against a third party (Article 521), and enforcement against a debtor of unknown abode (Article 522).

The Code also outlines the procedures for enforcement of monetary obligations against natural persons and legal entities (Articles 527-539); enforcement on debtor's movable goods (Articles 540-559); immovable goods, means of navigation and flying (Articles 560-580); enforcement of credits and goods that third parties owe to the debtor (Article 581-588); and enforcement on funds in doctor’s bank accounts (Articles 593-600).

Enforcement of monetary obligations towards budgetary institutions (Articles 589-592), obligations to relinquish a definite object (Articles 601-604), and obligations for specific performance of determined actions (Article 605) are also stipulated by the Code.

The cases and procedure for the suspension and cessation of enforcement are addressed by Articles 615-617.
Service of Process

The Civil Procedure Code does not contain explicit provisions regarding the manner in which the enforcement documents shall be sent to the debtor. Article 517 of the Code only states that, at the start of the enforcement process, the bailiff sends the debtor a notice of voluntary execution of the obligation contained in the execution order, without specifying the methods by which the notice may be served.

Sale of Assets

The provisions of the Civil Procedure Code do not appear conducive to ensuring that debtor’s goods are sold promptly, without costly and unnecessary depreciation.

While the Code contain provisions stipulating that debtor’s goods should be sold in shops or by auction (Article 550), the procedures and terms stipulated for such are structured such that they may in practice be unnecessarily cumbersome and inefficient. A shortcoming of the Code in this regard is the lack of provisions allowing the bailiff to shorten the term during which debtor’s goods could be sold, which is especially important in the case of perishable goods. Also, to provision for a wider circulation of advertisements for sale of debtor’s goods at public auction would be useful in this regard.

After appraising debtor’s seized movable goods (Article 552), the bailiff sends the goods to a vendor (Article 553), where, if during two months the goods are not sold, the bailiff makes a new appraisal. If, after two months from the new appraisal the goods are still not sold, the bailiff suggests that the creditor takes the goods against his credit (Article 553).

In cases when, due to the nature or the state of debtor’s goods they cannot be sent to a shop for sale, the bailiff places an announcement in the shop and in his office about the sale of such goods (Article 551).

When a good is sold by auction, the bailiff places in his office, at the place where the goods for sale are located, and at the place where the auction will be held, an announcement about the price of offered goods, and the place, date and time of the auction (Article 555).

If no bidders were present at the auction, after five days from its end, the bailiff shall make a second appraisal of the goods offered for sale and shall call a second auction (Article 557). If there are no bidders at the second auction, the bailiff will suggest that the creditor take the goods against credit at the price set in the new auction (Article 557).

Factor 3. Rights and Duties of Parties

The powers, rights and duties of the defendants, claimants, and third parties are clearly and thoroughly defined.

Although the Civil Procedure Code contains provisions regulating the powers, rights and duties of the defendant, claimants and third parties, such provisions, especially with respect to creditor’s rights and duties, are not always clearly and thoroughly defined.
Debtor’s Rights and Duties

Debtor’s rights and duties during the procedures of seizure, keeping goods in custody and sale of movable goods are provided for in Articles 531, 517, 545, 552 and 558 of the Civil Procedure Code. Debtor’s obligations with regard to enforcement on immovable goods, means of navigation and flying are stipulated in Articles 565, 566, and 572.

Debtor’s right to request the competent court to declare invalidity of the executive title or the non-existence of the obligation is provided for in Article 609.

Creditor’s Rights and Duties

Creditor’s rights in an enforcement process are set forth in Articles 605, 534, 535, 585 and 614.

Rights and Duties of Third Persons

Third persons’ rights and duties during the enforcement process are provided for by Articles 580, 581, 583, 584, 586, and 612-614.

The rights and duties of the buyer of debtor’s goods are set forth in Articles 574-576.

The right of parties to file appeals against bailiffs’ actions is stipulated in Article 610.

Duty to Cooperate

The Civil Procedure Code and the Law on the Organization and Functioning of the Bailiff Service do not contain explicit provisions requiring parties to cooperate in the enforcement process.

The Code and the Law, however, do contain provisions requiring that different entities, including banks and police officers cooperate during the enforcement process.

Article 26 of the Law on the Organization and Functioning of the Bailiff Service requires that the organs of the public administration and the judicial system, public entities, as well as natural and juridical persons who have documents and data related to execution, provide them at the request of the bailiff.

Article 593 of the Civil Procedure Code stipulates that, when a debtor is not found or when the bank does not have money for the debtor, all state and private banks are obliged to inform the bailiff’s office when accounts, deposits or credits on the name of the debtors are being opened with them. The Code does not contain any provisions requiring that such disclosure of information by banks be done “subject to human rights and data protection standards,” as required by the Council of Europe Recommendation.

Article 523 of the Code requires that, at bailiff’s request, the police officers shall assist the bailiff in entering a place of abode or any other building of the debtor in order to look for his possessions.
Protection of Defendant’s Essential Assets

In line with the provisions of the CoE Recommendation, Article 529 of the Civil Procedure Code contains a detailed list of debtor’s assets and income that may not be subject to enforcement procedures. Unlike the Recommendation, however, the Code does not exempt “necessary working tools” from enforcement.

Article 528 of the Code provides that, for enforcement of monetary obligations, property other than that indicated by the creditor may be seized at the debtor’s request, if the bailiff estimates that the property fulfills the creditor’s request.

Article 533 provides that when seizure is placed on the debtor’s salary, no more than half of it can be withheld.

Duty to Provide Financial Data

The Civil Procedure Code does not contain provisions requiring the debtor to provide information on his or her income, assets, and other relevant matters (e.g., the whereabouts of a child).

Protection of the Defendant During Search and Seizure of Assets

The Criminal Code provides that entering into premises without the consent of a person living therein, committed by a person holding a state function or public service during the exercise of his duty, except the cases when it is permitted by law, is punishable by a fine or up to five years of imprisonment (Article 254).

The Civil Procedure Code does not describe the procedure of search and seizure of debtor’s goods, nor does it expressly requires that such search and seizure be conducted taking into account relevant human rights. Article 523 of the Code provides, however, that when enforced execution necessitates entering the debtor’s the place of abode in order to look for debtor’s goods located inside, the bailiff must perform such action in the presence of representatives of the local government unit appointed by its bodies at bailiff’s request. For every action, the bailiff must keep detailed minutes (Article 524).

Priority of Multiple Claimants

Article 537 of the Civil Procedure Code states that when the proceeds from execution are not enough to pay all creditors, the bailiff must prepare a division plan, setting aside the amounts needed for credits paid in predisposition and paying the other creditors from the remaining amount in proportion to the amount they are owed.

The Civil Code contains a detailed list of priorities in which credits must be paid (Article 605).

Powers, Rights, and Responsibilities of Third Parties

The rights of claimants’ dependents, such as children, are not expressly guaranteed by either the Civil Procedure Code or by the Law on the Organization and Functioning of the Bailiff Service. Article 529(6) of the Code, however, provides that the assistance given to mothers with many children or single mothers shall not be subject to enforcement.
The Civil Procedure Code does not contain provisions explicitly referring to the rights and responsibilities of the third parties such as maintenance claimants and defendants of an attached debt.

**Suspension of Enforcement**

Articles 615 and 617 of the Civil Procedure Code contain provisions stipulating that suspension of enforcement may be done either by the court or by the bailiff, as appropriate. Article 615 also stipulates the instances when enforcement may be suspended.

**Proportionality**

Neither the Civil Procedure Code nor the Law on the Organization and Functioning of the Bailiff Service contains provisions stipulating that a proper balance between claimant’s and defendant’s interests be struck during the enforcement process.

**Factor 4. Prevention of Procedural Misuses and Abuses**

Mechanisms exist for deterring and preventing procedural misuses and abuses of the enforcement procedures by the parties, judges, and enforcement agents.

The Code provides for mechanisms for preventing procedural misuses and abuses by parties, enforcement agents, and judges.

According to the Civil Procedure Code, interested parties have the right to appeal the decisions made during the enforcement process (Articles 512, 517, 539, 580, 583, 588, 599, 601, 606, 609, 610, 611, 617).

**Invalidity of Debtor’s Actions**

Article 566 of the Civil Procedure Code provides that any action of the debtor that constitutes possession of the immovable thing after the registration of seizure in the office of the register of immovable property is invalid against the creditors who have requested the execution (Article 566).

**Criminal Sanctions**

Article 320 of the Criminal Code provides that hiding, altering, using, damaging or destroying the things that are subject to a court decision, or carrying out other acts with the intent of preventing the enforcement of court decisions constitutes criminal contravention and is punishable by a fine or up to two years of imprisonment.

In addition to the above-mentioned provision of the Criminal Code, Article 531 of the Civil Procedure Code reiterates that criminal sanctions will be imposed on the debtor or persons who possess the debtor’s goods for changing, damaging or hiding the debtor’s seized goods (Article 531) as well as the debtor’s goods left in custody (Article 545). Article 565 of the Civil Procedure Code stipulates that the debtor and persons to whom debtor’s seized goods are left in custody are held responsible, according to Article 320 **supra**, for actions that pose obstacles to execution of court decisions. Criminal sanctions shall also be imposed on debtors and third parties who have illegally regained possession of goods of which they have been previously divested (Article 604).
Fines

According to Article 606 of the Civil Procedure Code, in cases when criminal sanctions are not applicable, bailiffs may still impose fines on persons who violate enforcement procedures or hinder the enforcement process. For instance, the bailiff may impose a fine of up to 50,000 lek on debtors or other persons who refuse to perform, perform in an irregular manner, do not respect the deadlines or perform contrary to their obligations as set forth in court decisions.

Article 583 of the Civil Procedure Code stipulates that the bailiff shall impose a fine ranging from 1,000 to 50,000 lek on a third person who does not answer, within five days from receiving the notice of seizure of debtor’s goods whether: 1) he admits that the credit or seized things belong to the debtor and that he is ready to pay the credit or to deliver the things, 2) other persons have claims on the credit or the things, 3) seizure is placed on the credit or the things on the basis of another execution order.

If a competent person at the debtor’s workplace does not withhold from the debtor’s salary the amounts indicated in the bailiff’s notice or does not notify the bailiff of the debtor’s transfer to another place of work or his dismissal, the bailiff shall impose a fine of up to 30,000 lek (Article 588). The same sanctions can also be applied to a bank employee or management if the bank fails to execute its obligations in the enforcement procedures either entirely or partially, violates the time-periods of execution, or does not respect the order of preference (Article 598).

Prevention of procedural abuses and misuses by bailiffs

Parties in an enforcement process and other persons may complain and file an appeal against the bailiff’s actions or refusal to perform within five days from the performance or non-performance of such actions (Articles 580, 588, 599, 606, 610 of the Civil Procedure Code). Appeals against the bailiff’s decision to suspend or cease enforcement can be lodged by the interested persons in the district court (Article 617). In addition, a bailiff who violates the rules provided in laws and statutory acts is subject to disciplinary proceedings imposed by the Ministry of Justice (Article 31 of the Law on the Organization and Functioning of the Bailiff Service).

Prevention of procedural abuses and misuses by judges

Although the Code does not contain explicit provisions referring to prevention of procedural abuses by judges, Articles 512, 517, 601, 609 and 611, which set forth the right of interested parties to appeal court decisions relevant to enforcement, may constitute a mechanism for prevention of abuses and misuses committed by judges.

Prevention of procedural abuses and misuses by third parties

A sale by auction shall be invalid if the offered goods have been bought by a person who does not have the right to participate in the auction (Article 572). If a buyer does not pay the price of a good purchased at an auction during a required time period, he loses the right to get back the amount he left as guarantee (Article 576).
Factor 5. Judicial Review
Parties have the right of review for both judicial and non-judicial decisions made during the enforcement process.

According to the Civil Procedure Code, judicial and non-judicial decisions made during the enforcement process may be reviewed at the request of the parties. Such decisions can be appealed by the interested parties (Articles 512, 517, 539, 580, 583, 588, 599, 601, 606, 609, 610, 611, 617).

The subject matter of appeals against judicial and non-judicial decisions made during enforcement ranges from postponement of the execution of a monetary obligation division of such obligation in installments (Article 517), structure of the plan for dividing proceeds (Article 539), to invalidity of the executive title (Article 609).

Factor 6. Enforcement Fees
Enforcement fees are reasonable, fixed, prescribed by law, and are made known in advance to the parties.

According to Article 12 of the Law on the Organization and Functioning of the Bailiff Service, enforcement is carried out only if enforcement fees are paid. Enforcement fees are set forth by the Ministry of Justice Directive on Maintaining Documentation and Accounting on the Bailiff’s Office Activity, the System of Taxes and the Activity of Stamps of October 3, 2002.

According to Article 1(a) of the MOJ Directive, the enforcement fee depends on the identity of the debtor. Enforcement fees are established as percentage from the values of debtor’s goods. Natural persons must pay 3% of the value of the goods against which enforcement is performed, while legal entities must pay 7% of the value.

In addition, according to Article 545 Civil Procedure Code, when the debtor refuses to accept his goods in custody, the bailiff shall appoint a custodian, establishing a fee for him.

The Civil Procedure Code stipulates that the enforcement costs incurred for enforcement are initially paid by the creditor when an action is performed and then are withheld from the proceeds and returned to the creditor (Article 525).

PART II. ENFORCEMENT AGENTS

Factor 7. Rights and Duties of Enforcement Agents
The status, role, rights and responsibilities of the enforcement agents are clearly defined and described, including their powers and responsibilities in relation to those of the judge.

The status, role, rights and duties of enforcement agents are defined and described in the Civil Procedure Code and the Law on the Organization and Functioning of the Bailiff Service # 8730 of January 18, 2001. In addition, the Regulation on the Organization and Functioning of the Council of Bailiff’s Service, approved by the Ministry of Justice Order # 82 of January 1, 2002, defines and describes the activity of the Council of Bailiff’s Service, which plays an important role in proposing and selecting candidates, as well as applying disciplinary sanctions to bailiffs who violate their professionals duties.
The status of bailiffs as personnel “representing state authority” is mentioned in Article 5 of the Law on the Organization and Functioning of the Bailiff Service.

The role of bailiffs in the enforcement procedure is indicated in Article 515 of the Civil Procedure Code and Articles 2 and 5 of the Law on the Organization and Functioning of the Bailiff Service, which provide that bailiffs’ mission is to execute titles at the request of creditors.

**Bailiffs’ Rights and Duties**

Article 20 of the Law stipulates bailiffs’ rights to participate in trade unions and professional associations, to enjoy health care and social security for themselves and their dependents, to be reimbursed for appropriate travel expenses and to undergo professional training.

Article 24 of the Law specifies the period of annual paid and unpaid leave that bailiffs are entitled to take every year.

According to Article 26 of the Law, bailiffs have the right to collect, handle and protect data that is closely related to exercising their given functions and duties, while respecting the constitutional and legal guarantees for the fundamental human rights and freedoms.

Article 21 of the Law prescribes bailiffs’ duty to respect, recognize, and implement the provisions of all the legal and statutory acts relevant to the bailiffs activity and the orders and methodologies of the General Director of the Bailiff Service, as well as to participate in professional training.

In addition, Articles 516, 527, 540, 546, 549 of the Civil Procedure Code contain provisions relevant to various aspects of a bailiffs activity (e.g. the moment in time when a bailiffs activity may start, and the manner in which the bailiff should seize debtor’s goods).

The Code also contains provisions regarding the bailiffs’ rights and duties during enforcement on debtor’s movable goods (Articles 540-544, 546, 549, 551-555, 557), immovable goods, means of navigation and flying (Articles 560-565, 567-571, 573-575, 577-578), credits and things that third persons owe debtors (Articles 581-583, 587-588), amounts in bank accounts (Articles 593, 598), obligations to relinquish a certain good (Articles 601-604), and obligations for performance of a determined action (Articles 605-606).

Bailiffs have the right to keep their position, unpaid, during military service or during a period of study, with the General Director’s approval (Article 29 of the Law).

When, during the exercise of duty or because of it the bailiff’s life or family is endangered or his property is damaged, the bailiff is entitled to special protection from the state, the conditions and means of which are determined by the Council of Ministers (Article 27 of the Law).

Neither the Civil Procedure Code nor the Law on the Organization and Functioning of the Bailiff Service contain provisions directly stipulating ways in which the state may promote bailiff’s autonomy in the exercise of their work.
Although the provisions of the Civil Procedure Code and the Law on the Organization and Functioning of the Bailiff Service do not contain provisions explicitly delineating the powers and responsibilities of enforcement agents and judges, one can easily understand the difference between the enforcement rights and duties of judges and bailiffs from the overall procedural context provided by these documents.

**Factor 8. Qualification and Training**

In recruiting enforcement agents, consideration is given to the moral standards of candidates (e.g. no criminal record), their legal knowledge, and their training in relevant law and procedure. Candidates are required to take examinations that assess their theoretical and practical knowledge. Once recruited, enforcement agents undergo initial and continuous training according to clearly defined and well-structured aims and objectives.

The Law on the Organization and Functioning of the Bailiff Service contains several provisions regarding the qualifications and training of bailiffs. The Law, however, does not require candidates for bailiffs to undertake any examinations that assess their theoretical and practical knowledge, which may impair the objectivity of selection and appointment of bailiffs.

**Qualifications**

Article 15 of the Law sets forth eligibility requirements for one’s entry into the profession of bailiff, among which are: 1) a university degree in law; 2) good reputation; 3) no criminal conviction by a final court decision; and 4) no dismissal from the public administration for disciplinary violations during a time period of three years (or five years in certain cases).

Candidates are required to take examinations that assess their theoretical and practical knowledge.

Contrary to the requirements of the CoE Recommendation, candidates for the position of bailiff are not required to take examinations to assess their theoretical and practical knowledge. Instead, the Bailiffs’ Council announces in mass-media the vacancies for bailiff’s positions, and then selects and evaluates the applications of candidates. The Council presents its findings to the Ministry of Justice within a 15-day period (Article 15 of the Law; Articles 6-7 of the Regulation on Organization and Functioning of the Council of Bailiff’s Service). The candidates selected by Ministry of Justice are appointed as bailiffs for a probationary period of three months (Article 15 of the Law). At the end of the probationary period, the Minister of Justice, at the recommendation of the General Director of the Bailiffs’ Service decides to either offer permanent appointment to the bailiff or remove him from the Bailiff Service.

**Training**

Article 16 of the Law requires that bailiffs undergo training during the probationary period. Article 20 stipulates bailiff’s right to be trained by the state to increase his professional capabilities, while Article 21 provides that bailiffs are obliged to improve their professional skills by participating in training activities for this purpose.

The Law and the Regulation, however, do not provide any details regarding bailiff’s professional training, such as the manner in which it shall be organized, the frequency, objectives or the subject
matter of such training. Article 8 of the Law merely provides that the General Director of the Bailiff Service organizes and follows up on the professional education and training of bailiffs.

**Factor 9. Ethics and Discipline**

Enforcement agents shall always act according to recognized professional and ethical standards, shall be unbiased in their dealings with the parties, and shall be subject to professional scrutiny and monitoring, which may include judicial control. Enforcement agents alleged to have abused their position are subject to disciplinary, civil, and/or criminal proceedings, providing, in case of abuses, appropriate sanctions.


**Activities incompatible with the profession of bailiff**

Bailiffs may not exercise any other duties except educational activities. They are prohibited from having working relationships or conducting activities that raise conflicts of interest with the position they hold or that prevent them from fulfilling professional duties. Also, a bailiff may not be a member of central or executive bodies of political parties (Article 17 of the Law). Article 18 of the Law provides a list of cases when the bailiff is obliged to give up execution of a case (in order to prevent a conflict of interest or bias).

According to Article 4 of the Law, the Bailiff Service activity shall rest upon the principles of objectivity and lawfulness, as well as the respect of the rights and freedoms guaranteed by law.

**Professional scrutiny and monitoring**

According to Article 8 of the Law, the General Director of the Bailiffs Service must ensure “ethical and professional conduct” in the execution activity. The Bailiffs’ Council evaluates the professional skills of bailiffs every year, based on the criteria of quality, quantity of work, speed and good reputation. The evaluation system of bailiff’s work is determined by the Minister of Justice based on the proposal of the General Director of the Bailiffs’ Service (Article 14 of the Law).

**Disciplinary proceedings and sanctions**

A bailiff who violates the rules provided in laws and statutory acts or who does not apply them is punished with the following disciplinary measures: 1) a reprimand in writing; 2) a reprimand with warning of dismissal in writing; or 3) discharge from duty. Where necessary, the General Director of the Bailiff Service must begin a disciplinary proceeding, and the Bailiff’s Council will render its opinion within 15 days from the starting of proceedings (Art. 31 of the Law).

The disciplinary measures are imposed by the Ministry of Justice and are included in the employee’s personnel file (Article 32 of the Law). The bailiff may appeal the disciplinary measures imposed against him (Article 33 of the Law).

Article 35 of the Law specifies the cases in which a bailiff shall be dismissed.
Factor 10. Resources and Compensation

State employed enforcement agents have proper working conditions, adequate physical resources, and support staff. They are adequately remunerated.

The Law on the Organization and Functioning of the Bailiff Services does not cover the adequacy of bailiff’s working conditions and resources. Although the Decision of the Council of Ministers # 424 of June 11, 2001 does specify the salary that bailiff receive, it is not clear whether such remuneration is “adequate.” For an accurate assessment of this matter, information on the average salary in Albania and data on the cost of living should be examined.

Working conditions and support staff

Bailiff offices in each judicial district consist of the chairman of the office, bailiffs, and administrative and technical staff (Article 9 of the Law).

Remuneration

The Bailiff Service has its own budget separate within the budget of the Ministry of Justice, and also has the right to use other income permitted by law (Article 11 of the Law).

Bailiffs’ salaries are determined by the Council of Ministers and are made up of the basic salary, increments above the salary and special compensation (Article 22 of the Law). The bailiff’s salary is equal to 30,050 lek (Decision of the Council of Ministers # 424 of June 11, 2001). Bailiffs’ working hours are provided for in Article 23 of the Law, while Article 24 specifies the paid and unpaid leave that bailiffs may take annually.
INTRODUCTION

Due to Bosnia and Herzegovina’s division into two entities and one district, Federation of Bosnia and Herzegovina (“FBiH”), the Republika Srpska (“RS”) and Brcko District*, there are three individual legislative frameworks governing enforcement of judgments procedure within the countries. The Laws on Executive (Enforcement) Procedure for FBiH and RS serve as the primary document on enforcement procedures in the individual entities, enforcement will also in part be regulated by the civil procedure codes (“CPC”), and the laws on civil service to be adopted for each entity. Additionally, each Federation Canton has its own Law on Courts and Act on Internal Court Organization, certain provisions of which are relevant to enforcement procedures. There are no laws on enforcement at the State level.

For the most part the laws of the two entities are identical, with the exception that the RS Law on Executive Enforcement Procedure includes a chapter regarding the transfer of custody of a child, something which the Federation code does not include. This report will analyze the FBiH Law on Executive Procedure. Where substantive differences exist between the FBiH LEP and the RS LEP, they will be noted.

ISSUES OF CONCERN

Issues of concern with regard to the legislative framework for enforcements of judgments in BiH mainly have to do with areas of vagueness and judicial discretion. For instance, the law states that cases shall be reviewed in the order in which they are received “unless the nature of the claim or special circumstances calls for different action.” This provision may be subject to abuse by a judge either delaying a case stating that there are special circumstances for expediting the proceedings to the detriment of a party to a proceeding. Throughout the law, there are places where “in general” is used to regulate the enforcement process, indicating that there may be cases which fall outside the norm and may open the process to abuse or some form of discrimination. Additionally, the law does not specify any fixed costs for enforcement procedure nor does it specify a range of such costs. The law merely states that the court shall decide on the costs and that the debtor is to compensate the judgment creditor for the costs of execution. Though the law needs to incorporate some amount of flexibility to be able to address all scenarios regarding enforcement of judgments reasonably, the climate in BiH remains fraught with discriminatory practices, and the law must be viewed through this lens.

* Enforcement proceedings in Brcko District are not addressed in this report.
PART I. ENFORCEMENT PROCEDURE

Factor 1. Enforceable Titles

All enforceable titles are exhaustively defined and listed. The manner in which enforceable titles become effective is also clearly defined.

The LEP FBiH clearly defines enforceable titles, although they are not individually or specifically listed. Articles 22 and 23 of the law address the “Basis for Ordering an Execution” and the definition of an “Enforceable Document,” respectively. Article 22 states, “The court shall order an execution only on the basis of an enforceable or authentic document unless this Law stipulates otherwise.” Article 23 states:

Enforceable documents include the following:

- an enforceable ruling of the courts and an enforceable court settlement;
- an enforceable ruling adopted in an administrative procedure and a settlement in administrative procedure if it orders the fulfillment of a monetary obligation, unless otherwise prescribed by law;
- an enforceable notary document;
- other document prescribed by law as an enforceable document.

An enforceable document under items 1, 2, and 3 of paragraph 1 of the Article 23 shall be any such document issued in Bosnia and Herzegovina.

Although these articles do address the types of enforceable documents, they do not specifically define the individual documents which would fall into these categories, which may leave courts to decide ad hoc which titles may or may not be classified as enforceable.

Given the division of the legal system in the state of Bosnia and Herzegovina, Article 23(2) is important to ensure FBiH enforcement of documents from the Republika Srpska and the Brcko District.

Article 27 specifies the suitability of an enforceable document for execution, and Article 29 defines authentic documents.

Factor 2. Enforcement Procedures

Enforcement procedures are clearly defined and easy to follow by the enforcement agents.

The LEP FBiH clearly defines enforcement procedures in a way that facilitates their implementation by enforcement agents.

Article 3 states that the enforcement procedure shall be initiated by the motion of a judgment creditor, ex officio or by any person or state body when the law explicitly states so.

Article 40 outlines the requirements of delivery for a decision on execution.
According to Article 42(1), “execution shall be enforced on weekdays from 7:00 to 19:00.” Paragraph 2 allows for execution at other times when so ordered by the court.

Article 43 covers the “Work of the Court Referee,” who is defined in Article 2(8) as “a court official who on the court’s order directly undertakes certain actions in the enforcement procedure.” Article 43 outlines the specific procedure the court referee must follow searching a debtor’s house or clothing and undertaking other enforcement activities.

Article 44 provides the court referee with instructions on how to proceed when faced with an obstruction of his enforcement activities and gives him authorization to ask for police assistance in removing persons obstructing enforcement activities.

Article 119(1) stipulates that the “court referee shall reserve the decision on enforcement on the judgment debtor and instruct him to pay the amount for which the enforcement has been ordered.” Additionally, 119(2) states that if it was not possible to submit the decision on enforcement to the judgment debtor during the seizure, “it shall be delivered to him at a later time in accordance with the general rules of service of process.” Articles 120-128 detail the procedure for the seizure of moveable objects.

Article 142 mentions the court referee’s role in the seizure of monetary claims based on a security. Article 197 addresses the procedure for the hand-over and delivery of moveable assets.

The procedure for requesting a motion for the enforcement of a judgment is specified in Article 36. The motion must contain a request for enforcement with reference to an authentic or enforceable document “which provides the basis for requesting the enforcement, the names of the judgment creditor and judgment debtor, the claim whose satisfaction is requested, the means of enforcement and the object of enforcement, if known” and any other necessary information.

According to Article 13, a decision becomes enforceable and final if:

- no objection has been filed within the prescribed deadline;
- the objection against a decision is rejected and an appeal against such decision is not allowed; or
- an appeal has failed to meet the deadline or has been refused.

**Service of Process**

Article 10 stipulates that the delivery of documents take place in accordance with the FBiH Law on Civil Procedure, which details the different methods by which a document may be delivered (Articles 337-355, FBiH Law on Civil Procedure).

Details on the “Delivery of Decision on Enforcement” are set forth in Article 40 of the FBiH LEP.
Sale of Assets

Articles 82-95 describe the procedures associated with the sale of real property as an enforcement activity. The court must conduct a proceeding to determine the value of the real property and then pass a conclusion on its sale, according to Article 82(1). Paragraph 4 of that same article specifies that “at least thirty (30) days have to pass from posting the conclusion on sale on the court notice board to the day of sale.”

Article 84 states that the “sale of real property shall be carried out at public auction.”

Article 89 specifies the details regarding the sale price of real property. Article 89(2) asserts that “real property may not be sold for less than half of the appraised value.” However, according to Article 89(4), if the property has not been sold after the first hearing, a second hearing may be held at which the property may not be sold for less than one-third of its determined value. If after two hearings the property has still not been sold, a third hearing may be held and the property sold “without limitations as regards the determined value” pursuant to Article 89(5).

Articles 129-132 specifically invoke Articles 89 and 90 in addressing the procedure for the sale and handing over of enforceable moveable objects, which generally follows the same principles as that for the sale and handing over of real property.

Factor 3. Rights and Duties

The powers, rights and duties of the defendant, claimants, and third parties are clearly and thoroughly defined.

Duty to Cooperate

Article 17 of the FBiH LEP allows for the imposition of fines if a judgment debtor or other legal person refuses to cooperate with the enforcement process as prescribed by law and stipulates that this fine may not be converted to a prison sentence. However, if these persons provide false or misleading information, they may be held criminally liable.

Banks are also required to cooperate with the court when so ordered, pursuant to Article 166. A bank may be ordered to provide information on a judgment debtor’s accounts and when appropriate turn over funds necessary to satisfy an enforceable decision. Article 169 addresses the procedure a bank should follow when there are insufficient funds in the judgment debtor’s account to collect the enforceable claim.

Protection of Defendant’s Essential Assets

Article 117 specifies a number of assets that are exempt from execution:

- items necessary for the judgment debtor and members of his household to satisfy their daily needs;
- food and fuel needed by the judgment debtor and members of his household for three months;
- judgment debtor’s cash regarding the claims exempted or limited from enforcement;
• medals, certificates of war service and other decorations and awards, wedding rings, personal correspondence, manuscripts and other personal documents of the judgment debtor, family photographs, personal and family documents and family portraits.

However, Article 138 allows for income deriving from social benefits such as welfare, disability insurance, unemployment, child benefits, and scholarships to be subject to enforcement at up to one half the amount of such income. On income exceeding 1000 KM per month the execution may be enforced in the amount of up to two-thirds of such claim.

**Duty to Provide Financial Data**

Article 37 mandates that if the judgment creditor so requests, the judgment debtor and other relevant persons, organs and organizations must list the judgment debtor’s overall moveable and immovable property, the kind and amount of his income, and monetary deposits.

**Protection of the Defendant During Search and Seizure of Assets**

Article 43 on the “Work of the Court Referee” instructs the enforcement agent with regard to search and seizure. It allows for the search and seizure of the judgment debtor’s property only when “such entry and search is reasonably necessary for the court proceedings.” Paragraph 2 goes on to state that during the process, “a court referee shall treat the judgment debtor and members of his household with respect.”

**Priority of Multiple Claimants**

Articles 98 and 99 assign priority when distributing monies derived from the sale of property as an enforcement activity.

**Powers, Rights, and Responsibilities of Third Parties**

In case of the death of the judgment creditor, his heirs or interested persons may move to have a temporary representative appointed to continue the proceedings, according to Article 34(3) of the LEP.

The LEP FBiH protects the rights of third parties in Articles 51-53. Third parties may object when they have claims to the enforcement object and the articles allow for the third party to be instructed to file a lawsuit if the judgment creditor does not respond within the prescribed period or challenges the objection. Additionally, Article 53 allows for several other ways in which a third party’s interests may be protected.

**Suspension of Enforcement**

Articles 60-64 address postponement and dismissal of enforcement proceedings. Enforcement may be fully or partially postponed only upon a motion of the judgment creditor if the enforcement process has not yet begun. The court shall postpone enforcement for the period requested by the judgment creditor or for a period of time appropriate for the circumstances. The enforcement may also resume before the period of postponement expires upon the motion of the judgment. If the judgment creditor fails to move the court to resume the enforcement procedure within 30 days following the expiration of the period of postponement, the court shall dismiss the proceedings. Enforcement shall be dismissed automatically if the enforceable document has been rescinded,
altered, annulled, repealed or otherwise declared without effect, or if the certificate of enforceability is revoked.

**Proportionality**

The LEP FBiH generally strikes a balance between the judgment debtor and judgment creditor. It outlines in Articles 30-33 various rights and obligations of the parties with regard to the fulfillment of obligations on which the enforceable document or decision depends.

Article 8(2) gives the court the authority to limit the execution to only the means and objects of execution which suffice for the realization of the claim if more than one means or object of execution have been suggested. This provision protects the judgment debtor against excessive deprivation of assets or excessive means of execution.

By the same token, Article 8(3) allows the judgment creditor the right to propose a new means or object of execution if an enforceable decision on execution regarding a certain object or means may not be enforced.

According to Article 54, a judgment debtor may submit a motion for counter-execution if he uncovers information that invalidates the enforceable document or decision.

Article 71 allows a judgment debtor to change the object of enforcement if he can prove his right to that object. This provision allows the debtor to protect objects which may have more value than others to him considering the motion for change. The court takes into account whether execution against the initially suggested object would be exceptionally unfavorable to the judgment debtor. However, if the change in object of execution would cause the judgment creditor to suffer significant damage, the court must reject the motion.

**Factor 4. Prevention of Procedural Misuses and Abuses**

Mechanisms exist for deterring and preventing the misuses and abuses of the enforcement procedures by the parties, judges and enforcement agents.

Article 5(2) states that “(t)he court shall review the cases in the order in which they are received unless the nature of the claim or special circumstances call for a different action.” One would presume that this requirement is intended to prevent a judge from postponing the review of a case out of personal preference or some other discriminatory reason; however, the language is sufficiently vague to invite abuses in that the specific circumstances which would call for a different action are not defined.

Article 15 states that, “(i)n general, the court must decide on a motion for enforcement within eight (8) days and an objection within 15 days from the date the conditions required to decide on the objection are met.” Again, the language is unspecific in that it asserts that this is the requirement “in general,” but does not specify which circumstances may fall outside of the norm and thus leaves the procedure potentially open to abuse by the court.
Mechanisms for Preventing Delay or Other Abuse by Parties

Article 44 of the FBiH LEP authorizes the court referee to remove a person obstructing the enforcement procedure and to request police assistance and order the use of force.

Article 17 allows the court to impose fines on parties that fail to proceed in accordance with repeated court orders. When a judgment debtor fails to perform a non-monetary obligation specified by enforceable document, the court may impose a fee which the debtor must pay to the creditor for each day (or other defined period of time) he fails to fulfill this obligation after being so ordered by the court.

Postponement of the Enforcement Process

Article 34 of the FBiH LEP states that the enforcement procedure may be interrupted in accordance with the provisions of the Civil Procedure Law of FBiH. It also specifies the process by which the enforcement procedure should continue in the case of the death of either the judgment debtor or judgment creditor.

Factor 5. Judicial Review

Parties have the right of review for both judicial and non-judicial decisions made during the enforcement process.

Article 12 of the FBiH LEP specifies parties’ legal remedies with regard to the executive procedure. Article 12(1) allows for objections and appeals as ordinary legal remedies in the executive procedure unless exempted by the FBiH LEP. Article 12(3) stipulates that “(a)n objection shall be filed with the court that issued the decision within 8 days from the day of the delivery of the decision” and that “the objection shall be decided by the second instance court.”

Articles 46-50 detail the procedure for objections. They state that the provisions of the FBiH Civil Procedure Code apply to objections to enforcement judgments. Article 47 specifically outlines acceptable reasons for filing an objection against a decision on execution. Articles 51 and 52 deal with the procedure for objection by third parties.

Factor 6. Enforcement Fees

Enforcement fees are reasonable, fixed, prescribed by law, and are made known to the parties in advance.

Article 16 specifies the guidelines for paying the costs of enforcement proceedings. The judgment creditor pays the costs in advance and the judgment debtor compensates the necessary costs for the execution for the judgment. However, the LEP does not provide guidance on the range of costs to make sure they are reasonable. The Law merely states that the court shall decide upon the costs of the procedure.

The LEP stipulates that the creditor shall pay the costs in advance and be compensated by the debtor within fifteen days of the termination of proceedings. (Article 16(4) and 16(6), FBiH LEP)
PART II. ENFORCEMENT AGENTS

Factor 7. Rights and Duties of Enforcement Agents

The status, role, rights and responsibilities of enforcement agents are clearly defined and described, including their powers and responsibilities in relation to those of the judge.

Article 2(8) of the FBiH LEP states that the “court referee” denotes a court official who on the court’s order directly undertakes certain actions in the executive procedure. Though somewhat vague, this provision indicates that the enforcement agent shall take his orders directly from the judge.

Factor 8. Qualifications and Training

In recruiting enforcement agents, consideration is given to the moral standards of candidates, (e.g. no criminal record), their legal knowledge, and their training in relevant law and procedure. Candidates are required to take examinations that assess their theoretical and practical knowledge. Once recruited, enforcement agents undergo initial and continuous training according to clearly defined and well-structured aims and objectives.

Article 3 of the Law on Civil Service of the Federation of Bosnia and Herzegovina (FBiH Civil Service Law) states that recruitment of all civil servants shall be based on competition and professional merit. Article 72 of this law and Article 2(8) of the FBiH LEP assert that court referees are civil servants and as such are subject to the provisions of the FBiH Civil Service Law.

The FBiH civil service law also identifies the minimum qualifications for all civil servants, including education, age, citizenship, and absence of disciplinary dismissal from the FBiH civil service during the previous three years.

Factor 9. Ethics and Discipline

Enforcement agents shall always act according to recognized professional and ethical standards, shall be unbiased in their dealings with the parties, and shall be subject to professional scrutiny and monitoring, which may include judicial control. Enforcement agents alleged to have abused their position are subject to disciplinary, civil and/or criminal proceedings, providing, in case of abuses, appropriate sanctions.

Article 4 of the FBiH Civil Service Law enumerates the principles all civil servants must respect and apply: legality, transparency and publicity, accountability, efficiency and effectiveness, professional impartiality, and political independence. Article 17 goes on to identify other ethical standards the civil servant must abide and in so doing invokes the Code of Ethics of Civil Servants.

Article 19 of the FBiH Civil Service Law outlines “incompatibilities” with a person’s functions as a civil servant and sets forth certain prohibitions which a civil servant must respect if released from office.

Chapter VIII of the FBiH Civil Service Law clarifies the violations of official duties for which a civil servant may be disciplined and the procedure disciplinary. A civil servant may be subject to various degrees if sanction, including suspension. In addition, civil servants may be subject to criminal prosecution.

Articles 43 and 44 of the FBiH LEP address the enforcement agent’s interaction with the judgment debtor during the enforcement procedure. The articles state that the agent must respect
the debtor and members of his household, and that one adult witness must be present if the debtor or his agent is unable to be present. At the same time, the law allows for the enforcement agent to take certain measures if the debtor or other attempt to obstruct the enforcement procedure.

There are no explicit provisions mandating that enforcement agents must be professionals. However, the FBiH Law on Civil Service applies to them in this regard.

**Factor 10. Resources and Compensation**

*State employed enforcement agents have proper working conditions, adequate physical resources, and support staff. They are adequately remunerated.*

Article 18 the FBiH Civil Service Law addresses the rights civil servants enjoy. They range from protection of physical and moral integrity to the right to join a trade union and are relatively comprehensive.

Chapter V of the FBiH Civil Service Law regulates salaries and allowances for civil servants. It explains how the salary is determined, how a promotion is awarded, and regulates payment for overtime, paid absences, and other forms of remuneration. Chapter VI addresses working conditions and invokes the Labor Law. It also specifies the amount of annual leave and vacation civil servants are to receive. Article 50 of this chapter addresses training and calls on civil servants to on-the-job training and to take part in seminars and other training activities.
INTRODUCTION

The Civil Procedure Code of Bulgaria is the primary source of procedures concerning the enforcement of judgments, although the Judicial System Act, Family Code, the Obligations and Contracts Act, the Law for Registered Pledges and the Bank Act also include relevant provisions. The bodies of law addressing the enforcement of judgments in Bulgaria are summarized below in light of the Council of Europe Recommendation on Enforcement.

ISSUES OF CONCERN

The laws on the enforcement of judgments depart from the CoE Recommendation in that they lack provisions on the service of documents, the gathering of information on the debtor’s income and assets, and the search and seizure of the debtor’s assets. There are no provisions which set forth guidelines or ensure that the most effective and appropriate means are utilized in the service of documents. The debtor is not under any obligation to provide information on his income or assets. Furthermore, no provisions address the importance of human rights and data protection in the search and seizure of the debtor’s assets or the methods to be used in the gathering of information on the debtor’s assets. As a result, the enforcement of judicial decisions may be significantly hampered due to the inability of the enforcement agent or court to gain access to relevant information on the debtor’s assets in a fast and efficient manner. Debtors may also face unnecessary or even abusive intrusions into their personal data and private and family life.

PART I: ENFORCEMENT PROCEDURE

Factor 1: Enforceable Titles

All enforceable titles are exhaustively defined and listed. The manner in which enforceable titles become effective is also clearly defined.

Article 237 of the Civil Procedure Code (CPC) provides an extensive list of enforceable titles, such as decisions and rulings of the courts of law, rulings of administrative bodies, acts of a notary, abstracts from the register of pledges, and other documents for which a writ of execution may be issued. In addition, Article 261(1) presents further titles concerning family law matters including any temporary measures regarding alimony, the home of the spouse and use of marriage property, child support payments, and child custody. Although the CPC includes an exhaustive list of enforceable titles, it does not contain definitions of these enforceable titles in accordance with the CoE Recommendation on Enforcement.

The procedure through which enforceable titles become effective is clearly laid out in the CPC. A party must file an application for a writ of execution with the appropriate court based upon an enforceable title listed in Article 237 (Article 242(1)). The court will rule upon the application for the writ of execution within seven days of its receipt by the court (Article 242(4)). The writ of execution
must be issued by judicial order in regards to the titles listed in Article 237(a) and (b) (Article 242(4)). Before ruling on the application, the court will consider whether the title on the grounds of which the writ of execution has been requested is in proper form and “certifies a receivable, subject to implementation” against the person named in the application (Article 243(1)). The court must also determine, before granting the writ, that any required counter obligations have been fulfilled (Article 243(1)). The ruling on the application for the issuance of a writ of execution may be appealed by the claimant within seven days from the day that he was served with the ruling and by the debtor within seven days from the day that he was served with the subpoena for voluntary execution (Article 244(1)). However, the appeal of a ruling that grants the issuance of a writ of execution will not halt the implementation of the writ (Article 244(3)).

**Factor 2: Enforcement Procedures**

*Enforcement procedures are clearly defined and easy to follow by the enforcement agents.*

The CPC provides a clear and logical guide to the enforcement procedures in Bulgaria. Enforcement procedures are divided into those concerning the enforcement of monetary receivables and the enforcement of non-monetary receivables (part V, divisions 2 and 3, CPC). The execution on monetary receivables category is further divided into 1) execution over moveable and non-moveable objects, which both address inventory, and 2) the sale of property (Chapters 39 and 40, CPC). The execution through non-monetary receivables includes enforcement by compulsory deprivation of objects and the performance of a definite action (Chapters 44 and 45, CPC). All categories concerning the manner in which a judgment may be executed include procedures addressing the duties of the bailiff in regards to that particular method of enforcement (i.e., Articles 328, 360, 367, 373, 376, 414, 419).

**Service of Process**

The CoE Recommendation suggests that enforcement procedures should include provisions ensuring that documents be served on the parties in the most effective and appropriate manner. The Civil Procedure Code does not specifically outline the general requirements for service of documents in the enforcement of judgments and thus does not guarantee that the means used for the service of documents will be effective or appropriate.

The general CPC rules for service of process apply in the enforcement of judgments (Articles 41-52). In addition, articles 325 and 327, which are particular to enforcement procedures, apply.

The primary means of summoning a party is by serving a subpoena (Article 41(1)). The serving of subpoenas is carried out by the proper court official who certifies with his signature the date and manner of service. If there is no court in the place of service, service should be carried out through the municipality or the city council. In addition to the subpoena, the parties may be summoned by registered letter, although in urgent situations summons may be satisfied by telephone, telex, facsimile, or telegram (Article 41(3)). If the summons is effective by telephone or facsimile, an official must verify the summons in writing ( Article 41 (4)). If the summons is delivered by telegram, verification must be shown by the instructions for the delivery of the telegram. If the summons is sent by telex, the confirmation that the message was sent is sufficient for verification (Article 41, paragraph 4).
Sale of Assets

All enforcement actions must be scheduled within thirty days from the receipt of the application for the execution of a judgment (Article 325a). In regards to moveable objects, the inventory may be taken within the seven-day voluntary execution period (Article 325, Article 343). The bailiff will assess the price of an object within seven days following the inventory if he was unable to do so during the inventory (Article 362). The sale must be concluded within three months from the announcement of the sale or the submission of the moveable object to a shop (Article 371(1)). Fruits and plants subject to the enforcement of a judgment must be sold according to the rules of public sale for real estate and cannot be inventoried earlier than two months before their harvest time or sold earlier than one week before their harvest time (Article 360(a), Article 367(a)).

A movable object must be offered for sale at the same price indicated in its assessment or evaluation (Article 370). The bailiff must evaluate the price of the object based on its “market value” (Article 362(1)). If the object is purchased at a price lower than the evaluation, the bailiff will “collect the sale price from the seller” (Article 370). If a new sale is conducted, the object must be sold at a price equal to 80% of its assessed value (Article 371(2)). The debtor may use an inventoried movable object if he can do so “without reducing its value” (Article 363).

Concerning the sale of immovable objects, the bailiff must assess the property based on its “market value” with the assistance of an expert (Article 374). The inventory of the distrained property may be taken after the expiry of the seven-day period allotted for voluntary execution (Article 325, Article 343, Article 373). The bailiff must announce the sale of the immovable object within seven days from the taking of the inventory (Article 376). The offer will remain for one month and if a new sale is required, the property must be offered at a price equal to 80% of the assessed value (Article 377, Article 382(2)).

If the property has been pledged to a creditor, he has the right to sell the property after two weeks from the application for the execution of the judgment. If six months pass and the property have not yet been sold, the creditors who filed applications for execution of the judgment after the initial creditor have the right to sell the pledged property (Article 37(1), Law for Registered Pledges).

Factor 3: Rights and Duties of Parties

The powers, rights and duties of the defendant, claimants, and third parties are clearly and thoroughly defined.

The numerous rights and duties of the debtor and the claimant are defined throughout the Civil Procedure Code. In addition, the rights and duties of third parties, such as heirs, debtors to the obligor, non-debtor spouses, persons with claims of right to property, and creditors (including pledge creditors), are also addressed in the CPC. The claimant has the right to lodge an application for the enforcement of a writ of execution indicating the manner by which the enforcement should be carried out by the bailiff (Article 323, paragraph 3). The debtor may request that the bailiff enforce the writ of execution in a manner other than that specified by the claimant (Article 338). Any third person whose right is affected by the execution may lodge a claim in order to determine the ownership of the property subject to the enforcement of the judgment (Article 336). If the estate subject to enforcement is joint property, only the debtor’s share will be sold (Article 388). The debtor’s spouse has the same rights as the debtor to challenge the receivable and appeal the
execution actions (Article 389b). The heirs of the claimant “may request execution on the grounds of the writ of execution issued” on behalf of the claimant (Article 326).

**Duty to Cooperate**

The CPC facilitates the debtor’s cooperation by allowing him seven days for voluntary execution (Article 325). In regards to the sale of the debtor’s property, if the debtor “deposits 30% of the receivables under the writs of execution put forward against him and undertakes in writing to deposit with the bailiff 10% of them every three months, the bailiff shall stop the execution” (Article 348). The debtor has a duty to carry an object directed for sale to the shop where it will be displayed (Article 368, Article 328(2)). A refusal to fulfill this obligation may result in the involvement of the police, the mayor of the municipality or region, or the city council (Article 368, Article 328(2)). During the time that the estate subject to execution is under the control of the debtor, he has the duty to “manage this estate with the care of a good proprietor” (Article 375). Once a receivable has been seized in accordance with the execution of the judgment, the debtor loses his right “to dispose of the receivable or of the object” and is subject to penal charges for any alteration, damage or destruction of the receivable or object (Article 345(1)).

The CPC attempts to facilitate cooperation of the spouses in divorce proceedings by requiring both spouses to appear at a conciliation session (Article 259(1)). This provision is in line with the CoE recommendation that the relevant authorities should facilitate cooperation, especially in family law matters. The conciliation session allows the spouses to explain their reasons for desiring a divorce and gives the court the opportunity to discuss the negative consequences of a divorce with the spouses and encourage them to reconcile (Article 259(2)). In the event that at least one of the spouses will consider reconciliation or the court determines that reconciliation is a possibility, the court may schedule a new conciliation session (Article 259(3)).

**Protection of Defendant’s Essential Assets**

Household goods, basic social allowances, necessary working tools, and the house are protected in accordance with the CoE Recommendation. Article 339 lists the objects that are exempted from attachment. Some of the objects excluded from execution of the judgment include: everyday objects needed by the debtor and his family, food for the debtor and his family for one month, fuel for three months, tools needed in order for the debtor to practice his trade or profession, a specified percentage of the lands of a debtor-farmer for one year, essential animals, and the home of the debtor if he has no other home (Article 339). The debtor also has the right to request that the execution be directed against different property or carried out in a different manner than specified by the claimant (Article 338). The bailiff will grant the debtor’s request if he finds that the manner of execution suggested by the debtor would satisfy the claimant (Article 338). However, if the claimant is the pledge or mortgage creditor and the property listed under Article 339 has been pledged or mortgaged, the provisions of Article 339 no longer apply concerning that property (Article 340). If the judgment is enforced by the attachment of the debtor’s earnings, Article 341 provides a
breakdown of the amount to be deducted from the debtor’s salary based upon his monthly income and whether or not he has children to support (Article 341(1)). For instance, on a 100 leva per month salary, one-fifth will be deducted if the debtor has no children and one-sixth if the debtor does have children (Article 341(1)(a)). The debtor cannot waive his protection under Articles 339 and 341 (Article 342).

**Duty to Provide Financial Data**

The CPC does not impose a duty on debtors to provide information on their income or assets. However, a debtor is required to notify the bailiff of any changes in his employment when his earnings are attached to the execution of a judgment (Article 395 (6)). The debtor is also obligated to inform the bailiff of any changes in his temporary or permanent address (Article 325 (3), Article 51).

**Protection of the Defendant During Search and Seizure of Assets**

The CPC does not include any provisions on the search and seizure of the debtor’s assets that seek to uphold international human rights and data protection standards. Article 328, for example, allows the bailiff to search the property of the debtor “if that is necessary for the execution.” The debtor is under no obligation to declare his assets, and access to information, such as bank accounts, is not addressed in the CPC.

The Bank Act allows for information on account transactions and balances of a client to be released upon the client’s consent or a court ruling (Article 52 (4), Bank Act). The court may order the release of account information upon the request of the prosecutor and proof that a crime has been committed, and, under specific circumstances, upon the request of other officials, such as, the head of the regional tax office, head of the state financial control, and the chief of the customs directorate (Article 52 (5), Bank Act). The judge must rule on the application within 24 hours from its receipt and the ruling is not subject to appeal (Article 52 (6), Bank Act).

**Priority of Multiple Claimants**

If the amount accumulated from the execution of the judgment is not enough to satisfy all claimants, the bailiff will distribute the claims based on “the right of preferential satisfaction” (Article 355).

The Obligations and Contracts Act also includes provisions specifying the ranking of claims. Article 136 (1) sets out a hierarchy that must be followed in the satisfaction of claims. The claims concerning the costs of forcible executions must be satisfied first, followed by state claims for property taxes, claims concerning pledged property, and the claims of employees (Article 136 (1), items (1),(2),(3), and (5), Obligations and Contracts Act). Claims having the same rank will be satisfied proportionately (Article 136 (3), Obligations and Contracts Act). If the claim is not listed in the hierarchy of items in Article 136 and the claim is entitled to preferential satisfaction, it will be satisfied after item 6 of Article 136 (1), “claims of the state other than fines” (Article 137(1)). However, if a provision asserts that a claim must be paid before all other claims, that claim will be satisfied after item 1 of Article 136(1), “claims on costs for securing and forcible execution” (Article 137(2)).
Powers, Rights, and Responsibilities of Third Parties

Although certain property and income of the debtor is exempted from execution, the lands of a debtor-farmer and the home of the debtor are not protected if the debtor is “under liabilities for support money” (Article 340(2)). A debtor’s income, depending on the amount per month, is subject to specified percentage deductions, but the deducted amount is lower if the debtor has children to support (Article 341(1)). Nevertheless, the debtor will not benefit from the restrictions on income deductions provided in Article 341(1) if he is subject to liabilities for alimony or child support money. Instead, the amount awarded in alimony, child support, or both will be deducted from the debtor’s wage (Article 341(3)). Furthermore, any past liabilities for support money will be deducted from the remainder of the debtor’s total income (Article 341(3)). The debtor’s employer must enter a notice of attachment concerning the automatic deductions from the debtor’s wage for alimony and/or child support in the debtor’s employment book (Article 395(4)). The deductions must continue even when the debtor changes his place of work (Article 395(4)). Provisions such as Articles 340(2), 341(1) and (3), and 395(4), help guarantee the right of maintenance claimants and debtor’s dependants to receive child support and alimony payments in accordance with the recommendations of the CoE.

Suspension of Enforcement

The claimant has a right to suspend the execution proceedings by request; however, the debtor only has the right to the suspension of the enforcement proceedings when he provides “a security for the appellant [claimant] in accordance with Articles 180 and 181 of the Obligations and Contracts Act” and the enforcement does not involve alimony or child support or payment for work (Article 241(1), CPC). A security may be a cash deposit or a mortgage (Articles 180 and 181, Obligation and Contracts Act). A debtor may also terminate the execution proceedings if he presents a receipt proving that he paid the amount specified in the writ of execution, the writ of execution is declared void, or a claim under Article 254 or 255 has been granted (Article 330, CPC).

Within seven days from the receipt of the subpoena for voluntary execution, the debtor may raise objections to a writ of execution issued on grounds enumerated in Article 237, items (c), (d), (e), (f), (g), or (h) (Article 250 (1), CPC). If the debtor provides “convincing written evidence” supporting his objections to execution or produces security according to procedures of Articles 180 and 181 of the Obligations and Contracts Act, the court will stop the enforcement of the writ of execution (Article 250 (1) and (2), CPC).

Proportionality

Although the CPC does not include a provision ensuring that the enforcement procedures are proportionate to the claim, a number of articles provide the opportunity for the debtor and the claimant to protect their interests and rights in the enforcement process. The debtor and the claimant have the right to appeal the “irregular” actions of the bailiff or the bailiff’s refusal “to perform any requested execution action” (Article 332(1)). Both parties also have the right to appeal a ruling on the application for the issuance of a writ of execution within seven days. However, the appeal of a ruling that granted the application will not stop the implementation of the writ of execution (Article 244(1)).
The debtor is given seven days to voluntarily comply with the execution of the judgment (Article 325(1)). Certain assets of the debtor are exempted from the execution including his home, food, land, fuel, and animals (Article 339). The debtor may also request that the bailiff enforce a judgment in a manner other than that specified by the claimant. However, the manner of execution proposed by the debtor must satisfy the claimant, as determined by the bailiff (Article 338).

The deadlines established for applications, appeals, and executive actions help to ensure that the execution proceedings are not prolonged for an unnecessary period of time, which is particularly beneficial to the claimant. For instance, the bailiff must rule on the application for execution on the grounds of an issued writ of execution within seven days, and execution actions must be scheduled within one month from the receipt of the application (Article 325a). The claimant also has the benefit of determining the manner in which the execution of the judgment is carried out (Article 323 (3)).

While the CPC lacks provisions that take into account the best interests of the family, the Family Code addresses the interests of the family and children in divorce proceedings by requiring that the parties draft an agreement on issues of custody, visitation, child support, alimony, marital property, and use of the family home (Article 101(1), Family Code). The court will not approve the agreement until it has been shown that the interests of the children are protected (Article 101(1), Family Code). If the court finds that the agreement is not in the interest of the children, it will schedule a deadline for the modification of the agreement (Article 101(2), Family Code). Failure to revise the agreement by the deadline will result in the court’s rejection of the divorce (Article 101(2), Family Code). The claims concerning parental rights and child support that arise after a divorce will be allowed when a change of circumstances has occurred (Article 101(3), Family Code).

Factor 4: Prevention of Procedural Misuses and Abuses

Mechanisms exist for deterring and preventing procedural misuses and abuses of the enforcement procedures by the parties, judges, and enforcement agents.

The CPC includes a variety of mechanisms for deterrence and prevention of abuses of the enforcement process, aimed mainly at the parties and bailiffs. For instance, in regards to an auction, the debtor, his legal representative, and officers of the bailiff are prohibited from taking part in the bidding (Article 379). The final sale of a movable object is not subject to appeal or dispute (Article 372 (1)). The bailiff must draft a protocol for every action performed, including the day and location of the performance of the action, the parties’ demands, the amount collected for the execution, and the costs of enforcement (Article 331). Article 330 deals with situations that call for the termination of the proceedings, and allows for termination if the claimant has failed to request performance of the execution for two years.

Mechanisms for Preventing Delay or Other Abuse by Parties

The bailiff is granted the authority to demand the assistance of the police, the mayor of the municipality or region, the city council, and state organs and officials in the performance of his/her duties (Article 328, CPC, Article 155 Judicial System Act). If a movable object is awarded to the claimant and the debtor refuses to deliver it voluntarily, the object will be taken from the debtor by force (Article 414, CPC). Furthermore, if the object is not in the possession of the debtor or if it has been damaged, the debtor must deliver the “equivalent” of the object (Article 414). In regards to
immovable property, the debtor shall lose his control of the property subject to execution if he does not provide the property with adequate care or prevents others from examining the property (Article 375).

The bailiff has the power to impose up to 200 leva fine on the debtor when the debtor refuses to perform a duty that cannot be performed by another person (Article 421(1)). If the debtor’s actions contradict his obligations, the bailiff, upon the request of the claimant, may impose a fine of up to 400 leva on the debtor (Article 422). A debtor will be subjected to a fine of up to 20 leva for failure to notify the bailiff within one month of a change in place of employment when the earnings of the debtor have been attached to the execution of the judgment (Article 395). Fines levied on parties are subject to appeal according to the procedure established in Article 332 (Article 423).

The CPC and the Judicial System Act provide clear mechanisms for addressing the abuses of the enforcement process by bailiffs. Parties to the execution have the right to lodge a complaint against “irregular actions of the bailiff and against the refusal of the latter to perform any requested execution action” (Article 332). The court has 30 days from the lodging of the complaint to give its decision on the complaint (Article 334 (4)). The court’s decision is not subject to appeal (Article 334 (4)).

The Minister of Justice must grant his permission before a bailiff is subject to an arrest or penal action, although no permission is required if the bailiff was caught committing a felony (Article 157, Judicial System Act). The Minister of Justice has the authority to discharge the bailiff from his office on the grounds of a disciplinary offense, a sentence for a crime committed or permanent inability to perform his duties. Where a legal action has been taken against the bailiff, the Minister of Justice has the authority to temporarily remove the bailiff from his office (Article 152 (1) and (2), Judicial System Act).

Postponement of the Enforcement Process

Postponement of the execution proceedings may be allowed by court order, by request of the claimant, in cases specified in Article 182 (b) and(c), and in all other cases “provided for by law” (Article 329). The postponement is not subject to review by the court, though irregular bailiff actions may be appealed under Article 332. The decision of the court concerning the complaint against irregular bailiff actions cannot be appealed (Article 334 (4)). The lodging of a complaint against the actions of the bailiff does not stop the execution of the judgment unless the court rules to stop the execution (Article 335 (1)). An appeal of the affirmative ruling on the application for the issuance of a writ of execution, will not stop the implementation of the execution (Article 244 (3)).

Factor 5: Judicial Review

Parties have the right of review for both judicial and non-judicial decisions made during the enforcement process.

Parties have the right to appeal almost all judicial and non-judicial decisions made during the enforcement process. Once a ruling has been made on the application for the issuance of a writ of execution, the parties may appeal that decision within a term of seven days from the service of the ruling on the applicant or the service of the subpoena for voluntary execution of the judgment on the debtor (Article 244(1)). The debtor may object to the grounds on which the writ of execution was issued and assert that he is not obligated to the claimant for the awarded amount (Article 237,
Article 250(1)). Enforcement of the judgment will be suspended if the debtor provides “convincing written evidence” for his objections or security for the creditor in accordance with the procedures outlined in Articles 180 and 181 of the Obligations and Contracts Act (Article 250(1)). If the court rules to stop the implementation of the writ of execution due to the objections of the debtor, the claimant may appeal that ruling within seven days (Article 250(3)). Claimants may also appeal the distribution of the amount collected from the execution of the judgment (Article 358). The district court’s decision on the distribution complaint is subject to appeal (Article 358).

The CPC provides a few instances in which parties do not have the right to appeal judicial and non-judicial decisions. Although parties have the right to lodge complaints concerning irregular actions of the bailiff and against the bailiff’s refusal “to perform any requested execution action,” the decision of the court concerning that complaint may not be appealed (Articles 332, 334). In addition, parties may not appeal or dispute the completed sale of movable objects (Article 372(1)).

**Factor 6: Enforcement Fees**

Enforcement fees are reasonable, fixed, prescribed by law, and are made known in advance to the parties.

The debtor must bear the expenses of the execution proceedings, except when the proceedings have been terminated according to Article 330 and the claimant abandons the execution actions or the court terminates the actions (Article 69). The court’s decision regarding the costs of the proceedings is subject to appeal, if the ruling itself has not been appealed (Article 70). The costs of the proceedings in marriage cases will be borne by the most blameworthy spouse and in the case that both spouses are to blame, they will share the costs equally (Article 270).

In general, the State Fees Act, Tariff No.1 on the Fees Collected by the Judiciary and the Ministry of Justice, governs the fees for the enforcement of a judgment. However, a few provisions within the CPC make reference to enforcement fees. For instance, Article 366 of the CPC provides that the bailiff has the power to determine the remuneration for the experts and the guards involved in the execution of a judgment on movable objects, and Article 367 stipulates that 5% of the sale price will be given to the shop that carried out the sale of a movable object.

**PART II: ENFORCEMENT AGENTS**

**Factor 7: Rights and Duties of Enforcement Agents**

The status, role, rights and responsibilities of the enforcement agents are clearly defined and described, including their powers and responsibilities in relation to those of the judge.

The CPC identifies and describes the rights and duties of bailiffs in the enforcement process, even though it does not contain provisions on the powers and responsibilities of the bailiff in relation to those of the judge. Articles 324 through 331 outline the procedures that the bailiff must follow in the initiation of the enforcement proceedings. Upon application of a party “on the grounds of a presented writ of execution or another deed, subject to execution,” the bailiff will begin the execution of the judgment (Article 324(1), Article 323(1)). The bailiff must send a subpoena to the debtor, allowing him a period of seven days to voluntarily comply with the execution (Article 325). The bailiff must rule on the application for execution within seven days and the execution is to be scheduled within one month from the day on which the application for execution was received.
(Article 325a). The bailiff, if “necessary for the execution,” may order a search of the debtor’s property (Article 328(1)).

In order to keep an account of all actions of the bailiff, the CPC provides that the bailiff must draft a protocol for every action he/she performs indicating the day the action was performed, the demands of the parties, the amount collected and the costs of execution. (Article 331)

The Judicial System Act also specifies the rights and responsibilities of bailiffs. Article 152 enumerates the grounds on which the bailiff may be discharged by the Minister of Justice, which include: retirement, the bailiff’s request, a disciplinary offence, a sentence for a committed crime of general nature, or bailiff’s inability to perform official duties. Article 152 also provides that in the cases where a legal action has been taken against the bailiff she could be temporarily removed from office. If a discharge has been carried out on the basis of a legal action taken against the bailiff for an alleged criminal act, which is found to be “ungrounded,” the regulations of Article 141 will apply (Article 152(2)). The Minister of Justice must consent to any arrest or criminal proceedings against the bailiff, although no permission is needed if the bailiff is caught in the act of committing the felony (Article 157).

In addition, the bailiff has the authority to demand the assistance of state organs, state officials, and police in carrying out his duties (Article 155, Judicial System Act). He is also entitled to health and accident insurance while acting as bailiff and compensation in the case of termination of his employment (Article 157(a)(2) and (3)).

**Factor 8: Qualifications and Training**

In recruiting enforcement agents, consideration is given to the moral standards of candidates (e.g. no criminal record), their legal knowledge, and their training in relevant law and procedure. Candidates are required to take examinations that assess their theoretical and practical knowledge. Once recruited, enforcement agents undergo initial and continuous training according to clearly defined and well-structured aims and objectives.

According to Article 150(1) of the Judicial System Act, a person who satisfies the requirements of Article 126 may be appointed as a bailiff. In order to be eligible for the position of bailiff, the person must have Bulgarian citizenship, a higher legal education, the requisite post-graduate training, legal capacity, no criminal record, and the necessary moral and professional qualities under the Code of Conduct for the Judges, Prosecutors and Investigators (Article 126 (1) and (2), Article 150 (2)). If a person satisfies the requirements of Article 126, he is proposed as a candidate for the bailiff position by the president of the corresponding regional court to the Minister of Justice (Article 150(2)). The Minister of Justice will then appoint the candidate as bailiff or, if that there is more than one candidate, the Minister will hold a competition for the position (Article 150(3)). The candidates are not required to take an examination on their theoretical and practical knowledge as suggested by the CoE Recommendation.

In July 2002, the Judicial System Act was amended to create the National Institute of Justice (NIJ). These amendments provide that the NIJ will deal with the training of bailiffs, as well as judges, prosecutors, court clerks and other Ministry of Justice staff (Articles 35(f) and (g), Judicial System Act).
Factor 9: Ethics and Discipline

Enforcement agents shall always act according to recognized professional and ethical standards, shall be unbiased in their dealings with the parties, and shall be subject to professional scrutiny and monitoring, which may include judicial control. Enforcement agents alleged to have abused their position are subject to disciplinary, civil, and/or criminal proceedings, providing, in case of abuses, appropriate sanctions.

The bailiff is required to take an oath and must perform his duties impartially in accordance with his obligations as bailiff (Articles 151 and 188(e)). The Minister of Justice may discharge the bailiff from office for committing a disciplinary offense or a crime of general nature when the bailiff has been sentenced for the crime. The Minister of Justice may temporarily remove the bailiff from office in the cases where the bailiff faces legal action (Article 152, Judicial System Act).

The Minister of Justice must give his consent before a bailiff may be arrested or a penal procedure may be brought against him, unless the act committed by the bailiff is a felony (Article 157 Judicial System Act).

Article 332 of the CPC provides that parties may also lodge complaints against irregular actions of the bailiff. The court must give its decision within 30 days of the complaint filing, and the court decision is not subject to appeal (Article 334). Furthermore, fines imposed by the bailiff are subject to appeal according to the procedure provided in Article 332 (Article 423).

Factor 10: Resources and Compensation

State employed enforcement agents have proper working conditions, adequate physical resources, and support staff. They are adequately remunerated.

A bailiff has the authority to demand cooperation from the police, mayor of the municipality or region, city council, and state organs and officials in order to facilitate performance of his official duties. (Article 328 (2), CPC; Article 155 (2)(3), Judicial System Act). Neither the CPC nor the Judicial System Act ensures that proper working conditions or adequate physical resources will be provided for the bailiff. Nevertheless, the bailiffs receive other benefits for their service, such as an annual sum for clothes equal to two monthly salaries, health insurance, and accident insurance (Article 157(a)(1), Judicial System Act). In the jurisdictions that employ two or more bailiffs, one of the bailiffs is to be appointed as the head bailiff by the Minister of Justice and receive an increase in salary (Article 153 (1), Judicial System Act). The Minister of Justice may promote a bailiff to the position and salary of a district court judge if the bailiff has “proven high qualification and model performance of his official duties after six years of service” (Article 156, Judicial System Act).

Although no provisions state the required remuneration for bailiffs, several provisions address the mandatory compensation for a bailiff whose employment has been terminated. In general, a bailiff is paid compensation for termination of employment based on Article 139(d), which provides that a judge prosecutor or investigator with ten years of service will be paid compensation amounting to the total salary received during all his years of service in the judicial system, but not more than twenty multiplied by 1.45 (Article 157(3); Article 139d(1)). If the bailiff dies, the compensation will be paid to his survivors (Article 139d(3)).
INTRODUCTION

The reform of Croatian legislation on the execution of court judgments began with the adoption of the new Law of Execution on June 28, 1996. The new law replaced the previous Law on Execution Procedure, which was adopted in 1991. The main purpose of adopting the 1996 Law was to speed up and simplify the procedure for execution and securing of a claim, and to enable creditors to collect their claims as fast as possible and in the fullest possible amount, while at the same time confirming the respect for the fundamental procedural rights of the parties, especially the dignity of the debtor.

However, following roughly two years of implementation, it became apparent that the goals of the 1996 Law were not being reached in full. Namely, despite the fact that the law did strengthen the creditor's position compared to the earlier law, it still maintained some provisions that enabled the debtor to unduly prolong the proceedings and prevent a swift collection (or even the actual collection) of a claim. For these reasons the law was amended on March 18, 1999, by the Law on Changes and Amendments to the Law on Execution (N.N. 29/99) (hereinafter Law, 1999). The changes were aimed at further strengthening the position of the creditor and efficiency of the proceedings.

The following report analyzes various aspects of Croatian legislation on enforcement through the prism of ten criteria (hereinafter referred to as “factors”) that ABA/CEELI developed using the Guiding Principles of the draft CoE Recommendation on Enforcement.

The report is structured into two parts. Part I (factors 1 through 7) analyzes the general enforcement framework and enforcement procedures existent in Croatia, while Part II (factors 8 through 10) assesses the provisions relevant to the activity, the rights and duties of enforcement agents. The report is based on Law on Execution (1996), the Law on Changes and Amendments to the Law on Execution (1999), and the Law on Court Fees (1995).

ISSUES OF CONCERN

Even with the new Law on Execution of 1996, the issue of enforcement of judgments is hardly resolved in Croatia. On a purely legislative front, the country must make improvements regarding the enforcement framework and enforcement procedures, as well as make an effort to delineate the rights and duties of enforcement agents, the ethical standards they must adhere to, and the resources and compensation they are entitled to receive.

Another problem is that of implementation. Many Croatian legal professionals are concerned with the current state of affairs, as they believe that despite the legislative strides made by the country toward improving the situation with enforcement of judicial decisions, it has a long way to go toward achieving a swift and efficient enforcement of judgments.
PART I. ENFORCEMENT PROCEDURE

Factor 1. Enforceable Titles

All enforceable titles are exhaustively defined and listed. The manner in which enforceable titles become effective is also clearly defined.

The Law on Execution of the Republic of Croatia exhaustively lists and clearly defines all existing enforceable titles. It is also clear on how these enforceable titles become effective. To begin with, Article 20 states that courts “can determine execution only on the basis of execution or trustworthy documents, unless otherwise provided for by this law.” It then continues to list and define both execution and trustworthy documents in Articles 21 through 33.

Thus, in Croatian law, execution documents include:

- Judicial execution,
- Judicial execution settlement,
- Execution judgment rendered in an administrative procedure,
- Execution settlement arrived at in an administrative procedure,
- Execution document from a notary public,
- Or any other document that is considered by the law to be an execution document (Article 21)

Issues connected with executability of judgments, settlements, and public notary documents are covered in Articles 23, 24, and 25 respectively. Furthermore, Article 28 of the Law provides a list of trustworthy documents, while at the same time defining what constitutes a “suitable” trustworthy document for the purposes of determining execution.

Factor 2. Enforcement Procedures

Enforcement procedures are clearly defined and easy to follow by the enforcement agents.

The Law on Execution clearly and exhaustively defines enforcement procedures. To begin with, the Law outlines general provisions about serving writs to both legal and physical persons. It outlines when and how the writ should be served, which initially is through using a person’s post-box on the same day as the writ was issued. If the person does not take possession of the writ within eight days after its arrival, the officer of the court will attempt to deliver the writ “by post or in some other way approved by the law” (Article 8, para. 4). It must be noted that this law does not delineate what would constitute “other means” of serving the writ. It would best serve the purpose of the Law if more consideration were to be given to alternative (and effective) means of serving court documents. A signed receipt is required for service of the writ to be considered final.
Service of Process

Articles 5 and 37 of the Law on Execution outline the sequence and duration of the execution procedure, while Article 38 provides that the ruling about the execution must be delivered to both the creditor distrainer and the distrainee. The debtor, as well as the legal person that undertakes payment affairs for the distrainee, is served the execution on a monetary claim before it becomes legally effective. However, a ruling about execution on moveable subjects is served to the distrainee before initial execution actions take place (Article 38, para. 6). Part II of the Law gives a detailed description of procedures to be followed when

1. collecting monetary claims (Articles 69 through 73),
2. executing on real estate (Articles 74 through 125), and
3. executing on movables (Articles 126 through 140).

Within these provisions, the Law also outlines the duty of all parties to obtain the highest market value and to prevent unnecessary depreciation of executable assets (see, specifically, Articles 87, 88, 90, 92, 93, 137, 140, 141, 142, etc.).

Sale of Assets

The Law attempts to achieve a balance between prompt execution and obtaining the highest market value of the object of execution. Thus, in the case of real estate, it states, “immediately after making an execution ruling, the court will at once decide by a conclusion that way in which the value of the real estate is determined. If necessary, before making this conclusion, the court will hold a hearing with parties” (Article 87, para. 1). The value of the property (which is the market price on the day of the valuation) can be determined either by the “appropriate body of the taxation authority” or “on the basis of the estimation of experts and other circumstances.” (Article 87, para. 3 and 4). When determining the value of real estate, “care will be paid to the fact of how much less it might be worth because there are on it certain rights even after the sale” (Article 87, para. 3). The sale of real estate is done by oral public auction (Article 92, para. 1), which will be held even with only one participating bidder (Article 95, para 1). The Law determines that the property cannot be sold for less than three-fourths (3/4) of its determined value (Article 97, para. 1).

If the property is not sold during the first auction, the court sets a date of the second auction, no earlier than 15 days after the first hearing, at which point the property can be sold at a price below three-fourths (3/4) of its value, but not less than half of the value (Article 97, para. 2). If the property is not sold during either of the first two auction hearings, the court is authorized to hold the third hearing during which the property is to be sold without any price limitation (Article 97, para. 4). If the property is not sold during the third auction, the court must stop the proceedings. The distrainer is entitled to file for a new hearing three months after the third auction hearing, as if the sale of property is sought for the first time. Costs related to the earlier attempts to sell the property shall be recognized as enforcement costs (Article 97, para. 8).

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2 Please note that the Law uses the term “distrainer” in lieu of the term “creditor,” and the term “distrainee” in lieu of the term “debtor.”
In the case of movables, the Law on Executions states that valuation will be done at the same time as the seizure schedule (Article 137, para.1), “by the court distraining officer, unless the court has ordered that it be done by a court valuation officer or a special expert” (Article 137, para. 2). The movables are sold “by an oral public auction or by direct treaty. The manner of sale is ordered by the court by a conclusion, taking care that the things can be liquidated as favorably as possible” (Article 141, para. 1). However, a sale by an auction “will only be ordered if it is a question of movables of some considerable value, and which can be expected to be sold at a price higher than the estimated valuation” (Article 141, para. 4). If an auction takes place, the movables cannot be sold at a price less than two-thirds of the estimated value” (Article 142, para. 1). However, the same provision contains an ambiguous clause that may impede implementation: “the movables cannot be sold below this price in the period that the court has sold ordered for sale by direct treaty.” If the movables were not sold at the first auction, a second hearing will be scheduled at the request of a party, no earlier than 15 days after the first auction, at which point the movables may not be sold for less than one third of their estimated value (Article 142, para. 4 and 2).

In both cases, it is questionable to what extent the minimum selling price requirements are in line with the Council of Europe’s criteria of prompt execution. However, it should also be considered that the recovery of the highest price is in the interest of both the distrainer and distrainee, while the criterion of prompt execution is clearly in favor of the distrainer.

Executions can be carried out only during working days, unless otherwise decided by courts based on reasonable grounds (Article 42). Furthermore, Article 13 of the Law provides that the courts must act urgently during execution and security proceedings, reviewing cases in order of the arrival, unless the nature of the claim or special circumstances requires that the court proceed differently.

Article 7, para. 6 of the Law provides that in execution and security proceedings “the procedure cannot be adjourned.” At the same time, Chapter 8 delineates the guidelines for the postponement of execution (Articles 61 through 66), the discontinuance of execution (Article 67), and the closure of execution (Article 68).

**Factor 3. Rights and Duties of Parties**

The powers, rights and duties of the defendant, claimants, and third parties are clearly and thoroughly defined.

There are three categories of actively legitimated subjects in the execution procedure. The first category consists of persons who have initiated the procedure aimed at collecting or securing an alleged claim (Article 26, para. 1 and Article 29, para. 1). The second category is comprised of certain bodies or persons that do not have an authorized claim but are nevertheless empowered by law to initiate execution proceedings (*ex officio*) (Article 3, para. 2). Finally the third category consists of persons on whose behalf a procedure has been initiated by a body or a person *ex officio*. The persons in this category may participate in the proceedings with the status of a distrainer or proposer of the security, but cannot prevent the authorized body or person from initiating the execution procedure and carrying it out *ex officio* (Article 3, para. 5). Passively legitimated parties are the distrainee and opposer of the security. These are usually real or alleged debtors against whom the proceedings have been initiated. The status of active and passive party in these proceedings may be proven only on the basis of an executable document (Article 20).
The Law on Execution contains detailed provisions regulating the powers, rights and duties of defendants, claimants and third parties.

**Duty to Cooperate**

Article 44 of the Law states that no one should hinder the court distrainer (the bailiff) in carrying out the execution. It also gives the court distrainer the right to remove anyone who hinders the execution proceedings and, when needed, enlist the help of the police, which, if warranted by the circumstances, could mean the use of force. It is unclear in the text of this article whether there is any difference between “police” and “judicial police.” This could easily be a matter of translation, however, if it is not, it would serve the Law if the distinction is made clear. Article 16 of the Law is even more specific about the measures (fines and prison sentences) that could be applicable to the persons who hinder the proper implementation of execution proceedings.

**Protection of Defendant’s Essential Assets**

The Law on Execution is very clear as to what essential assets and income of the distrainee are protected. In Article 4, it sets out general provisions, stating that “things that are outside trade cannot be the subject of execution, as cannot other things as ordained by a special law” (para. 4), and that “whether a thing or a right can be the subject of execution … is judged with respect to the circumstances existing at the time the execution proposal is made, unless otherwise specifically determined by this Law” (para. 7). Article 5 deals with restricting the means and subjects of execution and security. Paragraph 2 of this Article states that “if a number of means or subjects of execution or security are proposed, the court will, at the suggestion of the distrainee, or the opposer of the security, restrict the execution or security only to some of these means or subjects, if they are enough to execute or secure the claim.”

Part II of the Law further specifies what cannot become a subject of execution or security proceedings. Article 70 of the Law states that “[e]xecution for the fulfillment of a monetary claim cannot be carried on [sic] things and rights that are necessary for the satisfaction of the basic vital needs of the distrainee and the persons he is bound by law to support or for the performance of the self-employed job that is the distrainee’s main source of earnings” (para. 1). Paragraph 3 of the same Article states that the “residential property or business property are not considered things that are necessary for the satisfaction of the support or for the self employed job that is the distrainee’s main way of earning a living, unless the law provides for differently.”

Virtually similar protections are extended to the business of legal persons that are in a position of distrainee. Article 71 prohibits carrying out execution on “things and rights of legal persons in order to obtain some monetary claim if these things and rights are necessary for their business to be carried on” (para. 1). More on protection of legal persons’ property can be found in Articles 201, 202 and 203 of the Law, which delineate which real estate, movable, and monetary assets of legal persons can and cannot be subjects of execution.

Article 148 exempts several types of incomes from execution, including the income on the basis of legal maintenance, income from social security, temporary unemployment, child support, and scholarship income.
While the above-mentioned provisions for the protection of defendant’s essential assets are a positive step forward, it is still unclear as to what specifically would constitute those items and rights that are necessary for the satisfaction of the basic vital needs of the distrainee or his or her dependents, or, in the case of a legal person, what items and rights are deemed necessary for the continuation of their business.

Article 86 of the Law provides that the “agricultural land and farm buildings of a farmer to the extent necessary for his maintenance and the maintenance of his immediate family and other persons he is bound to support according to the law cannot be subject of execution.” This provision seems to be redundant, as the same result could be achieved based on the exemptions articulated in Article 70, para. 1 and Article 71, para. 1, discussed above.

Article 128 provides a more specific list of movables that are exempt from execution. They include, but are not restricted to, clothing, footwear, and other items of personal use, bed clothing, pots, dishes, furniture, a stove, refrigerator, a washing machine, food and fuel supplies for 6 months, working and breeding livestock, agricultural machinery and other tools necessary for the upkeep of farms when distrainee is a farmer, medals, decorations, war memorials, and other awards and commendations, personal letters, manuscripts, family photographs, personal and family documents, family portraits, etc. Article 128 once again repeats that it can be “ordered by law that other movables also cannot be the subject of execution” (para. 8/3).

What happens during the execution when several persons enjoy right to maintenance? It is clear from previous Articles 70 and 86 that the amounts that are needed to fulfill third parties’ rights of maintenance would be exempt from execution. However, Article 174 discusses a situation in which people who have the right to maintenance are the ones in a distrainer position. In a case when competing claims on rights to maintenance arise from several persons, and when the “total amount of their claims exceeds the amount of the wage that can be the subject of execution, execution is ordered and carried out in favor of each of these distrainers in proportion to the amounts of their claims.”

When dealing with real estate as a subject of execution, the Law considers the rights of the distrainee being evicted, though it is questionable to what extent it protects the person and his or her family. Specifically, Article 122 of the Law states that the “distrainee and the members of his family who are being evicted have the right to emergency accommodation only if this is determined by a special regulation,” and that “the organization of emergency accommodation … does not prevent the implementation of the execution.” The question that arises in this regard is why the protection extended to the distrainee’s family (see the maintenance provision discussed above) would not be sufficient to guarantee them emergency accommodations. Subsequent Articles 123 and 124 deal with the issues arising from the eviction of third parties, including those leasing and renting real estate that was subject of execution. It gives the renters and the leaseholders of such property a minimum of three months to vacate the premises. However, this period could be longer and it would be clearly determined in the execution ruling issued by the court (Article 123).

The Law also provides that the court can, at the suggestion of the distrainee, or the opposer of the security, in accord with the Law, determine other means of execution or security instead of those that have been proposed (Article 4, para. 3).
Overall, it could be concluded that the enforcement of procedures, as currently delineated in the Law, are somewhat confusing or unnecessarily complex.

**Duty to Provide Financial Data**

Article 16, para. 6 of the Law discusses fining legal persons (or responsible persons in a legal person), as well as other physical persons if they (1) undertake actions with the intention of concealing, damaging or destroying the property of the distrainee or the opposer of the security, (2) carry out acts of violence or acts by which the rights, security and dignity of parties to the execution or security procedure can be seriously damaged, (3) if they undertake such actions that can lead to irreparable or nearly irreparable damage to the distrainer or the proposer of the security, or (4) they undertake actions that prevent the court, the court distrainer or other authorized persons to enforce the execution or security procedures.

Later, the Law is more specific about the duty to provide financial data, and declares it mandatory that the distrainee discloses the information on his or her accounts. Specifically, within eight (8) days following the distrainer’s written request, the distrainee must present a written document compiling the information on all accounts she or he has, as well as the information about all legal entities (e.g., banks) that keep these accounts. The distrainee’s failure to do so is sanctioned as a misdemeanor (Article 307a, Law 1999).

The Law on execution also provides that when the objects of execution are missing or cannot be found in distrainee’s possession, the distrainee must give a statement to that effect before the court (Prokazna izjava). The distrainee is required by law to reveal where the objects can be found – or state that they do not exist, or that he or she does not know where they are (Article 16a. para. 1, Law 1999). The distrainee is criminally liable for false or inaccurate statements (perjury) (Article 16a., para. 7 and 8; Article 15, Law 1999).

“Prokazni popis imovine” (citation to discover assets) is a distrainee's list of his property that he must – following such a proposal by the distrainer – present to the court, if the execution for monetary claim was unsuccessful because no objects against which the execution could be performed were found, or if only objects obviously insufficient for execution or objects belonging to third persons or encumbered objects were found (Articles. 16a. para. 3. and 4., Law 1999). The list has to be signed by the distrainer before the court. The distrainer is criminally liable for the accuracy of the information presented in the list.

**Protection of the Defendant During Search and Seizure of Assets**

Article 43 of the Law provides that the court distrainer is obligated during the search of the distrainee’s residence or clothing that he or she wears, as well as during other execution works, “to proceed with due respect to the person of the distrainee and the members of his household” (para. 1) and “makeup minutes concerning the performance of execution works …, which will be signed by the invited witnesses or the notary public” (para. 5). This article also requires that two adult witnesses or a notary public be present during the execution works in the distrainee’s residence when the distrainee or distrainee’s legal representative, proxy or an adult member of his household is not present (para. 2). The law does not include provisions that are explicit about respecting private and family life, though some of the above-cited articles that guarantee family maintenance could fit the bill.
**Priority of Multiple Claimants**

Article 73 of the Law states that “several distrainers who are satisfying their monetary claims on the same distrainee and on the same subject of execution are satisfied in the same order in which they obtained the right to be paid from this subject, unless the law makes a different provision.”

Articles 104 through 119 delineate the rankings of claimants and third parties and entitlements to monies recovered and distributed amongst claimants. Payments are to be made after purchaser has paid the purchase price (Article 104). Article 106 stipulates the priority of settlement (payment) from the sum of money gained from the sale of a real estate:

1. The costs of the execution procedure;
2. Taxes and other fees becoming due during the preceding year that are a burden on the real estate sold;
3. Claims on the basis of legal maintenance, claims for damages arising out of harm to health or reduced or lost ability to work; claims for damages based on loss maintenance after the death of the maintenance provider; and, claims of contributions to health and retirement insurance falling due in the previous twelve months.

Article 107 prioritizes other claims to be paid, once the Article 106 claims have been settled. Article 108 deals with compensation for personal servitudes and other rights that cease on the sale. Article 109 settles the issue of competing and equally ranked payments, by providing that “several claims that have the same order of payment are paid in proportion to their amount if the amount gained from the sale is not enough for them to be paid completely.” Articles 110 and 111 offer provisions related to contesting claims. Articles 112 through 116 discuss special provisions about the manner of paying claims, such as claims not due, claims for occasional receipts that have not become due, claims on condition (conditional claims), and claims arising from joint liens (mortgages).

Articles 144 and 145 deal with the payment settlement after selling movables, with the latter delineating the ranking of payments when several distrainers are involved. Article 156 deals with the order of priority of the liens of several distrainers.

The Law grants the parties the right to request the suspension of the enforcement in order to ensure the protection of their rights and interests. General provisions to this affect are found in Chapter 8 on the postponement, discontinuance and closure of execution. This chapter outlines reasons for postponements of execution at the proposal of the distrainee (Article 61), distrainer (Article 63), as well as the time for which the execution is postponed (Article 66) and the procedure for resuming the process (Article 66). Articles 67 and 68 specifically deal with the reasons for discontinuation of execution and closure of the execution procedure.

Furthermore, Chapter 6 of the Law on third party objection lists the reasons for preventing the execution by the third party (Articles 55 and 57) and outlines the direction of litigation (Article 65), while Chapter 7 gives reasons and procedure for counter-execution.
Factor 4: Prevention of Procedural Misuses and Abuses

Mechanisms exist for deterring and preventing procedural misuses and abuses of the enforcement procedures by the parties, judges, and enforcement agents.

Article 44 of the Law is clear that the parties to the enforcement procedure cannot hinder the court distrainer in undertaking legitimate actions to carry out the enforcement. It also provides that “the court can sentence a person who hinders the execution of a judgment according to the measures prescribed in Article 16 of this Law” (para. 4). Article 16, consequently, outlines the penalties that the parties could incur if they prevent the court distrainer from performing his duties. However, these are general provisions, and they do not indicate the type and size of fines to be assessed and the minimum and maximum terms of imprisonment for each particular crime. Article 16 does give general guidelines for fines to be assessed to physical and legal persons (1,000 to 30,000 kuna for the former, and 10,000 to 100,000 kuna for legal persons), as well as prison terms to be employed (fifteen days to three months, with the sum of the total prison term not exceeding 6 months). ³

The Law further determines that “if the private person who has been fined does not pay the fine in the period set by the court, this fine will be replaced by a prison term in accordance with the criminal law regulations about the replacement of a fine by a prison term” (para. 2). Article 217 of the Law on pronouncement of judicial penalties goes into greater depth about the measures that can be applied when the debtor does not fulfill a non-monetary obligation within a specified period of time.

Article 45 of the Law deals with irregularities committed by the court distrainer during the execution process. It specifically provides that a party can request from the court to undo the irregularities committed by the court distrainer. It also authorizes the court to stop any irregular actions taken by a court distrainer.

Article 96 of the Law provides that when real estate is sold as a subject of execution, the distrainee, a judge or other person who officially takes part in the sales procedures may not be a purchaser or know a person who by the law may not acquire the property that is the subject of execution.

 Appeals and judicial review of various decisions involved in execution and security procedures are other instruments used to deter and prevent procedural misuses and abuses of enforcement procedures by the parties, judges, and the enforcement agents. For more information on judicial review, see Factor 5.

Factor 5: Judicial Review

Parties have the right of review for both judicial and non-judicial decisions made during the enforcement process.

Any enforcement ruling can be appealed by the interested parties or by those damaged by the enforcement. An appeal can be made against a ruling made in the first instance, unless otherwise provided by law. It must be filed within a period of eight days from the day of the first instance.

³ See Factor 3, for more information on Article 16 provisions.
ruling. An appeal will not delay the execution unless otherwise provided by the Law on Execution (Article 11, para. 4). Thus, as a general rule, the execution is carried out even before the decision on appeal has been made. Similarly, the claim can be forcefully fulfilled through seizure even before the execution decision becomes final (Article 40, para. 2, Law 1999).

The Law reaffirms the rule on the forceful execution of claims by another provision, according to which the appeal filed by the distrainee against the decision on execution cannot delay the execution unless otherwise regulated by the Law (Article 46, para. 5, Law 1999). Moreover, the Law provides that even when the distrainee has been instructed to initiate the litigation, the execution cannot be delayed, unless otherwise regulated by the Law (Article 48, para. 3, Law 1999). It must be noted that the 1999 amendments to the 1996 Law improved the efficiency of the system of execution and strengthened the position of the distrainer (see Factors 2 and 3).

In the court of first instance, both the execution proceeding and the security proceeding are “heard by, and a judgment is given by, an individual judge, and in the second instance by a council composed of three judges” (Article 10, para. 1), with the decision in the second instance made by the president of the council (Article 10, para. 5). Other general provisions on judicial review can be found in later chapters of the Law, including Chapter 5 on legal redress available to the distrainer and the distrainee against a ruling about execution, Chapter 6 on third party objection, and Chapter 7 on counter-execution. More specific provisions about legal redress are found at the beginning of part two of the law, which describes judicial renew provisions dealing with different subjects of execution.

**Factor 6. Enforcement Fees**

*Enforcement fees are reasonable, fixed, prescribed by law, and are made known in advance to the parties.*

The Law of Execution does not itself cover the issue of enforcement fees. This issue regulated by the Law on Court Fees (*Narodne Novine* 74/95; as amended in 1996). The Law on Execution only provides that “the costs of the proceedings will be determined by the court in the execution proceedings and it will also determine, at the suggestion of a party, execution so that costs may be recovered” (Article 14, para. 7). Article 14 of the Law on Costs of Proceedings further provides that the costs of proceedings in connection with determining and carrying out execution and security are borne by the distrainer or the proposer of the security (para. 1). The distrainer is bound to pay these fees in advance, and if such a payment does not take place the court will halt execution of security. However, the Article also provides that “the court itself will from its own funds give an advance on the costs of proceedings initiated *ex officio*” (para. 3). It is eventually a distrainee’s responsibility to cover the costs of the enforcement: the distrainee or the proposer of the security is bound to indemnify the distrainer or the proposer of the security for the costs that were necessary for the execution or the security” (Article 14, para. 4). It seems that paragraph 8 of the same Article provides that it is distrainee’s responsibility to pay the enforcement fees; however, this paragraph is confusing because it refers to “distrainee or proposer of security,” rather than with “distrainer or proposer of security.”

Details about the actual amounts of enforcement fees can be found in the above-cited Law on Court Fees. Specifically, Article 32 of the Law on Court Fees provides that “the court fee in enforcement proceedings shall be determined based on the value of the claim that should be enforced or secured.” If the creditor fails to define the value of the claim, and if it cannot be
determined through civil proceedings as provided in Article 32 of the Law on Court Fees, the value of the claim is arbitrarily determined at 10,000 kuna (Article 33, Law on Court Fees). As it currently stands, the fee schedule for filing a claim of counter-claim, based on the value of the case, is as follows:

<table>
<thead>
<tr>
<th>Value Range</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 – 1,000.00 kn</td>
<td>100.00 kn</td>
</tr>
<tr>
<td>1,000.00 – 3,000.00 kn</td>
<td>300.00 kn</td>
</tr>
<tr>
<td>3,000.00 – 6,000.00 kn</td>
<td>600.00 kn</td>
</tr>
<tr>
<td>6,000.00 – 9,000.00 kn</td>
<td>900.00 kn</td>
</tr>
<tr>
<td>9,000.00 – 12,000.00 kn</td>
<td>1,200.00 kn</td>
</tr>
</tbody>
</table>

For claims over 12,000 kn, but not exceeding 100,000 kn, the enforcement fee equals 1,200 kn plus 2% of each 1,000 kn above 12,000 kn. For claims exceeding 100,000 kn the enforcement fee equals the amount of 2,900 kn plus 2% of each 1,000 kn above 100,000 kn. The maximum enforcement fee to be paid, regardless of the value of the claim is 10,000 kn (Attachment to the Law on Court Fees, Court Fee Schedule, Item 1).

The above-provided fee schedule is clear, easy to understand, and therefore more predictable for all parties to the execution procedure. However, as Croatia moves forward with the improvements to the current system of execution, it would be advisable to look at the experience of West European and North American states that have, over the years, devised a more differentiated fee schedules. It must be noted, though, that such fee schedules are harder to understand for the general public and could deter some members of the society from following through the execution procedure. Furthermore, it may be advisable to consider differentiating between natural and legal persons when assessing enforcement fees.

**PART II. ENFORCEMENT AGENTS**

*Factor 7. Rights and Duties of Enforcement Agents*

The status, role, rights and responsibilities of the enforcement agents are clearly defined and described, including their powers and responsibilities in relation to those of the judge.

The status, role, rights, and responsibilities of enforcement agents are not clearly defined and described. The Law of Execution leaves much to be desired in this respect. There are some general provisions, mainly found in Articles 43 and 44. These provisions outline the duty of the court enforcement agent to proceed with execution with due respect to the person of the distrainee and the members of the distrainee’s household (Article 43, para. 1), and to make up special minutes concerning the performance of the execution (Article 43, para. 5). Article 44 authorizes the court enforcement agent to remove the persons who hinder the carrying out of execution, and when needed enlist the help of police (Article 44, para. 1). Some related provisions are randomly placed in the text of the Law of Execution, such as in Article 137, para. 2, which states that “the valuation [of movables] will be done by the court [enforcement agent], unless the court has ordered that it be done by a court valuation officer or a special expert.”
In sum, the Law of Execution should articulate more clearly the status, role, rights, and responsibilities of court distrainers.

**Factor 8. Qualification and Training**

In recruiting enforcement agents, consideration is given to the candidates moral standing (e.g. no criminal record), their legal knowledge, and their training in relevant law and procedure. Candidates are required to take examinations that assess their theoretical and practical knowledge of the law. Once recruited, enforcement agents undergo continuous training according to clearly defined and well-structured aims and objectives.

See Factor 10

**Factor 9. Ethics and Discipline**

Enforcement agents shall always act according to recognized professional and ethical standards, shall be unbiased in their dealings with the parties, and shall be subject to professional scrutiny and monitoring which may include judicial control. Enforcement agents alleged to have abused their position are subject to disciplinary, civil, and/or criminal proceedings, providing, in case of abuses, appropriate sanctions.

See Factor 10

**Factor 10. Resources and Compensation**

State employed enforcement agents have proper working conditions, adequate physical resources, and support staff. They are adequately remunerated.

There are no provisions in the Law that articulate the necessary qualifications and training for court enforcement agents, ethics principles that they must follow, and their remuneration and working conditions. Croatia does have a law of civil servants and employees, which was adopted on March 26, 2001, and its general provisions apply to court enforcement agents, as they are government employees. However, the law does not have specific provisions that would regulate the profession of court enforcement agents.
INTRODUCTION

This report analyzes Macedonia’s legislative framework for the enforcement of judgments. CEELI’s analysis is conducted in the context of the Council of Europe’s draft Recommendation on Enforcement. Part I of the report consists of six factors that address general enforcement procedures, while Part II consists of four factors assessing the quality of Macedonia’s enforcement agents. It is important to note that this report is strictly a textual analysis of Macedonia’s legislative framework. Therefore, the actual effectiveness of Macedonian’s enforcement process is beyond the scope of this analysis.

Macedonia’s Law on Enforcement Procedures, amended in June 2000, is the primary legislation relating to enforcement of judgments. However, CEELI also refers to several other laws in this analysis. The Law on Trial Procedure details the specific procedures for service of process, while the Law on Court Taxes specifies the court fees that apply to enforcement proceedings. Additionally, the Macedonian Constitution contains several provisions relating to the privacy of financial data. Finally, the report refers to the Law on Civil Servants and the Ethical Code of Civil Servants, as they contain provisions regulating enforcement agents.

ISSUES OF CONCERN

The Law on Enforcement Procedures was substantially improved by the amendments of June 2000. While there are always minor improvements that can be made, there are no glaring weaknesses in Macedonia’s general enforcement procedures. At least on paper, the enforcement process appears to be relatively efficient and balanced, respecting the rights of all parties.

It would be preferable if Macedonia’s enforcement agents were governed by specific legislation that addresses their unique rights, responsibilities, and qualifications, resources, and professional standards. While these issues are adequately dealt with in the Law on Civil Servants and the Ethical Code of Civil Servants, specific legislation for enforcement agents is the only significant omission in the legislative framework for enforcement of judgments.

PART I. ENFORCEMENT PROCEDURE

Factor 1. Enforceable Titles

All enforceable titles are exhaustively defined and listed. The manner in which enforceable titles become effective is also clearly defined.

Until recently, Article 15 of the Law on Enforcement Procedures provided only a general definition of enforceable titles, which included:

- a final court decision and court settlement;
• a final decision in an administrative procedure and a settlement in an administrative procedure, but only for performance of a monetary obligation;

• enforceable notary document;

• other document provided by law as an executive title.

However, Articles 16 through 22 of the Law on Enforcement Procedures discuss each of the above points in more detail, and provide generally clear definitions for the reader. Additionally, the June 2000 amendments to the Law suggest that any authentic documents can be enforced, and several of the amendments elaborate on the definition of an enforceable document.

**Factor 2. Enforcement Procedures**

*Enforcement procedures are clearly defined and easy to follow by the enforcement agents.*

Overall, the Law on Enforcement Procedures clearly defines the different stages of the process in obtaining the enforcement of a judgment. The law contains provisions specifying that an enforcement proposal must be submitted by a creditor (Art. 2). The Law also clearly delineates the contents of the enforcement proposal (Art. 35), the conditions that must be fulfilled before an enforcement procedure shall commence (Art. 27, 29, 36), the times and days when enforcements may be performed (Art. 43), and the composition of courts handling enforcement procedures (Art. 6). Furthermore, the law specifies which courts handle specific types of enforcement procedures (Art. 34).

**Service of Process**

Article 5a of the Law on Enforcement Procedures, recently introduced by the 2000 amendments to that law, establishes the basic procedures to be used for service of process. The article provides for service of process through personal delivery, by mail, and to the court. Personal delivery appears to be limited to legal entities and to natural persons at the address provided in the enforcement proposal. If unsuccessful, service is next attempted at the address of the head office, as entered in the registry. If also unsuccessful, the only alternative means required by the Article 5a is for the writ to be placed on the bulletin board of the court for 8 days. Service of process by mail is accomplished through the use of post office boxes, requiring the defendant to sign for the delivery.

While Article 5a does not provide all necessary details on how delivery is to be made, Chapter 10, Articles 122-139 of the Law on Trial Procedure explicitly sets forth the procedures for service of process.

**Prompt Sale of Assets**

The Law on Enforcement Procedures contains effective measures for the prompt sale of assets, yet the law also recognizes the importance of obtaining the highest market value for the goods. For the sale of moveable property, Article 83 provides that the sale must take place within 15 days of inventory. However, Article 84 provides that the manner of sale either agreed to by the parties or determined by the court must ensure the highest value for the goods. Article 85 provides that goods may not be sold for less than their assessed value at inventory, unless the court’s initial efforts to do so through auction or direct sale are unsuccessful.
For the sale of real estate, Article 156 requires the court to issue a resolution for sale within 8 days of the property being valued. The resolution for sale must specify the time and manner for the sale, although the sale may not take place for at least 15 days following the issuance of the resolution. This mechanism strikes an effective balance between avoiding unnecessary delay and ensuring sufficient time for potential buyers to learn of the sale, thereby increasing the potential return. Additionally, Article 163 adopts measures intended to obtain the highest market value for the property. At the first sale, the real estate may not be sold for less than the determined value. If the first sale is unsuccessful, the real estate may be sold at a lower value at the second sale, but not less than two-thirds of the determined value.

Factor 3. Rights and Duties of Parties
The powers, rights and duties of the defendant, claimants, and third parties are clearly and thoroughly defined.

Duty to Cooperate
The Law on Enforcement Procedures takes some measures to encourage and ensure that the parties cooperate during the enforcement procedure. For example, a significant cause for delay in the enforcement process is the location and valuation of the defendant’s assets for inventory. By requiring the defendant to cooperate with the inventory process through fact statement, this delay should be substantially decreased, thereby making the enforcement procedure more efficient (Art. 28a).

Article 23 specifies that both the claimant and the defendant have mutual and reciprocal obligations towards one another, ensuring that the claimant must also fulfill his obligations to the defendant.

Additionally, Article 24 provides the defendant with the opportunity to satisfy his or her debt through alternative means, thereby increasing the likelihood that he or she will do so. Similarly, Article 25, which addresses non-monetary obligations, allows the defendant to satisfy the obligation through payment of the amount specified in the executive title.

Protection of Essential Assets
The Law on Enforcement Procedures does a good job of protecting the essential assets and income of the defendant. Article 5, for example, protects assets that are “[n]ecessary to meet the fundamental living needs of the defendant and the persons for whom he/she, according to law, is obligated to provide for.” The article also requires that steps be taken to protect the dignity of the defendant.

Additionally, Articles 92 and 93 provide further protection of the assets exempted from enforcement proceedings, including benefits or payments for child support, the unemployed, and those unable to work due to injury or disability. Finally, Article 152 protects certain types of real property from enforcement proceedings, including the defendant’s residence and, for farmers, their farms and land necessary for their support.
Duty to Provide Financial Data

As previously discussed, Article 28a obligates the defendant to provide the court with up-to-date information on his or her income and assets. The procedure for collecting the defendant’s financial information is both well developed and detailed specifying:

- location of objects that comprise defendant’s property;
- location and ownership certain objects, to which the defendant has some property rights;
- against whom the defendant has certain monetary or other claims;
- what other rights comprise the defendant’s property;
- does the defendant have money in his or her accounts and where;
- does the defendant receive a salary or pension allowance, i.e. does the defendant have other permanent or temporary incomes and what are they; and
- does the defendant have some other property.

Not only is the court given the power to fine the defendant if he or she fails to provide the requested financial information, but the court is also empowered to call witnesses to help ascertain the defendant’s income and assets. Finally, those who provide false information or attempt to conceal income or assets are subject to being charged with giving a false statement in a court procedure, leading to additional penalties from the court.

Protection of the Defendant During Search and Seizure of Assets

Enforcement procedures for search and seizure of the defendant’s assets do seem designed to be as unobtrusive as possible. Article 5 provides that, “[i]n the course of the enforcement and securing procedures, attention shall be paid to preserving the dignity of the debtor and making the enforcement and the securing procedure less unfavorable for the debtor.”

Additionally, Articles 42 and 43 provide additional protections for the defendant by specifying that an enforcement must not exceed the limits specified in the court’s order, and by limiting the time for enforcement during daylight on a weekday.

While additional protections could be considered in light of relevant Council of Europe human rights and data protection provisions, it is important to note the strong privacy protections provided in Articles 17 and 18 of the Macedonian Constitution. These articles prohibit any seizure of the defendant’s bank records and other financial information.

Priority of Multiple Claimants

Various provisions in the Law on Enforcement Procedures clearly define the priority of multiple and third-party claimants, and provide for the distribution of such claims. In cases of enforcement against moveable property, Article 89 specifies that, if not otherwise provided by law, third-party
claims are resolved in the order their pledge was received. If claims of the same priority cannot be fully satisfied, the parties receive proportional compensation.

Similarly, Article 100 establishes priority for multiple creditors in the case of enforcement of a monetary claim, while Article 121 resolves priority for multiple persons entitled to support. Finally, for cases involving real property, Articles 170 through 181 provide detailed procedure for the resolution of multiple claims, including both secured and unsecured claims.

**Powers, Rights, and Responsibilities of Third Parties**

The Law on Enforcement Procedures provides third parties with various protections. Section 2.5 of the law, for example, provides third parties with the right to object to enforcement. Third parties may also petition the court to postpone enforcement under Article 65. The rights of maintenance defendants appear to be protected under Article 121, which addresses multiple persons entitled to support.

**Suspension of Enforcement**

Section 2.7 of the Law on Enforcement Procedures provides a description of the parties’ rights to petition for a postponement or termination of enforcement. The defendant, claimant, and even third parties are able to file such a petition. Subject to very specific conditions, Article 63 permits the defendant to petition for postponement if it will cause them to suffer “significant damage.” In such cases, the court is empowered to either wholly or partially postpones enforcement. Article 64 addresses proposals by the claimant to postpone enforcement, which is generally permitted if enforcement has not yet begun. Finally, Article 65 permits third parties to petition for postponement, also where they have shown that enforcement will cause them to suffer significant damage.

**Proportionality**

The Law on Enforcement Procedures contains basic provisions to ensure that attempts to carry out the enforcement process are proportionate to the claim (Art. 4 and Art. 96). Additionally, various provisions require that any excess amount collected from the defendant be deposited with the court, which will then return the excess amount to the defendant (Art. 106 and 116).

**Factor 4. Prevention of Procedural Misuses and Abuses**

Mechanisms exist for deterring and preventing procedural misuses and abuses of the enforcement procedures by the parties, judges, and enforcement agents.

**Mechanisms for Preventing Delay or Other Abuse by Parties**

The Law on Enforcement Procedures contains several provisions designed to prevent delays and penalize parties who obstruct the enforcement process. Article 45 provides that the enforcement agent “shall remove any person that is hindering the realization of the enforcement…. ” In doing so, the enforcement agent is empowered to request the assistance of the “competent internal affairs agency,” presumably the police.

The use of fines and other penalties by the court is another effective mechanism for encouraging parties to comply with enforcement procedures. During the critical inventory process, the court may
fine the defendant under Article 28a if he fails to submit requested financial information. Additionally, if the defendant or legal entity conceals or falsifies information, the court may charge it with giving a false statement in a court procedure.

Under Article 219, where the defendant is the only one capable of performing a particular act required by the executive title, the court may fine or imprison the defendant if he refuses to do so. Under the 2000 amendments to the law, a natural person can be fined up to 20,000.00 denar, while a legal entity can be fined up to 80,000.00 denar. The fines for subsequent violations of court orders are cumulative up to ten times the initial amount. The article also permits the court to imprison the responsible party if the fine cannot be enforced.

Finally, Section 2.25 of the law details the interim measures available to the court in circumstances when there is a risk that the defendant will attempt to defeat or obstruct enforcement. Article 267 lists the interim measures in cases of monetary claims, while Article 269 lists those interim measures available for non-monetary claims. Section 2.25 balances the interests of the claimant and the defendant, and Article 275 permits the defendant to receive compensation of damages if interim measures sought by the claimant are subsequently determined to be groundless.

**Unnecessary Postponements**

As discussed, Section 2.7 of the Law on Enforcement Procedures details the specific conditions under which a postponement of the enforcement may be sought. While postponement is an important mechanism for preventing unwarranted damage to the defendant, these provisions allow the court to grant postponements only when necessary. As such, they should not lead to unnecessary delays in the enforcement proceedings, so long as the court is prudent in exercising its authority.

**Factor 5: Judicial Review**

Parties have the right of review for both judicial and non-judicial decisions made during the enforcement process.

Various provisions in the Law on Enforcement Procedures describe the availability of judicial review for the enforcement process. Article 7 lays the groundwork for appeals, which are described in much more detail in Section 2.4.

The process for appeals was extensively modified and expanded under the 2000 amendments to the Law. Most appeals fall under Article 47, which provides that a defendant must file an appeal within 8 days of an enforcement order being issued. Article 47 provides a lengthy and detailed list of those circumstances under which the defendant may file an appeal. The claimant may also appeal, although under more limited circumstances. However, both claimants and third-parties are able to petition for postponement under Articles 64 and 65.

While most appeals should fall within the parameters of Article 47, in some circumstances a defendant may file an appeal under Article 50 after expiration of the 8-day deadline. However, such an appeal is only possible if there were conditions that prevented the defendant from raising the appeal until after the expiration of the deadline.
Factor 6. Enforcement Fees

Enforcement fees are reasonable, fixed, prescribed by law, and are made known in advance to the parties.

Article 32 of the Law on Enforcement Procedures provides the general principles for the payment of enforcement fees. While the specific calculation of fees is determined by the Law on Court Taxes, the claimant is obliged to pay such fees in advance. After the proceedings, however, the claimant may request compensation from the defendant. Article 32 also attempts to minimize groundless expenses by requiring the claimant to compensate the defendant for any such expenses.

The Law on Court Taxes must be consulted in attempting to determine specific enforcement fees. The law details a wide variety of fees that might apply to enforcement proceedings, including:

- Complaint
- Counter complaint
- Proposal for enforcement
- Appeal of a decision
- Proposal for settlement
- Proposal for acceptance of a foreign decision
- First instance decision
- Decision in absence of a party
- Proposal for division of property among co-owners
- Motion requesting an entry in the register of real property
- Objections to a decision
- Proposals for new evidence if a new hearing would be required

Individually, these fees might not be overly burdensome, but collectively they can constitute an imposing hurdle to parties seeking enforcement of a judgment. Complicating matters is the uncertainty as to which fees will apply in a particular case. Accordingly, court fees are not fixed, reasonable, or known in advance to the parties.
PART II. ENFORCEMENT AGENTS

Factor 7. Rights and Duties of Enforcement Agents

The status, role, rights and responsibilities of the enforcement agents are clearly defined and described, including their powers and responsibilities in relation to those of the judge.

Enforcement agents are referred to as “officially appointed persons” in the Law on Enforcement Procedures. Their role is defined as “a court employee who directly undertakes certain actions for enforcement or security” (Art. 14). While this definition is rather vague, it is apparent from subsequent references in the law that “officially appointed persons” are indeed enforcement agents. For example, Article 44 describes how officially appointed persons are to conduct searches, and Article 45 grants officially appointed persons the power to “remove any person hindering realization of the enforcement, and...request assistance from the competent internal affairs agency.” Outside of these limited provisions, the status, role, rights, and responsibilities of enforcement agents are not clearly defined.

Factor 8. Qualifications and Training

In recruiting enforcement agents, consideration is given to the moral standards of candidates (e.g. no criminal record), their legal knowledge, and their training in relevant law and procedure. Candidates are required to take examinations that assess their theoretical and practical knowledge. Once recruited, enforcement agents undergo initial and continuous training according to clearly defined and well-structured aims and objectives.

As civil servants, the qualifications and hiring of enforcement agents is governed by the Law on Civil Servants. Section II of the law describes the general process for the hiring of civil servants, including their general qualifications (Art. 9), which are as follows:

(1) Any individual that meets the following general requirements may be employed as a civil servant:

- to be a citizen of the Republic of Macedonia;
- to be over 18 years of age;
- to have adequate level of education in accordance with Article 6 paragraph (6) of this Law;
- to have the necessary working experience, except for the positions of Junior Associate and Junior Officer;
- not to be sentenced to a security measure of prohibition to perform certain profession, activity or duty, and
- to be of good general health capability.

A candidate meeting these general qualifications must take a professional examination, and the selection for employment is made from the list of the most successful candidates on the examination (Art. 12). The selected candidate is initially hired as a civil servant-trainee, serving an internship
period that culminates in a trainee examination (Art. 14). If successful on the trainee examination, the civil servant-trainee becomes a permanent enforcement agent.

Article 24 of the Law on Civil Servants specifies that civil servants receive professional development and training as part of an annual program. Without any by-laws or regulations on enforcement agents, it is difficult to evaluate the extent of such training, although it does appear to be required by law.

**Factor 9. Ethics and Discipline**

Enforcement agents shall always act according to recognized professional and ethical standards, shall be unbiased in their dealings with the parties, and shall be subject to professional scrutiny and monitoring, which may include judicial control. Enforcement agents alleged to have abused their position are subject to disciplinary, civil, and/or criminal proceedings, providing, in case of abuses, appropriate sanctions.

Both the Ethical Code of Civil Servants and the Law on Civil Servants govern the ethical conduct of enforcement agents. The Ethical Code of Civil Servants is a fairly comprehensive set of ethical standards, the fundamental principles of which are listed in Article 2:

“Civil servant will perform the official duties in accordance with the Constitution and the law. While exercising the duties, the civil servant will protect only the public interest.

The civil servant will secure equal treatment of citizens and legal entities, while performing the official duties.

The civil servant will perform his duties on high professional level, which he continuously upgrades.

The civil servant will perform his duties most conscientiously, simply, efficiently, orderly, and timely, in the interest of citizens and other subjects, in the effectuation of their rights, responsibilities, and interests.

The civil servant will not involve himself in any activities that are opposite to the correct performance of his official duties, and will do everything which is necessary to avoid situations and behaviors that could damage the interest or dignity of the agency in which he is employed, or the public administration in general.

While contacting with the citizens and other legal entities, the civil servant will act in a way that provides for establishment of mutual trust and cooperation among these subjects and the administration. In the relations with the citizens and other legal entities, the civil servant will show understanding, courtesy, politeness, and the outmost will to help, and will not hinder the effectuation of their rights and interests.”

Absent a code of ethics for enforcement agents, the Ethical Code of Civil Servants seems to provide an effective set of ethical guidelines.

Although the Ethical Code of Civil Servants does not contain an enforcement mechanism, civil servants are held liable for their conduct under Part V of the Law on Civil Servants. Article 66
provides that the penalties for a disciplinary violation may include a public reprimand, a fine ranging from 10% to 30% of one month’s salary, or termination of employment. The civil servant may also be criminally liable (Art. 64).

The minister in charge of the civil servant’s agency resolves minor charges (Art. 69). Those charged with a minor violation are entitled to a written report of the allegations, with the opportunity to submit a response in writing.

Under Article 70, major disciplinary offenses are heard by a disciplinary commission, where the civil servant is able to hear and respond to the charges. The commission proposes a disciplinary measure for consideration by the minister in charge of the civil servant’s agency, who makes the final decision. The civil servant has the right to appeal the decision (Art. 73).

**Factor 10. Resources and Compensation**

*State employed enforcement agents have proper working conditions, adequate physical resources, and support staff. They are adequately remunerated.*

CEELI visited the office of the enforcement agents in Trial Court-Skopje 2, and observed the following situation. In the Trial Court-Skopje 2, there are 3 enforcement judges and 7 enforcement agents. The enforcement agents work in one big office divided in three parts, with a desk for each of them and 3 computers. The working conditions seemed decent to the CEELI staff attorneys. Enforcement agents, in some cases, are supported by the police, but mainly work in the field without such support. There are no interns in the Trial Court-Skopje 2 enforcement department, who could assist the staff in their work. Enforcement agents are not adequately remunerated. Their salary is less than 150 EUR.
INTRODUCTION

This report provides an analysis of the Romanian legislation on enforcement in light of the guiding principles of the Council of Europe Recommendation on Enforcement of September 9, 2003. While the provisions of the Recommendation are not legally binding for Romania, they may nevertheless serve as a useful “diagnostic tool” that may help relevant authorities identify the strengths and weaknesses of Romania’s current legislation on enforcement.

This report analyses various aspects of Romanian legislation on enforcement through the prism of ten criteria (hereinafter referred to as “factors”) that ABA/CEELI developed using the guiding principles of the CoE Recommendation on Enforcement.

This report is structured into two parts. Part I (factors 1 through 7) analyses the general enforcement framework and enforcement procedures existent in Romania, while Part II (factors 8 through 10) assesses the provisions relevant to the activity, the rights and duties of enforcement agents.

Overall, the Romanian legislative framework governing enforcement of judgments is well developed. The enforcement procedures are regulated by the Civil Procedure Code, which entered into force on July 26, 1993 (Articles 371/1-580/5), the Civil Code of July 26, 1993 (Articles 1722-1737), and Law #99 on Certain Measures for the Economic Reform Acceleration, which entered into force on May 27, 1999.

The rights and duties of court enforcement agents (hereinafter interchangeably referred to as “court bailiffs”) are governed by the provisions of the following laws and Ministry of Justice Orders: the Law on Bailiffs #188 of November 1, 2000, the Ministry of Justice Order #210 on Enforcement of the Law on Bailiffs of June 2, 2001, the Statute of the National Union of Bailiffs of June 12, 2001, the Ministry of Justice Order # 2628 on Approval of the Statute of the Bank Bailiffs’ Body of November 9, 1999, the Ministry of Justice Order #897 on Approval of Minimum Fees for Services Provided by Bailiffs of May 7, 2001, and the Ministry of Justice Order #1624 on Approval of the Maximum Fees for Services Provided by Court Bailiffs of June 12, 2003.

The activity of bank bailiffs, whose duty is to enforce the titles issued by the banks they are employed by, is governed by the Ministry of Justice Order # 2628 on Approval of the Statute of the Bank Bailiffs’ Body of November 8, 1999 and the provisions on enforcement contained in the Civil Procedure Code. Banks’ right to establish their own body of bailiffs is provided for in Article 88 of the Law on Banking #58 of March 23, 1998.
ISSUES OF CONCERN

While Romania’s enforcement legislation generally complies with most of the guiding principles of the Recommendation, two areas of the enforcement legislation may still need improvement in order to fully reflect the provisions of the Recommendation.

For instance, the Civil Procedure Code does not provide an exhaustive definition of an “enforceable title,” nor does it list all enforceable titles existent in Romania, as required by principle III(2(b)) of the CoE Recommendation on Enforcement.

The Civil Procedure Code also does not require debtors to provide information on their income and assets, as provided for by principle III 1(d) of the CoE Recommendation. On the other hand, however, making debtors solely and entirely responsible for providing information on their income and assets may lead to situations when debtors hide or dispose of their assets, or otherwise fail to render complete information on all their assets. A balanced legislative approach, one that will make debtors responsible for declaring their assets, while also allowing creditors to provide a list of debtors’ assets and request that they be frozen, may work best for Romania.

PART I. ENFORCEMENT FRAMEWORK AND PROCEDURES

Factor 1. Enforceable Titles

All enforceable titles are exhaustively defined and listed. The manner in which enforceable titles become effective is also clearly defined.

The Civil Procedure Code does not clearly define or list existent enforceable titles. Article 372 merely stipulates that: “enforcement shall be performed only based on a court decision or any other document which, according to the law, is an enforcement order.” The second part of the above-mentioned statement is ambiguous. While Article 377 lists the court decisions that are considered final and irrevocable and therefore enforceable, the Civil Procedure Code fails to make reference to particular laws or legislative acts that define and list other “enforcement orders” other than court decisions. In order to enhance transparency and legal certainty as suggested by the CoE Recommendation on Enforcement, the Romanian legislature may consider exhaustively defining and listing in existent enforceable titles in the Civil Procedure Code.

Factor 2. Enforcement Procedures

Enforcement procedures are clearly defined and easy to follow by the enforcement agents.

Generally, the Civil Procedure Code clearly defines and describes the enforcement procedures and the actions that court bailiffs are required to take during different stages of the enforcement process. Although from the provisions of the Code it appears that the enforcement procedures are easy to follow by the court bailiffs, information about their provisions’ implementation is needed for an accurate and final conclusion on this issue.

The Code contains provisions describing the enforcement procedures during different stages of the enforcement process.
The procedure by which a creditor may submit and obtain the approval of an enforcement application (Article 373/1), the conditions that must be fulfilled before an enforcement procedure shall commence (Articles 381, 384, 387(2)), the hours and days when an enforcement may be performed (Articles 385, 386), the place where court decisions and enforcement orders shall be enforced (Article 373), and the statute of limitations for requesting enforcement (Articles 405-405/3) are all described in the Civil Procedure Code.

The Code also describes the cases when a commenced enforcement shall cease, as well as the instances and the manner in which a ceased enforcement may resume. (Articles 371/5 and 371/6).

Enforcement of decisions guaranteed by bail and the modality of providing such a guarantee are stipulated in Articles 392-396.

The Civil Procedure Code thoroughly defines the procedure of enforcement of judgments on movables (Articles 406-461), including the manner in which seized goods may be kept in custody, the procedure of sale of goods, and attachment of goods. The procedure of enforcement on unharvested fruit and crops is described in Articles 463-470.

The Civil Procedure Code contains detailed provisions regarding enforcement on fixtures (Articles 488-523), including the manner in which fixtures can be sold.

The Code also covers the payment and division (distribution) of proceeds of sale among creditors (Articles 562-571) and the procedure for the mandatory handing over of movable and immovable goods and enforcement of other obligations regarding performance or non-performance (Articles 572-580/5).

**Service of Process**

Article 387 of the Civil Procedure Code states that enforcement may start only after a writ is sent to the debtor. Article 86(1) of the Code stipulates that communications of petitions and all procedural documents (including writs on enforcement) shall be done through bailiffs or through any other employees of the court in which jurisdiction the person to whom the documents are communicated resides. Paragraph 3 of Article 86 adds that in cases when communication of petitions and procedural acts is not possible, documents shall be sent by mail, through a registered letter with confirmation, or through other ways that assure the sending of the documents and a confirmation that they were received.

**Sale of Assets**

The Civil Procedure Code contains provisions aimed to ensure that debtor’s goods are sold during a reasonable period of time, thus avoiding any costly and unnecessary depreciation in the value of these goods.

Thus, sale of debtor’s goods may not be done in less than two weeks and more than two months from the date the seizure minutes were issued (Article 434). Also, if goods to be sold are perishable or alterable, a court bailiff may, even *sua sponte*, shorten the sale term (Article 436).
In order to promote a prompt sale of debtors’ assets, at least three days prior to the auction, a court bailiff shall prepare and post the sale ad at the place of auction and other appropriate locations and, whenever necessary, the auction shall be announced in a wide circulation newspaper (Article 437).

The provisions regulating the procedure of preparing and conducting public auctions of debtor’s goods are included in Articles 439 and 439/1, 441, 444, 445, and 448 of the Civil Procedure Code.

**Factor 3. Rights and Duties of Parties**

The powers, rights and duties of the defendants, claimants, and third parties are clearly and thoroughly defined.

The Civil Procedure Code contains detailed provisions regarding the powers, rights, and duties of the defendant, claimants, and third parties.

Articles 431, 435, 439(2), 445, and 448 set forth the rights and duties of the creditors and debtors in connection with the sale of movables subject to enforcement.

The rights and duties of debtors and creditors in connection with the sale of debtor’s immovable assets are provided for in Articles 499(1), 500, 501, 503, 506, 507, 508, 512, 523(1).

Article 506 defines the duties of persons interested in purchasing the real property at a public auction, while Article 522 sets forth the rights of bid winners.

The rights and responsibilities of the third parties such as the maintenance claimants, custodians and holders of attached goods are stipulated in Articles 421, 422, 454 (2), 456 and 459.

The right of parties and other interested persons to file appeals against enforcement is set forth in Articles 400-404, while Articles 404/1-404/3 set forth the right of interested parties to cancel enforcement.

**Duty to Cooperate**

According to Article 371/4 of the Civil Procedure Code, the debtor and the creditor may cooperate by agreeing that the enforcement be performed only as it applies to debtor’s incomes. The parties may also agree that the sale of goods subject to enforcement be done, partially or entirely, through mutual agreement.

Articles 373(2), 579 and 580/5 set forth the obligation of police or other public order agents to provide the court bailiff with support in performing enforcement, as well as the obligation of persons owing money to a debtor to provide information necessary for executing the enforcement order.

At the request of bank bailiffs, banks that employ them may ask enforcement authorities to obtain necessary enforcement information from persons who owe money to the debtor or possess debtor’s goods, including banks or other institutions where debtor’s accounts. The bank may also request that police or other agents of public order help bank bailiffs pursue enforcement (Article 4 of the MOJ Order on Approval of the Statute of the Bank Bailiffs’ Body).
Article 373/2(3) of the Civil Procedure Code stipulates the duty of court bailiffs, institutions, banks and any other persons to communicate in writing all information necessary for the execution of enforcement proceedings, even if special laws provide otherwise. The Civil Procedure Code, however, fails to expressly require that the information furnished by banks for enforcement purposes be subject to human rights and data protection standards, as suggested by the CoE Recommendation.

**Protection of Essential Assets**

In line with the provisions of the CoE Recommendation, Articles 406-409 of the Civil Procedure Code contain a detailed list of debtor’s assets and income that may not be subject to enforcement procedures. Article 406(a) stipulates that debtor’s “basic household goods” shall not be subject to enforcement, and provides a detailed definition of such “goods.”

Article 407(1) provides that goods serving a debtor in practicing his profession may be subject to enforcement only in the absence of other enforceable goods and only for satisfying dooms such as alimony, rent, lease, or other privileged debts on movables. According to Article 407(2), if a debtor works in agriculture, the agricultural inventory shall not be subject to enforcement, to the extent it is necessary for the continuation of agricultural work, except for the situations when a possessory lien or a preferential right for guaranteeing a debt exist on such goods.

Article 409 provides special arrangement for enforcement on debtor’s salaries, pensions granted as social insurance and other amounts and income paid to the debtor meant to provide his living.

**Duty to Provide Financial Data**

The Civil Procedure Code does not contain provisions requiring debtors to provide information on their income, assets and other relevant matters (e.g., the whereabouts of a child). Article 373/2(2,3) only stipulates the duty of persons owing money to a debtor or possessing any of his/her goods subject to enforcement, as well as the duty of institutions, banks and any other persons to provide information necessary for performing enforcement.

The currently existent practice in Romania is that, during the first hearing, the judge in Romania will consider arguments set forth by whoever is the party charged with the burden of proof. If the debtor, is made solely responsible for disclosing information on his income and assets, there is a risk that he will fail to declare all assets, will hide or dispose of them, etc. The Romanian legislators may want to consider imposing an obligation on debtors to declare their assets, while entitling creditors to provide a list of debtors’ assets and request that they be frozen.

**Protection of the Defendant During Search and Seizure of Assets**

Articles 411-420, 425 and 426 of the Civil Procedure Code contain provisions relevant to the search and seizure of defendants’ movable assets, while Articles 464-466 elaborate on the seizure of defendants’ unharvested fruits and crops.

While the above-mentioned articles do not contain explicit provisions requiring that the search and seizure of defendants’ assets be done taking into account relevant human rights and data protection provisions, in particular the right to respect for private and family life, they do contain requirements regarding participation of police officers, a mayor or two adult witnesses in certain
circumstances (enumerated in Articles 412 and 413). If the seizure of debtors’ goods is performed without respecting the requirements set forth in Article 412 of the Civil Procedure Code, the seizure will be nullified.

The bailiff is obliged to prepare seizure minutes (Article 416), which must be signed by the bailiff and by all persons who participated in the seizure (Article 417(1)). A copy of the minutes shall be handed to the debtor or left at his domicile (Article 417(2)).

**Priority of Multiple Claimants**

The Civil Procedure Code contains provisions clearly defining the claimants’ and third parties’ rankings and entitlements to monies recovered from the defendant.

The Code contains provisions setting forth the manner in which the bailiffs must divide the proceeds of sale among several creditors that initiated the enforcement, and the preference order of such distribution (Articles 563, 564). Article 567 sets forth the order in which conditioned debts or debts affected by a suspension term shall be paid.

In addition to the Civil Procedure Code, the Civil Code also contains detailed provisions regarding the preferences for payment of debts to creditors (Articles 1722-1737). The Law #99 on Certain Measures for the Economic Reform Acceleration of May 27, 1999 sets forth the priority order applicable to corporeal securities on movables meant to ensure the fulfillment of a civil or commercial obligation (Article 94 of the Law on Certain Measures for the Economic Reform Acceleration).

The Civil Procedure Code guarantees the rights of claimants’ dependents, by providing that up to \( \frac{1}{2} \) of the debtor’s monthly net income shall be seized for amounts owed as alimony or children’s allowance (Article 409(1(a)).

**Powers, Rights, and Responsibilities of Third Parties**

The Civil Procedure Code contains provisions that refer to the rights and responsibilities of third parties such as maintenance claimants and defendants of an attached debt (Articles 421, 422, 454 (2), 456 and 459).

**Suspension of Enforcement**

The Civil Procedure Code contains provisions allowing interested parties or parties damaged by enforcement to appeal any enforcement, as a result of which the court may suspend the enforcement. The instances and procedures for suspension of enforcement are provided for in Article 403. Article 499 also describes a situation when the court may suspend enforcement on debtor’s real property.

**Proportionality**

Article 371/3 of the Civil Procedure Code stipulates that a debtor's incomes and goods may be subject to enforcement only to the extent necessary to fulfill creditors’ rights. This provision reflects the requirement of the CoE Recommendation that a proper balance is struck between claimants’ and defendants’ interests.
Factor 4. Prevention of Procedural Misuses and Abuses

Mechanisms exist for deterring and preventing procedural misuses and abuses of the enforcement procedures by the parties, judges, and enforcement agents.

The Civil Procedure Code contains provisions aimed at preventing procedural misuses and abuses by parties, court bailiffs, and judges.

According to Article 399(2) of the Civil Procedure Code, violation of enforcement provisions or of the performance of any enforcement action prompts the sanction of cancellation of the illegal document.

Fines and Sanctions

Several articles of the Civil Procedure Code (Articles 418, 580/3(1), 572, 578 and 579) set forth civil and criminal sanctions that may be imposed on the debtor if he does not fulfill the duties prescribed by the enforcement procedures.

According to Article 580/3(2), in order to recover the damages caused by debtor’s failure to fulfill his obligations, the creditor may sue the debtor for damages and/or fulfill debtor’s obligations himself, at the debtor’s expense (Article 580/2).

Articles 422, 460(1), 491(1) 502(1,2), and 578 stipulate the civil and criminal sanctions that may be imposed on custodians, trustees and third party holders of goods for damages and actions that violate the enforcement procedures.

Articles 512 and 513(1,2) stipulate sanctions for bid winners who do not submit prompt payment for the items won in the auction of debtor’s onsets.

Prevention of Procedural Abuses and Misuses by Court Bailiffs

Approved persons may contact the enforcement court regarding measures taken by a court bailiff (Article 503(1,2)). Court bailiffs can be held civilly liable for causing damages or for infringement of professional duties (Article 42 of the Law on Bailiffs). Disciplinary actions against bailiffs are initiated either by the Minister of Justice or by the board of the Bailiffs’ Chamber (Article 45 of the Law on Bailiffs).

Prevention of Procedural Abuses and Misuses by Bank Bailiffs

Interested parties or persons damaged by the actions of a bank bailiff may submit complaints on enforcement according to the relevant provisions of the Civil Procedure Code (Article 22 of the MOJ Order on Approval of the Statute of the Bank Bailiffs’ Body). A bank bailiff may bear civil liability, for violation of his professional duties (Article 14 of the MOJ Order on Approval of the Statute of the Bank Bailiffs’ Body). Article 16 of the respective MOJ Order provides that bank bailiffs are subject to disciplinary liability according to the by-law on the organization and functioning of the bank that employs them, and other relevant regulations. The same article enumerates the instances in which a bank bailiff is subject to disciplinary liability.
Prevention of Procedural Abuses and Misuses by Judges

Although the Civil Procedure Code does not contain explicit provisions regarding the prevention of procedural abuses and misuses by judges, Articles 373/3(1), 399, and 400-404/3 provide for the right of interested parties to appeal court decisions relevant to enforcement, and this may help prevent abuses and misuses committed by judges.

Factor 5. Judicial Review

Parties have the right of review for both judicial and non-judicial decisions made during the enforcement process.

According to the Civil Procedure Code, judicial and non-judicial decisions made during the enforcement process may be reviewed at the request of the parties. Any enforcement can be appealed by the interested parties or by those damaged by the enforcement (Articles 399-404, 570).

The subject-matter of appeals against enforcement can be diverse, ranging from separation of joint goods (Article 400/1), claims related to a third party’s property right (Article 401(2)), to reinstatement of the situation existent previous to enforcement (Article 404/2(3)).

Factor 6. Enforcement Fees

Enforcement fees are reasonable, fixed, prescribed by law, and are made known in advance to the parties.

The Romanian legislation prescribes reasonable fees, which are made known in advance to the public. There are two Ministry of Justice Orders governing the minimum and the maximum fees that bailiffs may charge for the services they provide. The minimum fees for court bailiffs’ services are set forth in the Minister of Justice Order #897 on Approval of Minimum Fees for Services Provided by Bailiffs of May 7, 2001. Some of these minimum fees are established as flat rates (e.g., the fee for notification and communication of procedure documents, the fee for eviction, etc.), while others are established as a combination of a flat rate and, in some cases, a percentage rate of the value of the claim (e.g., the fee for garnishment), or solely as a percentage rate of the value of the claim (e.g., the fee for seizures).

The maximum fees for services offered by court bailiffs are established in the Ministry of Justice Order #1624 on Approval of Maximum Fees for Services Provided by Court Bailiffs of June 12, 2003. Like the minimum fees, the maximum fees are established as flat rates or as percentage rates of the value of the claim.

However, Article 371/7(3) of the Civil Procedure Code stipulates that the fees to be paid shall be set by the bailiff, through a finding based on evidence produced by the interested party above.

Also, when the bailiff appoints a trustee in an enforcement procedure who is a person other than the debtor, the bailiff shall set a fee, by taking into account the requisite workload; he shall also establish the method of payment (Article 501(4)).

When a court consolidates several enforcements to be performed on the same goods, the court shall also deliver a conclusion on enforcement fees (Article 373/4(2)).

4 The fees for bailiffs’ services may be considered “reasonable” in light of the average salary in Romania, which is between 2,000,000-2,500,000 Romanian Lei per month.
The Romanian legislation does not contain explicit provisions regarding the minimum and maximum enforcement fees that bank bailiffs have the right to charge for their services.

The Civil Procedure Code stipulates that the party requesting issuance of a document or any other activity affecting enforcement must pay in advance all necessary costs. The creditor shall pay the costs for documents and actions ordered by the court, including the costs for ads published in connection with the public auction for sale of debtor’s movable goods (Article 439(2)). The costs of enforcement shall be borne by the debtor subject to enforcement, except when a creditor waived enforcement or when otherwise provided by the law (Article 371/7(1,2)).

PART II. ENFORCEMENT AGENTS

Factor 7. Rights and Duties of Enforcement Agents

The status, role, rights and responsibilities of the enforcement agents are clearly defined and described, including their powers and responsibilities in relation to those of the judge.

Due to the fact that there are two categories of bailiffs in Romania: court bailiffs and bank bailiffs, this part of the report will reference the legal provisions applicable to the rights and duties of each category of bailiffs as appropriate.

The status, role, rights, and duties of court bailiffs are defined and described in the Civil Procedure Code, the Law on Bailiffs #188 of November 1, 2000, and the Ministry of Justice Order #210 of February 5, 2001 on Enforcement of the Law #188/2000 on Bailiffs. In addition, the Statute on the National Union of Bailiffs #311 of June 12, 2001 exhaustively defines and describes the activity of the National Union of Bailiffs, which is a professional organization consisting of all the court bailiffs of Romania appointed by the Ministry of Justice according to the law.

The activity of bank bailiffs is governed by the provisions of the Ministry of Justice Order #2628 on Approval of the Statute of the Bank Bailiffs’ Body of November 8, 1999.

Status and Role of Court Enforcement Agents

The status of court bailiffs as personnel “performing a public interest service” is mentioned in both Article 2(1) of the Law on Bailiffs, and Article 1 of the MOJ Order on Enforcement of the Law on Bailiffs.

The role of court bailiffs in the enforcement procedure can be distilled from the provisions of several articles of the Law on Bailiffs and the MOJ Order on Enforcement of the Law on Bailiffs.

According to Article 1 of the Law and Article 1 of the MOJ Order, court bailiffs are authorized to enforce civil decisions contained in the writs of execution.

Article 7 of the Law contains a detailed list of the court bailiffs’ competencies in an enforcement procedure, such as giving notice of judicial and extra-judicial decisions, servicing procedure documents, preparing various documents required by the law, etc.
**The Rights and Duties of Courts Bailiffs**

Article 35 of the Law on Bailiffs and Article 52 of the MOJ Order on Enforcement of the Law on Bailiffs ensure that court bailiffs perform their duties personally and benefit from tenure and stability in their position, without being transferred from one location to another without their consent. Articles 37 and 55 of the MOJ Order stipulate the court bailiffs’ right to fees for the provided services, while Articles 38 and 53 of the same document state a court bailiffs’ right to vacation. Articles 39 and 53 of the MOJ Order provide that court bailiffs benefit from rights to social insurance, based on their contribution to the social insurance systems.

Articles 49-62 of the Law on Bailiffs contain provisions relevant to various aspects of court bailiffs’ activity (e.g., the moment in time when a court bailiff’s activity may start, and the manner in which the bailiff should prepare the enforcement documents, correct material errors in them, and issue copies to interested parties).

The Code of Civil Procedure also contains various provisions regarding the court bailiffs’ rights and duties during the various stages of the enforcement process. The court bailiffs’ rights and duties during seizure of debtor’s movables subject to enforcement are described for in Articles 411, 416, 419, 421, 425, and 426.

Court bailiffs’ rights and duties with respect to the sale of debtors’ movable and immovable goods in a public auction are set forth in Articles 431, 433, 436, 437, 440, 442, 444, 447, 496, 508-511, 513, 516, 569, and 570 of the Civil Procedure Code.

Articles 453, 458 and 461 of the Code identify the court bailiffs’ duties during the process of attachment of goods, as well as the distribution and capitalization of such goods.

Articles 576, 577 and 580/1 indicate court bailiffs’ duties with respect to the enforcement of debtors’ obligations to hand over movable and immovable goods to the creditor.

**The Status and Role of Bank Bailiffs**

Article 2 of the MOJ Order on Approval of the Statute of the Bank Bailiff’s Body provides that bank bailiffs are authorized to perform any legal activity necessary for the voluntary or, forced execution of obligations set forth in enforcement titles belonging to banks. The same article provides that any document prepared by a bank bailiff bearing his seal and signature has public authority and probative force according to the law.

The rights and duties of bank bailiffs are governed by their employment contracts with the bank, applicable agreements and legal regulations, and the internal by-laws of the banks (Article 12 of the MOJ Order on Approval of the Statute of the Bank Bailiffs’ Body). Bank bailiffs enforce the titles issued by the banks they work for and perform all necessary enforcement acts in all forced types of execution provided for by the Civil Procedure Code and other relevant legal provisions (Article 2 of the MOJ Order on Approval of the Statute of the Bank Bailiffs’ Body). Article 10 of the respective MOJ Order contains specific provisions regarding the professional duties of bank bailiffs. In the course of their activity, bank bailiffs are obliged to perform the necessary enforcement duties and acts in strict compliance with the provisions of the Civil Procedure Code and other relevant
regulations on enforcement (Article 2 of the MOJ Order). Bank bailiffs perform their duties on the basis of the written order of the Chief of the Bank Bailiff’s Body and the preliminary mandatory approval of the legal department (Article 19 of the MOJ Order).

**Autonomy**

Documents prepared by court bailiffs within the limits of their legal competencies, bearing court bailiffs’ signature and seal, as well as the registration number and date, are considered official public documents and have the authority of law (Article 2(2) of the Law and Article 2 of the MOJ Order). Court bailiffs may not refuse to issue a document within their competency, except for situations and conditions provided by the law (Article 6 of the Law).

Documents prepared by bank bailiffs bearing their seal and signature has public authority and probative force according to the law (Article 2 of the MOJ Order on Bank Bailiffs).

**Clear Limitations on Powers**

Although the provisions of the Civil Procedure Code, the Law on Bailiffs and the MOJ Order on Approval of the Statute of the Bank Bailiffs’ Body do not clearly and expressly delineate the powers and responsibilities of court and bank bailiffs and those of judges during the enforcement process, one can easily deduce the difference between the enforcement rights and duties of judges and bailiffs from the overall legislative framework on enforcement.

**Factor 8. Qualification and Training**

In recruiting enforcement agents, consideration is given to the moral standards of candidates (e.g. no criminal record), their legal knowledge, and their training in relevant law and procedure. Candidates are required to take examinations that assess their theoretical and practical knowledge. Once recruited, enforcement agents undergo initial and continuous training according to clearly defined and well-structured aims and objectives.

The Law on Bailiffs and the MOJ Order on Enforcement of the Law on Bailiffs both contain detailed and clear provisions regarding the qualifications and training of court bailiffs. A bank bailiff must meet the general conditions provided by relevant regulations (Article 8 of the MOJ Order on Approval of the Statute of the Bank Bailiffs’ Body).

**Bailiffs’ Qualifications**

Article 15 of the Law on Bailiffs, and the provisions of the MOJ Order on Enforcement of the Law on Bailiffs set forth rigorous eligibility requirements for one’s entry into the profession of bailiff, including: 1) a bachelor degree in law; 2) no criminal record and a good reputation; and 3) passage of an entry examination, a two-year internship with a practicing bailiffs’ office and passage of a qualification examination.

The first step in one’s entry into the profession of bailiff is the passage of a professional entry examination (Article 14 of the MOJ Order on Enforcement of the Law on Bailiffs). During the professional entry examination, the theoretical knowledge of aspiring bailiffs is tested the following orders of the law: civil law, civil procedure, commercial law, private international law, and organization of the bailiffs’ profession (Article 22 of the MOJ Order on Enforcement of the Law on Bailiffs).
Following the professional entry examination, the persons who passed it are assigned to a practicing bailiff’s office for a two-year internship (Article 36 of the MOJ Order on Enforcement of the Law on Bailiffs).

After an intern bailiff has completed the two-year internship, he is required to sit for a qualification examination, the passage of which will allow him become a practicing bailiff.

The qualification examination consists of two parts: a theoretical and a practical one. The theoretical part tests the knowledge of civil law, civil procedure law, commercial law, private international law, and the organization of the bailiffs’ profession. The practical part assesses one’s ability to prepare a procedural document (Article 39 of the MOJ Order on Enforcement of the Law on Bailiffs).

Within a maximum of five days from the validation of results of the qualification examination, the Council of the National Union of Bailiffs shall submit its proposals for appointment of bailiffs to the Minister of Justice (Article 44 of the MOJ Order on Enforcement of the Law on Bailiffs).

Bailiffs’ Training

Article 15 of the MOJ Order on Enforcement of the Law on Bailiffs contains provisions requiring intern bailiffs to attend internship conferences conducted by the Chamber of Bailiffs, according to a curriculum developed by the Council of the National Union of Bailiffs. The conference curriculum includes study of the current legislation, case studies, presentations on problems experienced by bailiffs in their activity, and study of the legal doctrine (Article 15(3)).

Neither the Law on Bailiffs, nor the MOJ Order on Enforcement of the Law on Bailiffs require that practicing bailiffs undergo professional training. However, according to Article 6 of the Statute on the National Union of Bailiffs, an objective of the National Union of Bailiffs is to contribute to the improvement of bailiffs’ professional qualifications by: informing bailiffs about court enforcement practice and doctrine; introducing and teaching new techniques of conducting bailiffs’ activity; organizing sessions, seminars, symposiums and other training and conference sessions, with the participation of experts and professionals from Romania and abroad; publishing specialized publications; and standardizing the enforcement practice.

Thus, although the Law and the MOJ Order do not set forth direct requirements regarding bailiffs’ duties to undergo continuous professional training, one may infer from the above-mentioned provisions of the Statute on the National Union of Bailiffs that training targeted towards increasing the practicing bailiffs’ qualifications is conducted. Practical information about this is needed, however, for an accurate assessment of this matter.

Factor 9. Ethics and Discipline

Enforcement agents shall always act according to recognized professional and ethical standards, shall be unbiased in their dealings with the parties, and shall be subject to professional scrutiny and monitoring, which may include judicial control. Enforcement agents alleged to have abused their position are subject to disciplinary, civil, and/or criminal proceedings, providing, in case of abuses, appropriate sanctions.

Provisions regarding court bailiffs’ ethics and discipline are included in the Law on Bailiffs, in the MOJ Order on Enforcement of the Law on Bailiffs, in the Statute of the National Union of
Bailiffs, as well as the Civil Procedure Code. The ethical guidelines for bank enforcement agents are provided for in the MOJ Order on Approval of the Statute of the Bank Bailiffs’ Body.

A court bailiff should perform his duties in compliance with the law, respecting the parties’ and other interested persons’ rights and interests, regardless of their race, nationality, ethnic and social origin, language, religion, sex, political affiliation, and wealth (Article 5 of the Law on Bailiffs). There are no similar provisions regarding bank bailiffs.

**Court and Bank Bailiffs Act According to Recognized Professional and Ethical Standards**

Court bailiffs and their office personnel must always maintain the confidentiality of documents and information they learned during their professional activity (Article 41 of the Law on Bailiffs) and should not give access to documents contained in their archives to persons other than parties, their parents, heirs and legal representatives, and those who can prove a right or a legitimate interest in accessing the documents (Article 56(1) of the MOJ Order on Enforcement of the Law on Bailiffs).

Court bailiffs are prohibited from advertising their services in any way, except to provide information regarding the existence of a court bailiffs’ office, its address, the working hours and the type of activity it conducts (Article 57(1) of the MOJ Order on Enforcement of the Law on Bailiffs).

Court bailiffs are not allowed to acquire, either directly or through intermediaries, for themselves or for other persons, assets that are subject to forced enforcement (Article 43 of the Law on Bailiffs; Article 58 of the MOJ Order on Enforcement of the Law on Bailiffs).

Bank bailiffs are obliged to keep professional secrets, regarding the acts, dates and information they learned during their job activity (Article 3 of the MOJ Order on Approval of the Statute of the Bank Bailiffs’ Body). Bank bailiffs are strictly prohibited from performing enforcement acts based on enforceable titles belonging to natural persons or legal entities, other than those belonging to the bank by which they are employed (Article 10 of the MOJ Order on Approval of the Statute of the Bank Bailiffs’ Body). Article 13 of the respective MOJ Order sets forth the activities that are incompatible with the activity of a bank bailiff. Bank bailiffs must not acquire, directly or through intermediaries, on their own or somebody else’s behalf, goods that were the object of forced execution or to perform enforcement acts in their own case or the case of their relatives (Article 15 of the MOJ Order on Approval of the Statute of the Bank Bailiffs’ Body).

**Bailiffs are Subject to Professional Scrutiny and Monitoring, which May Include Judicial Control**

**Court Bailiffs:**

Documents issued by court bailiffs are subject to the competent courts’ control, according to the law (Article 57 of the Law on Bailiffs).

During a bailiff’s internship period, every month the Chamber of Bailiffs shall verify the intern bailiff’s status of professional education and training, as well as the manner in which he fulfilled the duties delegated to him by the coordinating bailiff (Article 15 of the MOJ Order on Enforcement of the Law on Bailiffs).
Bank Bailiffs:

Professional supervision of bank bailiffs’ activity and assessment of the legality of their acts is provided by the legal department of the bank that employs them (Article 6 of the MOJ Order on Approval of the Statute of the Bank Bailiffs’ Body). Bank bailiffs’ acts are subject to judicial control in accordance with the law (Article 22 of the MOJ Order on Approval of the Statute of the Bank Bailiffs’ Body).

Bailiffs Alleged to Have Abused their Position are Subject to Disciplinary, Civil and/or Criminal Proceedings, Providing, in Case of Abuses, Appropriate Sanctions

Court Bailiffs:

Court bailiffs can be held civilly liable for causing damages or for infringing their professional duties (Article 42 of the Law on Bailiffs). Article 44 of the Law on Bailiffs provides a detailed list of infringements for which court bailiffs can be held liable.

Disciplinary actions are initiated either by the Minister of Justice or by the board of the Bailiffs’ Chamber (Article 45 of the Law).

Article 46 of the Law on Bailiffs contains a list of disciplinary sanctions that may be applied to a court bailiff.

Bank Bailiffs:

Bank bailiffs bear civil liability for damages caused through violation of their professional obligations (Article 14 of the MOJ Order on Approval of the Statute of the Bank Bailiffs’ Body). Disciplinary liability of a bank bailiff is established according to the by-law of the bank and other relevant regulations (Article 16 of the respective MOJ Order). The same article lists the types of violations for which bank bailiffs bear disciplinary liability.

Factor 10. Resources and Compensation

State employed enforcement agents have proper working conditions, adequate physical resources, and support staff. They are adequately remunerated.

Court Bailiffs:

Court bailiffs shall perform their activity in offices, individually or in association, based on a partnership contract. Court bailiffs shall have appropriate supporting staff (Article 12(1) of the Law on Bailiffs; Article 4(1)) of the MOJ Order on Enforcement of the Law on Bailiffs).

Court bailiffs may hire intern bailiffs and other specialized staff, as well as appropriate supporting staff, necessary for the activity of their office (Article 12(3) of the Law on Bailiffs, and Article 82 of MOJ Order on Enforcement of the Law on Bailiffs).

Court bailiffs are entitled to receive fees for the services they provide (Article 37 of the Law, Article 55(1)). The Council of the National Union of Bailiffs shall propose the minimum fees for services provided by bailiffs to the Minister of Justice for later approval (Article 55 of the MOJ Order on Enforcement of the Law on Bailiffs). Court bailiffs’ minimum fees shall be updated under
the same rules indicated in the Law applicable to the setting of fees (Article 55(4) of the MOJ Order on Enforcement of the Law on Bailiffs.)

Court bailiff offices have their own archive and registry office. The secretary office shall receive, register and file documents, keep the registries and perform any other auxiliary activities necessary for the carrying out of the bailiffs’ activities (Article 60(1, 2)).

Expenses allotted to investments, equipment and other utilities necessary in the activity of a bailiffs’ office shall be deducted from the bailiffs’ taxable incomes for a three-year period from the date when the activity actually started (Article 64 of the Law).

Article 7(2) of the MOJ Order on Enforcement of the Law on Bailiffs requires that, before registering an office, a court bailiff shall present a confirmation from the board of the Chamber of Bailiffs that the office has an appropriate space for performing the activity and for keeping the archives in good condition. Article 80 of the MOJ Order on Enforcement of the Law on Bailiffs reiterates that a bailiffs’ office shall have appropriate working space.

Bank Bailiffs:

The MOJ Order on Approval of the Statute of the Bank Bailiffs’ Body does not contain any provisions on the working conditions, resources and remuneration for bank bailiffs.
INTRODUCTION

This report analyzes the legislative framework for the enforcement of judgments in Serbia and Montenegro. CEELI’s analysis is conducted in the context of the Council of Europe’s draft Recommendation on Enforcement. Part I of the report consists of six factors that address general enforcement procedures, while Part II consists of four factors assessing the quality of enforcement agents in Serbia and Montenegro. It is important to note that this report is strictly a textual analysis of Serbia and Montenegro’s legislative framework. Therefore, the actual effectiveness of the enforcement process is beyond the scope of this analysis.

The primary legislation governing the enforcement of judgments in Serbia and Montenegro is the Law on Executive Procedure. Adopted in 2000 by the Federal Republic of Yugoslavia, the law replaced the 1978 Law on Enforcement Procedure. Several other laws were also useful in compiling this report, including the Law on Civil Procedure, for service of process procedures, and the Law on Late Payment Interest Rates, as indicators of sanctions reliable to the court. Because Serbia and Montenegro does not have a law on enforcement agents, CEELI consulted the Court Rules of Procedure and the Law on Labor Relations in State Agencies for pertinent information.

ISSUES OF CONCERN

While the enforcement procedures are generally adequate, there are specific areas that could be improved. With some issues, the Law is vague or incomplete. For example, both the list of enforceable titles and the powers and rights of third parties are poorly defined. Additionally, the Law could strengthen provisions that would provide for greater proportionality between claimant and defendant. For instance, only the claimant may request a postponement or suspension of proceedings, and there are limited provisions to prevent a claimant from seizing assets in excess of what is owed. Finally, another deficiency in the general enforcement procedures is the limited ability to obtain judicial review of an enforcement decision.

The legislative framework for Serbia and Montenegro does not adequately address the powers, duties, or organization of enforcement agents. As civil servants, most provisions governing enforcement agents are found in the Law on Labor Relations in State Agencies. Unfortunately, the law’s provisions regarding hiring qualifications, training, and ethical standards are simply insufficient for the development of a professional body of enforcement agents.
PART I. ENFORCEMENT PROCEDURE

Factor 1. Enforceable Titles

All enforceable titles are exhaustively defined and listed. The manner in which enforceable titles become effective is also clearly defined.

Neither the Law on Executive Procedure nor any other law or regulation provides an exhaustive list of enforceable titles. Instead, Article 16 of the Law on Executive Procedure provides a general definition, which includes:

- enforceable court decision and enforceable court settlement;
- enforceable decision made in an administrative proceeding, settlement in an administrative proceeding, and enforceable decision made in petty-offence proceeding, if such decision mandates the fulfillment of a monetary obligation;
- another decision or settlement prescribed by law as an enforceable document.

Articles 17 through 19 discuss the above points in more detail, and provide generally clear definitions for the reader. However, these provisions could be much more specific as to the exact enforceable titles covered by this law.

Article 22 also allows an execution for a monetary claim on the basis of “an authentic document.” The article then defines an authentic document as being:

[a]n invoice, bill of exchange or cheque with protest and reverse account as well as utility bills or excerpts from the business books, a document drafted in the lawful form, lawfully certified private document and a document deemed to be a public document according to relevant regulation. Calculation of interest shall also be deemed to be an invoice.

While not explicitly deemed an enforceable title, the authentic document expands the instruments upon which an execution can be based. Executions based upon authentic documents are handled differently, however, as they are handled by regular courts under the civil procedure code if the debtor files an objection to the authentic document.

Factor 2. Enforcement Procedures

Enforcement procedures are clearly defined and easy to follow by the enforcement agents.

Service of Process

Various provisions in both the Law on Executive Procedure and the Law on Civil Procedure govern service of process. According to Article 7 of the Law on Executive Procedure, only orders for execution and orders upon objection to an execution order are delivered under the service of process rules described in the Law on Civil Procedure. The applicable civil procedure rules are found in Chapter 11, which lays forth relatively clear and straightforward procedures for service of process, including both postal delivery and personal service.
Service of process that does not fall within the definition of Article 7 is conducted through the
court’s notice board. Accordingly, Article 7 seems designed to emphasize speed and efficiency over
the provision of actual notice to the defendant. The article would be improved if service of all
execution documents was accomplished through either postal delivery or personal service.

Finally, Article 40 of the Law of Executive Procedure specifies which parties and third parties
receive service of process, based upon the particular document being served.

**Sale of Assets**

Finding a balance between the prompt sale of assets while still seeking to obtain the highest
market value can be difficult. In their procedures for the sale of assets, Serbia and Montenegro seem
to emphasize maximizing a high return. While Article 4 states that “in the procedure of execution
and security the court is obliged to act urgently,” the sale is not required to take place within a
certain timeframe. Instead, Article 77 provides that the sale of moveable assets take place at least 15
days after inventory. The article does, however, allow for the sale of assets prior to the deadline if
the goods are perishable or would otherwise depreciate.

Additional provisions emphasize the importance of a high return for the sale of assets. For
example, for the sale of movable assets, Article 78 allows the court to choose the manner of sale it
deems most favorable. Additionally, Article 79 provides that assets cannot be sold below their
assessed value at the first auction. If the assessed value is not met, the parties may move for a second
auction, where the assets cannot be sold for less than one-third of their assessed value. If this lower
threshold is not met, a third auction will only be scheduled if claimant files a motion for another
sale. At this third auction, the law does not specify the minimum value for which the assets may be
sold. If the claimant fails to file a motion for a third auction within 90 days of the previous auction,
the proceedings will be dismissed.

Similarly, real property may not be sold at the first auction for less than the assessed value
(Article 154). If this value is not met, a second auction may be held at least 30 days later, at which
the property cannot be sold for less that two-thirds of the assessed value. However, the parties may
agree in advance to permit sales for less than the minimum value prescribed by law.

**Factor 3. Rights and Duties of Parties**

The powers, rights and duties of the defendant, claimants, and third parties are clearly and thoroughly defined.

**Duty to Cooperate**

The Law on Executive Procedure outlines the parties’ duty to cooperate with several provisions.
The principal provision is Article 102, requiring the defendant to provide the court and the claimant
with such documents and other information as are necessary for execution. The interests of the
defendant are protected, however, as the claimant can be required to give security for the documents
until safely returned to the defendant.

Chapter XIV, regarding “The Duty to Perform, to Bear, or to Refrain from Action,” is also
applicable. For example, Article 204 empowers the court to require the defendant to perform actions
necessary for execution. Similarly, Articles 205 and 206 empower the court to respond to actions by
the defendant that are contrary to the defendant’s obligations.
Protection of Defendant’s Essential Assets

The protection of certain essential assets and income of the defendant is accomplished by provisions such as Article 65, which exempts assets such as clothing, household goods, and a minimum amount cash.

Article 86 exempts certain sources of income, including child support, social security allowance, disability insurance, and unemployment payments. Similarly, Article 87 limits execution against certain sources of income. For example, execution against a salary or pension can be enforced only up to one-half of the salary or pension.

Interestingly, execution against real property is only limited in the case of agricultural land belonging to a farmer, up to 10 acres (Article 143). Execution against the defendant’s residence does not appear to be limited in any way.

Duty to Provide Financial Data

The Law on Executive Procedure contains effective provisions requiring the defendant to supply the court with financial information. As discussed above, Article 102 requires the defendant to “give explanations required by the judgment creditor in order to realize that claim and to hand over documents relevant to such claim.” If the defendant does not cooperate, the court is empowered to take steps to enforce the order.

Protection of the Defendant During Search and Seizure of Assets

Enforcement procedures during the search and seizure of the defendant’s assets seem designed to be as less intrusive as possible. For example, Article 44 provides that inventory may only take place during daylight on a workday. However, the court retains the authority to authorize execution on a weekend or at night if there is a “risk of delay.”

Article 45 states that the enforcement agent “shall act with all due respect to the judgment debtor and members of his household.” Additionally, if the defendant is not present or refuses to unlock an area to be searched, the enforcement agents may only conduct their search in the presence of two adult witnesses.

Additional protections could be considered in light of relevant Council of Europe human rights and data protection provisions. In particular, while fast and efficient access to relevant information in bank accounts and other sources is essential, measures should be included to ensure that the defendant’s fundamental privacy rights are protected.

Priority of Multiple Claimants

Enforcement procedures clearly define the priorities of multiple claimants. Article 11 establishes the basic principle that multiple claimants are satisfied in the order of their execution rights. More detail is provided in subsequent articles, such as Article 83, which establishes a simple chronological priority for multiple claimants in cases of execution against movable assets. Such claimants are settled in the order in which they obtained their lien. If there are insufficient assets for full satisfaction of claimants with the same priority, they receive proportional compensation based on
the value of their claim. Article 83 is careful to note that the costs of the enforcement proceedings have the priority as the main claim.

In resolving multiple claimants for execution of a monetary claim, Article 94 establishes a different order of priority. In such cases, claimants are satisfied in chronological order determined by receipt of the motion of execution (Article 94). As with execution against movable assets, if there are multiple claimants with the same order of priority and they cannot be fully satisfied, they receive a pro rata share of their claims.

Finally, Article 163 establishes the order of priority for multiple claimants in an execution against real property. In such cases, the law goes into much greater detail, first providing for the settlement of enforcement costs and then taxes owed on the property. The next order of priority includes the following:

- Claims regarding statutory support, claims regarding reimbursement of damages incurred due to deterioration of health or reduction or loss of ability to work, claims for reimbursement of damages for loss of family support because of the supporter’s death, claims of the employees against entrepreneurs, or other individuals performing commercial activity, and claims for past year’s pension contribution, regardless of security by a lien on the sold real property.

Once any claims arising under Article 163 have been settled, the following may also be satisfied: “[c]laims secured by a lien, claims of judgment creditor on whose motion the execution was ordered and the settlement of personal easements and real encumbrances that cease to exist with the sale.” Such claims are resolved in chronological order based on when their lien was obtained. Article 166 provides that, claims of the same order of priority receive pro rata compensation if there are insufficient funds to fully satisfy all claimants.

**Powers, Rights, and Responsibilities of Third Parties**

The rights of third parties are not adequately provided for in the Law on Executive Procedure. For example, third parties can neither object to the execution of an enforcement order nor petition for a postponement. Particularly in cases such as co-ownership, third parties should have mechanisms for ensuring that execution does not significantly infringe upon their rights.

The law provides only limited protections for children. The exemption of child support from enforcement is one example (Art. 65). Additionally, Article 209 provides that, for enforcement procedures regarding the custody of a child, “[t]he court shall particularly take consideration of the need to provide protection of the child’s interests.”

**Suspension of Enforcement**

Chapter IV of the Law on Executive Procedure provides extremely limited procedures for requesting a postponement of enforcement proceedings. Neither the defendant nor a third party may request postponement; only the claimant has this right (Art 59). The defendant’s only power is to refuse a postponement requested by the claimant.
Proportionality

Overall, the Law on Executive Procedure is relatively balanced, although the process does appear to somewhat favor the claimant. As discussed above, the defendant is obligated to cooperate with the claimant, but there is no reciprocal obligation. The defendant also has no right to request a suspension of enforcement. While Article 51 allows the defendant to object, he may do so only for very specific reasons that are largely procedural, such as the court not having jurisdiction or the execution being based on a document that is not enforceable. This may make the enforcement process more efficient, but it does not provide strong protections for the defendant’s rights.

Additionally, there is limited proportionality in the seizure of assets. Other than Articles 100 and 110, no other provisions prohibit the claimant from seizing excessive amount of assets to satisfy the amount adjudged.

Factor 4. Prevention of Procedural Misuses and Abuses

Mechanisms exist for deterring and preventing procedural misuses and abuses of the enforcement procedures by the parties, judges, and enforcement agents.

Mechanisms for Preventing Delay or Other Abuse by Parties

The Law on Executive Procedure attempts to combat procedural abuses and misuses by giving the court various powers to encourage compliance by the parties. As discussed, Article 102 provides that the defendant must provide the claimant with information necessary to realize the claim. If the defendant fails to comply, the court has the power “enforce the execution against the judgment debtor to hand over documents.”

Article 47 allows the enforcement agent to request the assistance of police in cases where the enforcement of execution is being obstructed.

If there are specific actions necessary for enforcement that can only be performed by the defendant, the court can fine the defendant if he does not comply within a certain time period. Under Article 204, the court can fine individuals up to 5,000 dinars, while legal entities can be fined up to 20,000 dinars. For continued violations, the court may issue additional fines totaling up to ten times the initial amount of the enforcement judgment. Alternatively, where fines are unsuccessful, the court may substitute one day of imprisonment for every 100 dinars of fines, not to exceed 60 days of imprisonment.

The court has the power to issue fines in other circumstances, such as in cases of repeated trespassing (Article 207), refusal to relinquish custody of a child (Article 209), and against an employer that refuses to allow an employee to return to work (Article 213). Additionally, the court can impose late payment fees as calculated under the Law on Late Payment Interest Rate.

Perhaps the two most significant powers at the court’s disposal are preliminary measures (Chap. XXV) and injunctions (Chap. XXVI). Article 239 empowers the court to authorize preliminary measure in cases where the absence of such a security would make the satisfaction of the claim “impossible or considerably more difficult.” The preliminary measures that may be authorized by a court are listed in Article 242 and include:
• inventory of movable assets;

• prohibition to the debtor’s debtor to pay the debtor’s claim or to hand over items, as well as prohibition to the debtor to accept payment, receive items and use them;

• prohibition to a bank to pay to the debtor, or to a third party upon the debtor’s order, financial assets from his account for which a preliminary measure has been ordered;

• registration of possessory lien against the debtor’s real property, or against a right registered on that real property.

Article 240 prevents such preliminary measures from being abused by requiring the claimant to deposit a guarantee. This guarantees serves as compensation to the defendant for any damages caused by the preliminary measure.

Injunctions, which are deemed a more severe step by the court, may only be used when a preliminary measure is insufficient to protect the claimant’s rights (Article 250). As described in Article 252, the purpose of an injunction is to prevent the claimant from defeating or frustrating the execution by selling, hiding, or otherwise disposing of his or her assets. The actions permitted by an injunction are listed in Article 253:

To secure a monetary claim, any measure which could achieve the aim of such security could be ordered, and particularly:

• prohibition to the debtor to dispose of movable assets, and safekeeping of those assets;

• prohibition to the debtor to dispose or encumber his real property or real rights registered in his name in the public registry book, with registration of that prohibition in the public registry book;

• prohibition to the debtor’s debtor to pay the debtor’s claim or to handover goods, as well as prohibition to the debtor to receive the goods, collect claim and use them;

• instruction to the bank to refuse payment to the debtor or third person, upon debtor’s order, of the funds from the debtor’s account under injunction.

• to secure the enforcement of a non-monetary claim, the court may undertake the following actions under Article 254:

• [a]ny measure which could achieve the aim of securing such a claim could be ordered, and particularly:

• prohibition to dispose of or attach an encumbrance to movable assets – objects of the claim, and safekeeping of those assets;

• prohibition to dispose of and attach encumbrance to real property – object of the claim, and registration of that prohibition in the public registry book;
• prohibition to the debtor to undertake actions which could be detrimental to the creditor, and prohibition to modify items – objects of the claim;

• prohibition to the debtor’s debtor to handover the goods – objects of the claim to the debtor;

• payment of compensation of salary to an employee during the dispute on legality of the decision to terminate employment, if that is necessary to support the employee and the persons he has legal duty to support.

As with temporary measure, the defendant is entitled to compensation for damages caused by an injunction (Article 261).

Postponement of the Enforcement Process

The postponement process is clearly defined in Chapter VI. As discussed, the opportunities for postponement are quite limited, as the claimant is the only party with the right to petition for postponement. Since the claimant generally wants to resolve the enforcement proceeding as quickly as possible, he is not likely to request a postponement.

Factor 5: Judicial Review

Parties have the right of review for both judicial and non-judicial decisions made during the enforcement process.

The Law on Executive Procedure does not have a clear process that allows for judicial review of decisions during the enforcement process. Article 6 provides that the case filed in the court of first instance shall be heard by a single judge, with “complaints” heard by a panel of three judges. It is unclear whether a “complaint” constitutes an appeal, and, if so, what issues may be appealed.

The only other article that might be relevant to judicial review is Article 8 on legal remedies, which provides that “[n]o legal remedy shall be allowed against a conclusion.” While it is unclear exactly what constitutes a conclusion, Article 6 does state that, “the court shall pass the rulings in the executive procedure in the form of an order or a conclusion.”

Taken together, Articles 6 and 8 seem to indicate that there are extremely limited opportunities for judicial review of decisions made during the enforcement process.

Factor 6. Enforcement Fees

Enforcement fees are reasonable, fixed, prescribed by law, and are made known in advance to the parties.

Enforcement fees are addressed in Article 33 of the Law on Executive Procedure. Unfortunately, the article is extremely vague, as it states, in its entirety, “Costs of execution shall be born by a judgment debtor, except in case of unfounded motion for execution and withdrawal of a motion for execution not caused by fulfillment of the judgment debtor’s obligation, when the judgment creditor shall bear the costs.”

Prepayment of the enforcement costs by the defendant is extremely problematic, as there are many factors in the enforcement procedure that are difficult to estimate. Additionally, the defendant is not going to be willing to pay enforcement fees in advance. Accordingly, in practice, the claimant
pays estimated enforcement fees as well as additional costs as they are incurred. At the end of the proceedings, the claimant then submits a motion for costs seeking reimbursement by the defendant.

**PART II. ENFORCEMENT AGENTS**

**Factor 7. Rights and Duties of Enforcement Agents**

The status, role, rights and responsibilities of the enforcement agents are clearly defined and described, including their powers and responsibilities in relation to those of the judge.

The rights and duties of enforcement agents are not clearly defined, as the only relevant provisions are Articles 305 to 308 of the Court Rules of Procedure. At best, these articles provide an extremely cursory description as to how enforcement agents are to perform their duties. There is no description of their overall role, responsibilities, and powers, or how they are organized and operate as a department within the court system.

**Factor 8. Qualifications and Training**

In recruiting enforcement agents, consideration is given to the moral standards of candidates (e.g. no criminal record), their legal knowledge, and their training in relevant law and procedure. Candidates are required to take examinations that assess their theoretical and practical knowledge. Once recruited, enforcement agents undergo initial and continuous training according to clearly defined and well-structured aims and objectives.

Legislation addressing the qualifications and training of enforcement agents is also severely lacking. Because there is no specific legislation on enforcement agents, the qualification and training of enforcement agents is governed by the Law on Labor Relations in State Agencies. As listed in Article 6 of the law, a person qualifies as a civil servant if he or she:

- is citizen of SFRY,
- is over the age of 18,
- possesses general medical capability,
- possesses required education,
- has not been convicted on unconditional prison sentence minimum of 6 months, or for punishable offence rendering him/her unsuitable to perform duties in the state agency
- fulfills other requirements prescribed by law, other regulations or internal act determining job positions in the agency.

Although Article 6 refers to other requirements as established in relevant laws, regulations, or internal acts, no other such sources are available. Accordingly, there does not appear to be any examination process or other means for testing and evaluating a candidate's moral standards, knowledge, and training. The only other requirement for an enforcement agent might be a one-to-three month probationary period, as described in Article 7.

Finally, there are no requirements for the continuous training of enforcement agents.
Factor 9. Ethics and Discipline

Enforcement agents shall always act according to recognized professional and ethical standards, shall be unbiased in their dealings with the parties, and shall be subject to professional scrutiny and monitoring, which may include judicial control. Enforcement agents alleged to have abused their position are subject to disciplinary, civil, and/or criminal proceedings, providing, in case of abuses, appropriate sanctions.

The ethical standards and disciplinary rules for enforcement agents are the general rules applicable to all civil servants under the Law on Labor Relations in State Agencies. Articles 58 and 59 establish a range of infractions for which a civil servant can be disciplined. These are categorized into minor disciplinary breaches, such as unprofessional conduct or being late for work, and serious breaches, such abuse of official authority or unlawful management of funds and assets.

Minor breaches are penalized with a fine of up to 20% of the employee’s monthly salary, while major breaches are penalized with a fine of 20% to 35% of the employee’s monthly salary for three to six months. Additionally, Article 62g provides that an employee can be suspended pending a disciplinary hearing if “his continued work could be detrimental to the interests of the state agency.”

The disciplinary hearings themselves are relatively well described in a format that closely resembles a trial, with relevant procedure regarding testimony, evidence, transcripts, and service of process in effect (Article 62a). The article also provides that the employee has “[t]he right to a hearing and defense.” Somewhat surprisingly, Article 62a also provides that disciplinary hearings are public. Whether this means they are open to the public or that the results are public documents, this level of transparency might be counterproductive.

While the current procedures are minimally adequate, both the public and the courts would be better served by having ethical standards and disciplinary procedures specifically tailored to the role and responsibilities of enforcement agents.

Factor 10. Resources and Compensation

State employed enforcement agents have proper working conditions, adequate physical resources, and support staff. They are adequately remunerated.

No information is available on the resources and compensation for enforcement agents.
INTRODUCTION

Provisions concerning the enforcement of judgments in the Slovak Republic are set forth in the Code of Executions, as well as in the Code of Civil Procedure. The analysis of the legislation on the enforcement of judgments in the Slovak Republic has been made with regards to the provisions of the Council of Europe Recommendation on Enforcement.

ISSUES OF CONCERN

A few issues of concern arise from the analysis of the laws on the enforcement of judgments in the Slovak Republic, in light of the provisions of the CoE Recommendation on Enforcement.

The receipt of relevant documents by a party is not always assured, as indicated in Sections 46, 47, and 48 of the Code of Civil Procedure, which allow for service to be satisfied by depositing the document with a post office or municipal authority. The writ is considered served on the day it was deposited, whether or not the person named was informed of its deposit at the post office or municipal authority.

Section 315 of the Code of Civil Procedure may create an undue burden on the claimant in the enforcement of a judgment made on his behalf. Under Section 315, the claimant is liable for any loss of the defendant resulting from the claimant’s failure to assert a claim on behalf of the defendant in the event the debtor fails to comply with the judgment execution order.

Regarding the sale of the defendant’s assets, the Code of Civil Procedure and the Code of Executions fail to ensure that the highest market value will be sought in the sale of the tangible or intangible property. While there is a separate Act on Protection of Personal Data, no provisions in the Code of Executions exist concerning the search and seizure of the defendant’s assets. Neither the Code of Civil Procedure nor the Code of Executions contain provisions aimed at protecting the personal data and human rights of the defendant in accordance with relevant international standards, such as Article 8 of the ECHR (the right to respect for private and family life), and the Convention for the Protection of Individuals With Regard to the Automatic Processing of Personal Data. In addition, there are no provisions that mitigate abuse of the enforcement proceedings by judges, detail the judgement enforcement fees, or provide for the training of enforcement agents.

PART I: ENFORCEMENT PROCEDURE

Factor 1: Enforceable Titles

All enforceable titles are exhaustively defined and listed. The manner in which enforceable titles become effective is also clearly defined.

The Code of Executions defines an enforceable title as an “enforceable court decision granting a right, imposing an obligation or affecting any assets” (Section 41, Act No. 233/1995 Code of
Executions). Enforceable titles under Article 41 of the Code of Executions include enforceable decisions, approved settlements, payment orders, statements of outstanding claims permitted by law, and notary deeds (Section 41, Act No. 233/1995 Code of Executions).

Enforceable titles under the Code of Civil Procedure include enforceable judgments and decisions of courts, law enforcement agencies, arbitration committees, state notary offices, state administrative bodies, local public authorities, as well as the notarial records containing a legal duty, decisions on insurance and social security, and pre-trial settlements (Section 274, Code of Civil Procedure).

Definitions of enforceable titles can be found within a number of sources of law. They are not provided within the lists of enforceable titles. A “settlement” is defined in Section 99 of the Code of Civil Procedure as a manner by which parties may conclude proceedings once the court’s approval has been secured. The parties’ agreement on the settlement and the court’s approval are needed before the enforcement will have the effect of a final judgment (Section 99, Code of Civil Procedure). However, the definition of a “payment order” is provided in Section 22 of Act No. 100/1988 on Social Security. The definition of a “statement of outstanding payment” is provided in Section 71(3) of the Administrative Code.

An enforceable title becomes effective after a final judgment has been rendered and the period allowed for voluntary compliance has expired (Sections 161 and 251, Code of Civil Procedure). A judgment is considered final once it has been served and is no longer subject to challenge (Section 159, Code of Civil Procedure). If the defendant fails to voluntarily comply with the judgment within the given time limit, the claimant may file a petition to begin the judicial execution proceedings (Section 251, Code of Civil Procedure).

**Factor 2: Enforcement Procedures**

Enforcement procedures are clearly defined and easy to follow by the enforcement agents.

In general, the enforcement procedures are outlined in a logical and structurally comprehensible manner. The parties to the execution of a judgment include the claimant, defendant, spouse of the defendant when the judgment affects community property, and persons who have been assigned the duties of the defendant or the rights of the claimant (Sections 255 and 256, Code of Civil Procedure). The enforcement procedures are broken down into two distinct categories: 1) judgments imposing a money payment and 2) judgments imposing a duty other than a money payment (Section 258, Code of Civil Procedure). Judgments requiring a money payment may be executed by the attachment of earnings, appropriation order (i.e. compulsory debiting of a bank account), sale of tangible and intangible property, or a judicial lien. Judgments imposing an obligation other than a money payment include eviction and vacation, removal of an item, partition of a common item, and work or performance to be completed by the defendant (Section 258, Code of Civil Procedure). Each execution method for the satisfaction of a judgment is detailed in provisions describing the scope, procedure and exemptions concerning the manner of executing the judgment. Categorization of the various methods of enforcement helps provide a coherent framework for the enforcement of judgments, although the specific obligations of the enforcement agents are not sufficiently addressed in the Code of Civil Procedure.
Service of Process

The courts may serve documents through their own system, the postal service, the municipal authorities, police departments or the Ministry of Justice of the Slovak Republic (Section 45, Code of Civil Procedure). The circumstances in which documents must be personally served are specified in the relevant laws. For example, Sections 282, 294, 306, 313, 336c of the Code of Civil Procedure require service “in the hands” of the person to whom the documents are being delivered (Section 47, Code of Civil Procedure). Documents that must be served on a person may be delivered to a party at his habitual residence, place of business, or any place where he may be reached. If the person named cannot be served with the documents, any adult residing in the same apartment or house, or employed at the same place of business may agree to deliver the document to the party (Section 46, Code of Civil Procedure). A person who refuses to accept the service of a document, and lacks a reason for doing so, is considered served on the date of that refusal (Section 50, Code of Civil Procedure). If the documents cannot be served on the person or another adult according to Sections 46 or 47 of the Code of Civil Procedure, a carrier may deposit the documents at the post office or municipal authority and the person named will be notified and requested to claim the document (Section 46, Section 47). The document will be considered served even if the person named never learned of the deposit of the document at the post office or municipal authority (Section 46, Section 47).

Service may also be achieved by posting decisions, notices or data on the notice board of the court or by publishing them in the Commercial Gazette. However, obligations to post or publish such information must be specified in the law (Section 47a, Section 50a, Code of Civil Procedure).

Sale of Assets

The Civil Procedure Code does not establish a time period during which assets must be sold to ensure that the property will be sold at its highest market value, as recommended by the CoE. The provisions dealing with the sale of tangible property are almost identical to the provisions concerning the sale of intangible property. Regarding the sale of tangible property, a court administrator or an official assessor will appraise the listed items to be sold at auction (Section 328, Code of Civil Procedure). The lowest bid must equal no less than two-thirds of the assessed price (Section 329, Code of Civil Procedure). Objects of high cultural or historical value must be offered for purchase at “at least” the assessed price to institutions that are experienced in preserving such objects (Section 328(a), Code of Civil Procedure). Concerning the sale of intangible property, Section 336(a) provides only that the court will estimate the price of the property. The assessment of the intangible property is only valid up to one year (Section 336, Code of Civil Procedure). The lowest bid must be equal to the estimated price. However, in the event a second auction is required, the lowest bid may be as low as two-thirds of the estimated price (Section 336(d), Section 336(e)(2), Code of Civil Procedure). Perishable items will not be included in the list unless “they can be quickly sold” (Section 326, Code of Civil Procedure).

Factor 3: Rights and Duties of Parties

The powers, rights and duties of the defendant, claimants, and third parties are clearly and thoroughly defined.

The powers, rights and duties of the defendant, claimant and third parties are identified throughout the Code of Civil Procedure. The claimant has the right to file a petition to begin judicial execution proceedings in the event that the defendant refuses to voluntarily comply with an
enforceable decision or judgment (Sections 251, 259, Code of Civil Procedure). Besides the defendant and claimant, the spouse of the defendant may also be a party to the judgment execution proceedings if the judgment affects community property (Section 255, Code of Civil Procedure). A judgment may be executed against a person who has been assigned the duties of the defendant or to the benefit of a person who has been assigned the rights of the claimant (Section 256, Code of Civil Procedure). Third parties, such as wage payers, banks, and debtors to the defendant are required to pay the defendant’s debt to the claimant and if they fail to fulfill that obligation, the claimant may assert his or her right against the third party in court (Sections 283, 292, 307, 311, 314, 315, Code of Civil Procedure).

**Duty to Cooperate**

The Code of Civil Procedure promotes defendant’s cooperation by allowing the defendant to provide an account of his property or bank account information voluntarily before the court orders the execution of the judgment (Sections 259, 260, Code of Civil Procedure). If the defendant fails to comply voluntarily within one week from the time of the service of the inquiry by refusing to provide the requested information or by presenting false information, he may be subject to a fine (Section 260(3), Code of Civil Procedure). In the event that the claimant is required to meet a condition concerning the enforcement of the judgment, the execution of the judgment will not be ordered until the claimant fulfills or secures the fulfillment of that condition (Section 262, Code of Civil Procedure).

In judgments concerning child custody or visitation, the judge will call upon the defendant to comply with his duties set out in the judicial decision or agreement and may also direct the municipal and child care authorities to help facilitate defendant’s voluntary (Section 272, Code of Civil Procedure). A defendant may also lodge a motion with the judge to terminate the execution of a judgement concerning maintenance and support payments by attachment of earnings. The judge may grant the motion if the defendant, in light of his behaviour and “attitude to work,” could be trusted to make the maintenance and support payments voluntarily (Section 290, Code of Civil Procedure).

**Protection of Defendant’s Essential Assets**

In accordance with the CoE Recommendation, the Code of Civil Procedure and the Code of Executions provide protection for the defendant’s household goods, social allowances, money for essential medical needs, and tools needed for work. Property owned by the defendant that is exempt from the execution of a judgment includes: things necessary to the subsistence of the defendant’s family, to the performance of the defendant’s job, and to the operation of defendant’s business, as well as other property, the sale of which would “contradict moral rules” (Section 322, Code of Civil Procedure). Section 322 of the Code of Civil Procedure also refers to the following items specifically as exempted from the judgment execution: clothes, household equipment, engagement rings and other similar sentimental objects, medicine and other items needed by the defendant for treatment of a disease or handicap, and cash up to SKK 3,000. Section 115 of the Code of Executions provides a more lengthy list of exempted items and includes the following items not listed in Section 322 of the Code of Civil Procedure: essential furnishings, beds, tables, chairs, fridge, stove, cooker, heater, fuel, blankets, kitchen utensils, radio, animals (except those used for business purposes), items used for work or business purposes up to the amount of 10,000 SKK, study materials,
toys. A judge also has the power to suspend the execution of a judgment when the expedited execution of the judgment would “adversely affect” the defendant or his family and the defendant did not create the temporary crisis (Section 266, Code of Civil Procedure).

A pension necessary for paying the costs of living in a social care facility cannot be attached as earnings of the defendant in the execution of a judgment (Section 299, Code of Civil Procedure). Section 279 provides that only one-third of the defendant’s net wage may be deducted to satisfy a claim; however, up to two-thirds may be deducted for prior claims. Exemptions from an appropriation order include: social assistance benefits, compensation for serious health problems or handicaps, and state social benefits (Section 317, Code of Civil Procedure, Code of Civil Procedure).

The Code of Civil Procedure and the Code of Executions allow for alternative assets to be attached to the enforcement of a judgment under specific circumstances. According to Section 261 of the Code of Civil Procedure, the claimant may specify the method of executing the judgment; however, the judge may order the execution of the judgment by other means if the method proposed by the claimant is deemed inappropriate (Section 264, Code of Civil Procedure). A party may lodge a motion to exclude an item from the enforcement if the item cannot be subject to the execution of the judgment (Section 267, Code of Civil Procedure, Section 55(1) Code of Executions). A petition may also be filed by a party to “deny the authenticity, the amount or the ranking of any claim registered in respect of the distribution of proceeds where the execution of the judgment was ordered by means of garnishment and/or sale of tangible and intangible assets” (Section 267, Code of Civil Procedure).

**Duty to Provide Financial Data**

The defendant has the opportunity to voluntarily provide his bank account information, an account of his property, and the name of the person who pays his wages, either upon the request of the claimant or the judge (Sections 259, 260, Code of Civil Procedure). The defendant must provide his bank account information and the identity of the person who pays his wages within one week. A defendant who intentionally supplies misleading, false or incomplete information will be subject to a fine. There are no provisions that refer specifically to the requirement of giving up-to-date information on income or assets as suggested by the CoE Recommendation on Enforcement.

**Protection of the Defendant During Search and Seizure of Assets**

The defendant is given one week to provide his bank account information and identify his/her wage-payer (Section 260, Code of Civil Procedure). Banks are required, upon written request, to disclose to the court executor bank account information, such as the account number, the account owner, the account balance and any transactions conducted concerning the account (Section 34 (5), Code of Executions). Section 34(12) of the Code of Executions demands that all disclosures concerning the defendant’s assets, contact information, bank accounts, post office boxes, and applications for insurance are provided “without undue delay” by the relevant persons or institutions mentioned in Section 34 (1-11) of the Code of Executions. There are no provisions that indicate the importance of human rights and data protection in the search and seizure of the defendant’s assets.
Priority of Multiple Claimants

Numerous provisions exist within the Civil Procedure Code on the rankings of the claimants in regards to the distribution of the proceeds recovered from the execution of the judgment. Section 279 concerning the attachment of earnings provides that the claimant’s judgment will be satisfied from one-third of the net wage of the obligor. If prior claims exist, two thirds from the net wage will be deducted in order to satisfy those claims. Prior claims are fully enumerated in Section 279(2) of the Civil Procedure Code and include, for instance, claims for maintenance and support, claims for damages caused to the injured party as a result of bodily harm, claims for damages caused by intentional crimes, judicial claims, and claims for taxes and fees. Prior claims that cannot be fully satisfied from the second third of the net wage will be deducted from the first third (Section 279(1), Civil Procedure Code). If claims for reimbursement of maintenance and support are included among the prior claims, they will be deducted from the second third of the net wage before any other prior claims, regardless of their ranking (Section 280(2), Civil Procedure Code). In the situation that earnings are attached to satisfy multiple claims, each claim will be satisfied from the first third of the net wage in the order that the claims were brought regardless of whether they are prior claims or other claims (Section 280(1), Civil Procedure Code).

Regarding appropriation orders, the day on which the judgment execution order was serviced on the bank determines the order of distribution of payments (Section 308, Civil Procedure Code). However, if the individual claims were serviced on the same day and the defendant’s account cannot satisfy all claims, the individual claims will be satisfied “on a pro rata basis” (Section 308, Civil Procedure Code). Similarly, Section 316 of the Civil Procedure Code asserts that if several orders for judgment execution involve multiple claims, each individual claim will be satisfied in the sequence that the orders for the judgment execution were served to the defendant. If several orders for judgment execution were serviced on the debtor with multiple claims and all cannot be fully satisfied, then they will be satisfied “on a pro rata basis” (Section 316, Civil Procedure Code).

Satisfaction of multiple claims by the sale of tangible property is conducted according to the order in which the court received the judgment execution order concerning the individual claims (Section 322, Civil Procedure Code). In the event that several claims hold the same ranking and the proceeds from auction are insufficient to satisfy all claims, individual claims will be satisfied “on a pro rata basis” (Section 322, Civil Procedure Code). Section 337 of the Civil Procedure Code governs the satisfaction of claims from the proceeds of a sale of intangible property and provides a hierarchy, which must be followed for the satisfaction of multiple claims. The costs of conducting the auction must be paid first and then any maintenance or support payments due by the date set for the distribution of the profits of the sale must be satisfied (Section 337(1)(a) and (b), Civil Procedure Code). If claims with the same ranking cannot be satisfied from the proceeds of the sale, the claims will be satisfied “on a pro rata basis” (Section 337(2), Civil Procedure Code).

Section 338(b) of the Civil Procedure Code dealing with judicial liens on intangible property provides that the time the court received the motion to secure a judicial lean will govern the ranking and if more than one motion was received at the same time, the liens will have the same ranking (Section 338(b)(2)).
Powers, Rights, and Responsibilities of Third Parties

The Code of Civil Procedure makes the regular maintenance and support of claimants and their dependants a priority in the rankings of claimants. Section 280 refers to the order of satisfaction for prior claims and asserts that claims involving the payment of maintenance and support will have first priority in the satisfaction of the prior claims regardless of their ranking. When the amount deducted from the second third of the defendant’s net wage is insufficient to satisfy all claims, the “regular maintenance and support for all beneficiaries shall be satisfied first and then all earlier outstanding amounts shall be paid off according to the proportion of the regular maintenance and support” (Section 280 (2), Civil Procedure Code). If all the claims for “regular maintenance and support” cannot be satisfied from the second third of the net wage, then the claims will be satisfied from the second third of defendant’s net wage on a pro rata basis disregarding any of the outstanding payments (Section 280(2), Civil Procedure Code).

Section 322 of the Code of Civil Procedure and Section 115 of the Code of Executions provide protection for the assets of the defendant that are essential to the “material needs of him and his family,” in addition to items such as clothes, beds, heaters, blankets, toys and medical provisions. Upon the request of a party, the court will also assist in determining the residence of a person delinquent on maintenance and support payments (Section 260, Civil Procedure Code). Claims for maintenance or support have priority over all other claims in the distribution of the proceeds from a sale of intangible property except for the costs of conducting the auction (Section 337(1)(a) and (b), Civil Procedure Code).

As regards the powers, rights and responsibilities of defendants in cases involving an attached debt, the defendant’s debtor may be prohibited from the payment of his debt to the defendant and ordered to pay the claimant instead through a judgment execution by appropriation order (Section 312(1), Section 313(1), Civil Procedure Code). The judgment execution order must be served in the hands of the defendant’s debtor and the debtor will pay the debt to the claimant when the payment is due (Section 313(2), Section 314(1), Civil Procedure Code). Once the debtor pays the claimant, he is relieved of all obligations to the defendant (Section 314(2), Civil Procedure Code). In the event that the defendant’s debtor does not pay the debt to the claimant in a prompt manner, the claimant may lodge a complaint on behalf of the defendant before the court (Section 315(1), Civil Procedure Code).

Suspension of Enforcement

The Code of Civil Procedure prohibits the suspension of the proceedings in the execution of a judgment and any failures to follow the scheduled time line (Section 254). Despite Section 254, Section 266 of the Code of Civil Procedure and Section 56 of the Code of Executions permit the defendant to file a motion for the suspension of the enforcement order if the immediate enforcement of the judgment would “adversely affect him or his family members.” The motion will only be granted if it will not result in “serious harm” to the claimant and the defendant did not create the situation necessitating the suspension of the enforcement order (Section 266, Code of Civil Procedure; Section 56(1), Code of Executions). The court may also suspend the execution of the judgment upon the motion of the defendant if “immediate execution could prevent the obligor [defendant] from providing or ensuring medical care under special regulations” (Section 56(3), Code of Executions). In addition, the executor, with the written consent of the claimant, may refrain from
executing the judgment and permit the defendant to gradually pay the claim over time as long as the defendant abides by the payment agreement (Section 56 (5), Code of Executions).

**Proportionality**

Section 263 of the Civil Procedure Code ensures that the execution of a judgement may only be ordered within the scope sufficient to satisfy the claimant. According to Sections 331(3) and 337(4) of the Civil Procedure Code, if the proceeds of a sale of tangible or intangible property exceed the amount needed to satisfy all claims, the remaining sum is returned to the defendant. Section 281 prevents the attachment of earnings beyond that permitted by the Code, even if the defendant has consented to such action. Judgment execution by appropriation order only affects the defendant’s debt “up to the amount of the beneficiary’s adjudicated claim” (Section 312, Civil Procedure Code). The Code of Executions also ensures that if the proceeds exceed the claim, the difference is paid to the defendant. (Sections 88(2); Section 127(3); and Section 157(4)).

The CoE suggests in the Recommendation on Enforcement that the best interests of the child should be the main consideration in an enforcement process that concerns the rights of a child. Although Sections 272 and 273 of the Civil Procedure Code provide for voluntary compliance in family matters and Section 322 of the same Code provides protection for the family necessities, the Code in general contains few provisions that ensure that the best interests of the child will be taken into consideration in the enforcement of a judgment.

**Factor 4: Prevention of Procedural Misuses and Abuses**

*Mechanisms exist for deterring and preventing procedural misuses and abuses of the enforcement procedures by the parties, judges and enforcement agents.*

Neither the Code of Civil Procedure nor the Code of Executions contain provisions dealing with the deterrence of abuses of enforcement procedures by judges. However, provisions are included that aim to deter and prevent abuses by the parties and enforcement agents.

**Mechanisms for Preventing Delay or Other Abuse by Parties**

Section 260 of the Code of Civil Procedure allows for a fine to be imposed on the defendant if he fails to voluntarily give an accounting of his assets. The defendant is prevented from “assigning or charging the intangible property” and must declare within 15 days whether anyone has a “pre-emptive right to the intangible property” (Section 335(3), Civil Procedure Code). The defendant’s failure to comply with Section 335(3) of the Civil Procedure Code will result in his liability for the resulting damage. The defendant is prohibited from using the items on the list of things to be sold (Section 324, Civil Procedure Code). If the claimant is concerned that the property on that list may be “removed, damaged, or destroyed,” he may file a motion with the judge for the protection of that property (Section 327(1), Civil Procedure Code). However, the claimant must pay in advance any costs that will be incurred in the protection of the property (Section 327(2), Civil Procedure Code).

If a person refuses to abide by a judgment or agreement on the custody and visitation of a child after the judge called upon them in writing to voluntarily comply, the judge will levy a fine on that person in an amount not to exceed SKK 2,000 (Section 272(2), Section 273(1), Civil Procedure Code). The court will impose a fine upon the defendant not exceeding SKK 100,000 if he/she fails to satisfy an obligation imposed by the judgement executed, such as paying in advance the costs to
the claimant in hiring another person to perform work in the place of the defendant (Section 350, Section 351, Civil Procedure Code).

The claimant may also face penalties if he fails to perform a required duty. Section 262 of the Civil Procedure Code provides that a judgment execution requiring the “fulfillment of a condition or a mutual duty of the beneficiary” will not be ordered if the claimant fails to meet that condition or duty. If a bank, debtor to the defendant, or wage payer fail to meet their obligations as specified by the Code of Civil Procedure, the claimant may assert his rights in court against them (Sections 311, 315, 292). However, in the situation that a debtor to the defendant fails to make his payment promptly, the claimant must assert a claim on behalf of the defendant and failure to do so will result in the claimant’s liability “for any loss incurred by the obligor in such event” (Section 315, Civil Procedure Code).

Section 29 of the Code of Executions only permits the executor to carry out the judgment execution order when the executor has the authorization of the court. Section 219 of the Code of Executions makes the executor liable for any disciplinary offense committed. A disciplinary offense is defined as “any violation of official duties, breach of oath, conduct violating dignity of the office and continuing, despite a prior notice, in any activity that is incompatible with the office of executor” (Section 220, Code of Executions). “Natural entities or legal persons” may lodge a complaint concerning an executor’s activities to the Chamber of Executors (Section 218(a), Code of Executions). Depending on the findings of the Chamber, the executor may face a written or oral reprimand, a fine, or removal from office (Section 218(b), Code of Executions).

**Postponement of Enforcement Process**

Section 254 provides that the execution of a judgment shall not be suspended and does not allow for any failure to meet the time limit. However, upon the obligor’s motion, the judge may suspend the execution of the judgment if its immediate enforcement would adversely affect the defendant’s family (Section 266(1), Code of Civil Procedure, Section 56(1), Code of Executions). The judge will only suspend the execution of the judgment if the defendant is not responsible for creating the necessitous situation and the claimant would not suffer “serious harm” from the postponement (Section 266(1), Code of Civil Procedure; Section 56(1), Code of Executions). The court also has the power to suspend the execution of the judgment upon the defendant’s motion “if such immediate execution could prevent the obligor from providing or ensuring medical care under special regulations” (Section 56(3), Code of Executions). If the judge anticipates that the judgment execution will be discontinued at some point, he may suspend the execution of the judgment without the defendant’s motion (Section 266(2), Code of Civil Procedure; Section 56(2), Code of Executions). An order to suspend the execution of a judgment is subject to appeal (Section 36, Code of Executions).

**Factor 5: Judicial Review**

*Parties have the right of review for both judicial and non-judicial decisions made during the enforcement process.*

The court is competent to review the enforceability confirmation with respect to all titles for the execution of the judgment (Section 275(2), Code of Civil Procedure). Section 36 of the Code of Executions permits an appeal against the decision on the execution of a judgment as well as decisions on a fine, a stay of execution, and the distribution of proceeds. A person who was present.
at an auction and raised an objection, or a person who was not served the auction guidelines and therefore not present at the auction, may appeal the “resolution awarding the knockdown,” but only if the appeal “claims defects to the detriment of the person who filed the appeal or if the court detected a substantial violation of law” (Sections 336(j), 336(k), Code of Civil Procedure). Persons who object to the distribution resolution following an auction may file a motion for an administrative proceeding to give a ruling on the objection (Section 337(c), Code of Civil Procedure). A party may also file a petition “to deny the authenticity, the amount or the ranking of any claim registered in respect of the distribution of proceeds where the execution of the judgment was ordered by means of garnishment and/or sale of tangible and intangible assets” (Section 267(2), Section 337(c)(2), Code of Civil Procedure). The court will either give a ruling on the petition or refer the petition to an administrative proceeding for a decision (Section 337(c)(2), Code of Civil Procedure).

**Factor 6: Enforcement Fees**

*Enforcement fees are reasonable, fixed, prescribed by law, and are made known in advance to the parties.*

The judge has the power to impose on a party the obligation to pay the costs of the execution (Section 270, Code of Civil Procedure). The claimant is entitled to reimbursement of all costs of the execution, although the provision does not specifically state that the defendant bears the burden of paying the costs of the enforcement proceedings (Section 270, Code of Civil Procedure). The enforcement fees are not specified in any provisions and are not made known in advance to the parties in accordance with the CoE Recommendation.

**PART II: ENFORCEMENT AGENTS**

**Factor 7: Rights and Duties of Enforcement Agents**

*The status, role, rights and responsibilities of the enforcement agents are clearly defined and described, including their powers and responsibilities in relation to those of the judge.*

Section 265 of the Code of Civil Procedure refers to a “court worker” or “administrator” who carries out acts concerning execution of judgments in accordance with the judge’s instructions. The state appoints the executor (i.e. administrator) and grants him the authority to “carry out non-voluntary enforcement of court and other decisions” (Section 2, Code of Executions). The executor has the power to order the defendant to refrain from interfering with his property subject to the execution judgment, request the assistance of third persons, enter onto the property of the defendant, freeze bank accounts, and auction assets (Section 34, Section 47, Code of Executions). The executor creates the list of the defendant’s tangible property, which may be sold in order to generate proceeds to satisfy the claimant’s judgment and, therefore, has access to the defendant’s apartment and other places where his tangible property is located (Section 326, Code of Civil Procedure). The executor also facilitates the eviction of the defendant from his apartment and the removal of an item to be delivered to the claimant, if so ordered by the court (Section 341, Section 345, Code of Civil Procedure).

**Factor 8: Qualifications and Training**

*In recruiting enforcement agents, consideration is given to the moral standards of candidates (e.g. no criminal record), their legal knowledge, and their training in relevant law and procedure. Candidates are required to take*
examinations that assess their theoretical and practical knowledge. Once recruited, enforcement agents undergo initial and continuous training according to clearly defined and well-structured aims and objectives.

Besides being a citizen of the Slovak Republic, an enforcement agent must have “full legal capacity,” a law degree from a university in the Slovak Republic or the equivalent from a foreign law school, no criminal record, experience of two years or more working with an executor or court in the area of enforcement of judgments, and must have completed a qualification examination (Section 10(1), Code of Executions). Neither the Code of Civil Procedure nor the Code of Executions refers to the training of enforcement agents as recommended by the CoE.

**Factor 9: Ethics and Discipline**

Enforcement agents shall always act according to recognized professional and ethical standards, shall be unbiased in their dealings with the parties, and shall be subject to professional scrutiny and monitoring which may include judicial control. Enforcement agents alleged to have abused their position are subject to disciplinary, civil, and/or criminal proceedings, providing, in case of abuses, appropriate sanctions.

The executor may be subject to discipline for “violations of official duties, breach of oath, conduct violating the dignity of the office and continuing, despite a prior notice, in any activity that is incompatible with the office of the executor” (Sections 219, 220, Code of Executions). “Natural entities and legal persons” may lodge a complaint with the Chamber of Executors concerning the actions of an executor and the Chamber will address the complaint within two months from the time the complaint was lodged with the Chamber (Section 218a, Section 218b, Code of Executions). The Chamber may impose sanctions for a disciplinary offense in the form of an oral reprimand, a written reprimand, or a fine of up to 10,000 SKK (Section 218b, Code of Executions). In the event that the executor has committed a serious disciplinary offense, the Chamber may penalize him through a written reprimand, a fine of up to 100,000 SKK, or removal from office (Section 218b, Code of Executions). The CoE recommends that enforcement provisions guarantee the impartiality of executors in their dealings with parties; however, neither the Code of Executions nor the Code of Civil Procedure contains provisions ensuring such impartiality.

**Factor 10: Resources and Compensation**

State employed enforcement agents have proper working conditions, adequate physical resources, and support staff. They are adequately remunerated.

An executor has the authority to delegate tasks concerning the execution of a judgment to a clerk, although he may not permit the clerk to issue a writ of execution or a notice or order of the execution of a judgment (Section 22(1), Code of Executions). The clerk also may not conduct an auction or “enforce any non-pecuniary claims” (Section 22(1), Code of Executions). In addition to the clerk, the executor has the authority to hire other employees according to Section 28 of the Code of Executions.

The court executor is compensated according to the regulation of the Ministry of Justice No. 288/1995 on Fees and Reimbursements of Court Executors. Compensation is not less than 500 SKK and not more than 1,000 SKK per month.
Appendix A

Council of Europe Draft Recommendation on Enforcement

(Committee of Experts on Efficiency of Justice, December 2, 2002)
COUNCIL CONSEIL
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Strasbourg, 2 December 2002

CDCJ (2002) 30 Add I Final
CJ-EJ (2002) 18 Add I Final

COMMITTEE OF EXPERTS ON EFFICIENCY OF JUSTICE
(CJ-EJ)

DRAFT RECOMMENDATION
ON
ENFORCEMENT

AND

ITS DRAFT EXPLANATORY MEMORANDUM
DRAFT RECOMMENDATION ON ENFORCEMENT

(Adopted by the Committee of Ministers on
at the meeting of the Ministers’ Deputies)

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Recognizing that the rule of law on which European democracies rest cannot be ensured without fair, efficient and accessible judicial systems;

Considering that the enforcement of a court judgment forms an integral part of the fundamental Human Right to a fair trial within a reasonable time in accordance with Article 6 of the European Convention on Human Rights (hereinafter referred to as “the ECHR”);

Acknowledging also that the rule of law principle can be a reality only if citizens can uphold their legal rights and challenge unlawful acts;

Considering that member States are under a duty to ensure that all persons in receipt of a final and binding court judgment have the right to enforcement. Not to enforce a judgment, or to delay it taking effect, could therefore render this right inoperative and illusory to the detriment of one party;

Conscious of the need to promote greater efficiency and fairness in the enforcement of judgments in civil cases and to strike a positive balance between the rights and interests of the parties to the enforcement process;

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 and credibility of the legal system;

Recalling Resolution No. 3 of the 24th Conference of European Ministers of Justice on “The implementation of judicial decisions in conformity with European standards”, held in Moscow on 4 and 5 October 2001, in which it was agreed that the “proper, effective and efficient enforcement of court decisions is of capital importance for States in order to create, reinforce and develop a strong and respected judicial system”.


Having regard to the importance of Information Technology in improving the efficiency of the enforcement process and the relevant Council of Europe legal instruments in this field including Recommendation Rec(...) on the interoperability of information systems in the justice sector and Recommendation Rec(...) on the archiving of electronic documents in the legal sector,

Recommends the governments of member States:

- to facilitate the efficient and cost-effective enforcement of judicial decisions, as well as of other judicial or non-judicial enforceable titles, whenever appropriate;
- to take or reinforce, as the case may be, all measures which they consider necessary with a view to the progressive implementation of the “Guiding principles concerning enforcement” set out below.

Guiding Principles concerning enforcement

I. Definitions

For the purpose of this Recommendation,

a. “Enforcement” means the carrying into effect of judicial decisions, as well as of other judicial or non-judicial enforceable titles in compliance with the law which compels the defendant to do, to refrain from doing or to pay what has been adjudged;

b. “Enforcement agent” means a person authorized by the State to carry out the enforcement process irrespective of whether that person is employed by the State or not;

c. “Claimant” means a party seeking enforcement;

d. “Defendant” means a party against whom enforcement is sought.

II. Scope of application

1. This Recommendation applies to civil matters, including commercial, consumer, labor and family law matters. This Recommendation does not apply to administrative matters. This Recommendation may apply to those criminal matters which do not concern the deprivation of liberty.

2. Moreover, this Recommendation applies to the enforcement of judicial decisions, as well as of other judicial or non-judicial enforceable titles.

III. Enforcement procedure

1. In order for enforcement procedures to be as effective and efficient as possible,

a. enforcement should be defined and underpinned by a clear legal framework, setting out the powers, rights and responsibilities of the parties and third parties;

b. 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 of the process, as well as to provide for such process to be as foreseeable and efficient as possible;

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 co-operation;

d. defendants should provide up-to-date information on their income, assets and on other relevant matters;
e. States should set up a mechanism to prevent misuse of the enforcement process by either party which should not be considered as a re-adjudication of the case;

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;

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;

h. certain essential assets and income of the defendant should be protected such as basic household goods, basic social allowances, monies for essential medical needs and necessary working tools.

2. Enforcement procedures should:

a. be clearly defined and easy for enforcement agents to administer;

b. prescribe an exhaustive (definition and listing of enforceable titles and how they become effective;

c. clearly define the rights and duties of defendants, claimants and third parties including, in the two latter cases, their rankings and entitlements to monies recovered and distributed amongst claimants;

d. provide for the most effective and appropriate means of serving documents (e.g. personal service by enforcement agents, electronic means, post);

e. provide for measures to deter or prevent procedural abuses;

f. prescribe a right for parties to request the suspension of the enforcement in order to ensure the protection of their rights and interests;

g. prescribe, where appropriate, a right of review of judicial and non-judicial decisions made during the enforcement process;

3. Enforcement fees should be reasonable, prescribed by law and made known in advance to the parties.

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.

5. The necessary costs of enforcement should be generally borne by the defendant notwithstanding the possibility of other parties who abuse the process to bear costs.
6. 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 achieved through access to relevant information contained in registers and other sources as well as the option of defendants making a declaration of their assets.

7. Assets should be sold promptly while still seeking to obtain the highest market value and avoiding any costly and unnecessary depreciation.

IV. Enforcement agents

1. Where States make use of enforcement agents to carry out the enforcement process, they should comply with the principles contained in this Recommendation.

2. Enforcement agents’ status, role, responsibilities and powers should be prescribed by law in order to bring as much certainty and transparency to the enforcement process as possible. States should be free to determine the professional status of enforcement agents.

3. In recruiting enforcement agents, consideration should be given to the moral standards of candidates and their legal knowledge and training in relevant law and procedure. To this end, they should be required to take examinations to assess their theoretical and practical knowledge.

4. Enforcement agents should be honorable and competent in the performance of their duties and should act, at all times, according to recognized high professional and ethical standards. They should be unbiased in their dealings with the parties and be subject to professional scrutiny and monitoring which may include judicial control.

5. The powers and responsibilities of enforcement agents should be clearly defined and delineated in relation to those of the judge.

6. Enforcement agents alleged to have abused their position should be subject to disciplinary, civil and/or criminal proceedings, providing, in case of abuses, appropriate sanctions.

7. State employed enforcement agents should have proper working conditions, adequate physical resources and support staff. They should also be adequately remunerated.

8. Enforcement agents should undergo initial and continuous training according to clearly defined and well-structured aims and objectives.
DRAFT EXPLANATORY MEMORANDUM

I. INTRODUCTION

1. The Council of Europe has, for many years, been dealing with questions concerning the enforcement of court decisions in the framework of its work aiming at setting standards in the field of Human Rights and the Rule of Law and at promoting law reform in States.

2. The European Court of Human Rights decided, in the landmark case of Hornsby v Greece in 1997, that enforcement forms an integral part of the fundamental human right to a fair trial within a reasonable time in accordance with Article 6 of the European Convention on Human Rights. The Court has, since then, recurrently reaffirmed that States are under a duty to ensure that all persons in receipt of a final and binding court decision have the right to enforcement and that the right of access to a court “would be illusory if a Contracting State’s domestic legal system allowed a final binding judicial decision to remain inoperative to the detriment of one party”.

3. The Conclusions adopted by the participants of the Council of Europe multilateral seminar on “The execution of court decisions in civil cases” held at the Palais de l’Europe, Strasbourg, on 15 and 16 October 1997, reaffirmed the legal and political importance of enforcement in the proper functioning of the judicial system in a State governed by the rule of law.

4. In Resolution No. 3 of the 24th Conference of European Ministers of Justice on “The implementation of judicial decisions in conformity with European standards”, held in Moscow on 4 and 5 October 2001, it was agreed that the “proper, effective and efficient enforcement of court decisions is of capital importance for States in order to create, reinforce and develop a strong and respected judicial system”. To this end, the European Ministers of Justice invited the Committee of Ministers to instruct the European Committee on Legal Co-operation (CDCJ) to identify common European enforcement standards and principles as regards the procedures to be applied and the role and practices of enforcement agents (e.g. bailiffs).

5. During the Council of Europe multilateral seminar on “The role, organization, status and training of enforcement agents” held in Varna, Bulgaria, on 19 and 20 September 2002, the Conclusions adopted by the participants reasserted the importance of fair and efficient enforcement carried out by an effective profession of enforcement agents.

6. As a follow-up to Resolution No.3 of the Conference of European Ministers of Justice, and on the basis of the legal co-operation activities carried out by the Council of Europe on a bilateral, regional and multilateral level, the Working Party of the Committee of experts on efficiency of justice (CJ-EJ-GT) held two meetings at the Palais de l’Europe in Strasbourg (24-26 June 2002 and 9-11 October 2002) to prepare a draft Recommendation on enforcement for the attention of the CJ-EJ at its meeting held at the Palais de l’Europe on 13-15 November 2002. The draft Recommendation will, subsequently, be submitted to the European Committee on Legal Co-operation (CDCJ) on (...) 2003 and, thereafter, to the Committee of Ministers for adoption as Recommendation Rec (...) on (...) at the (... meeting of the Ministers’ Deputies on (...).
II. COMMENTS ON THE DIFFERENT PARTS OF THE RECOMMENDATION

7. Directly following the Preamble, the Recommendation invites the governments of member States to facilitate the enforcement of those judicial decisions and enforceable titles of a judicial and non-judicial character requiring enforcement.5

8. The Recommendation applies to judicial decisions and to other judicial and non-judicial enforceable titles which are, in the wider sense, acts of a binding nature often issued by other authorities (e.g. settlements of a public notary, arbitral awards). It must be understood that not all such decisions and titles require action to be taken to enforce them as is the case, for example, for acts of a declaratory or self-executory nature or for judgments that change existing relationships (e.g. divorce or annulment of contracts).

Principle I — Definitions

9. Principle I concerns the definitions of the main references relating to enforcement: the process of enforcement, the enforcement agent, the claimant and the defendant.

10. The reference to “enforcement agent” covers a wide variety of persons responsible for carrying out the enforcement process (e.g. bailiff, huissier de justice, enforcement judge etc). It must be pointed out that, in many states, the role, responsibilities, organization and professional status of these persons vary considerably as does their working conditions and remuneration.

11. At the time of writing, many states are re-examining their enforcement procedures and practices. In the majority of Council of Europe States, enforcement agents are classed either as civil servants subordinated to the Ministry of justice, judicial officers subordinated to the courts, self-employed persons acting independently or are employed as a combination of the above.

Principle II — Scope of Application

12. Principle II concerns the legal scope of application of the Recommendation.

13. This Recommendation applies to civil matters (including matters of a commercial, consumer, labor and family nature) as well as to certain specific criminal matters (e.g. fines, confiscation and, in so far as it is not considered a civil matter, compensation for victims).

14. In contrast, the Recommendation does not concern criminal matters involving the deprivation of liberty often relating to custody in prison nor does it concern administrative matters. In the latter instance, reference should be made Recommendation Rec (...) of the Committee of Ministers to member States on the execution of decisions in the field of administrative law, the provisions of which are without prejudice to the present Recommendation.

15. 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 the

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5 The reference to the term ‘judicial decisions and enforceable titles of a judicial and non-judicial character’ is also cited in Principle I.a. on definitions and in 11.2. on scope of application which, in all cases, should be considered to have the same meaning.
rights of children, the best interests of the child should be a primary consideration in accordance with international and national law. The main application of this Recommendation in Family matters is to issues concerning the maintenance of dependants.

16. Nothing in this Recommendation should supersede the European Convention on recognition and enforcement of decisions concerning custody of children and on restoration of custody of children.\(^6\)

17. In certain family law cases, relevant authorities, such as social services, may have an important role to play in promoting co-operation both between authorities and between the parties concerned.

18. States may apply the principles contained in the Recommendation to other appropriate areas.

**Principle III — Enforcement procedure**

19. Throughout the Recommendation States are invited to consider different ways of improving the effectiveness of enforcement procedures and practices.

20. Principle III. l.a. makes clear that enforcement procedures should be clearly defined and laid down in a legal framework with reference to the powers, rights and responsibilities of the parties, including third parties such as maintenance claimants and defendants of an attached debt. This Principle underlines that enforcement is more effective when procedures are clear and easy to follow. This also enables the parties to more effectively understand their roles and comply with their responsibilities.

21. The reference, in Principle 111.1.b., to ‘compliance with the relevant law and judicial decisions’ envisages two recurrent problems in many States: (i) the misuse and abuse of enforcement procedures by the parties thereby delaying the process and justice as a whole, and (ii) the risks of private forms of justice emerging when the enforcement process is inefficient.

22. To combat the emergence of such problems, States are invited to develop detailed legislation with legal certainty, transparency and easy applicability to encourage the parties to use and to rely upon enforcement to strengthen the credibility and visibility of the process.

23. The reference, in Principle 111.1.c., to the duty of the parties to co-operate appropriately is necessary to increase compliance with, and reduce misuse of, the enforcement process (e.g. vexatious appeals). By co-operating and, therefore, by better communicating with each other, the vulnerability of the defendant and adverse reactions to the enforcement process (e.g. hiding assets), may be reduced. For example, a cooperative claimant may be more open to agreeing with the defendant on the assets to be attached or on payment arrangements (e.g. by installments). In member States where these actions are permitted enforcement agents can therefore play a key role in facilitating such co-operation.

24. In addition, the co-operation of third parties, such as banks, can be extremely beneficial in the search and seizure of defendant’s income and assets subject to Human Rights and data protection standards.

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\(^6\) European Treaty Series No. 105.
25. In the same vein, Principle 111.1.d. refers to the duty of defendants to provide up-to-date information on their income, assets as well as other relevant matters (e.g. declarations referring to the whereabouts of a child) so that they may feel more responsible (even liable) and thereby discouraged from acting adversely. Defendants should provide such information if and as required by national law.

26. Principle m. i.e. reasserts the importance of preventing and deterring abuses of procedures by inviting States to establish mechanisms which combat procedural abuses for example by giving judges and/or enforcement agents more authority to penalize parties who are abusive (e.g. issuance of fines, increasing investigative powers).

27. In the light of the above, States should consider the ways in which the parties and the actors (i.e. judge and enforcement agent) may play a more active role during enforcement to empower and motivate them.

28. Principle 111.1.f. reasserts the importance of avoiding unnecessary delays which may be brought about by unnecessary postponement of enforcement (e.g. vexatious appeals by the parties, by the decision of the enforcement agent). States are invited to overcome such delays by requiring reasons to be prescribed by law, which are subject, ultimately, to judicial review.

29. Considering the different positions of the (demanding) claimant and (often vulnerable) defendant, it is extremely important that enforcement procedure and practice strikes an appropriate and considerate balance of their interests which respects in particular Articles 6 (right to a fair trial) and 8 (right to respect for private and family life) of the European Convention on Human Rights (ECHR).

30. The vulnerable and precarious position of the defendant is further emphasized in Principle 111.1.h. It recommends that certain basic assets and income of the defendant should not be seized so that he/she has sufficient means to live as a measure of respect for that person's private life and human dignity. Similar exemptions can be found in the enforcement and civil procedural codes of many states. These essential items should, nevertheless, be underlined.

31. States should also ensure that the rights of claimants’ dependants such as children (e.g. maintenance) are guaranteed.

32. In some states, the law exempts the attachment of the principle dwelling of the defendant (e.g. family house) while in many other states it does not. In the latter event, the seizure of the principle dwelling and the eviction of the defendant and his/her dependants is a stressful event causing unnecessary hardship especially in states with low levels of social security and alternative housing plans. The opportunity to attach alternative assets, where appropriate, should be available within the enforcement system.

33. In Principle 1IJ.2.a., States are invited to ensure that enforcement procedures are clearly defined and easy for enforcement agents to administer to reduce any unnecessary complexity that may cause confusion and delays as well as to avoid their misuse and/or abuse.

34. In the light of the above, Principle 1IJ.2.b. invite States inter alia to exhaustively list, for the benefit of both legal certainty and transparency, all titles which may be enforced.
Principle III.2.c. reasserts the importance of the clarity and transparency of the enforcement process by underlining the rights and duties of the parties and of third parties in particular as regards their rankings and (percentage) entitlements to monies recovered and distributed amongst claimants.

States often employ different methods of serving documents pertaining to the enforcement process. Some states use the postal service as an efficient and affordable means of service while in other states documents are served personally. In certain states, the service of documents is more problematic because of a lack of public service infrastructure.

Taking account of these variations and difficulties, Principle III.2.d. invites States to employ the most effective and appropriate methods of service. In strengthening the efficiency of enforcement it is therefore important that service is both assured and rapid.

The coercive measures referred to in Principle III.2.e. highlights the utility of measures such as fixed and variable penalties for late payment and the freezing of defendant’s assets after judgment, to encourage parties to comply with, rather than to abuse, enforcement procedures.

In the same vein, disciplinary sanctions provide a similar incentive to combat situations where State employed enforcement agents abuse their position (e.g. suspension from office, deduction in salary).

Principle III.2.f (coupled with the limitations to postpone enforcement in Principle 1111.1 .f.) reasserts the importance of protecting the interests and rights of the parties. This is reinforced in Principle III.2.g. by the right of review of judicial and non-judicial decisions. These safeguards are offered by most if not all states but should, nevertheless, be underlined.

The cost-effectiveness of the enforcement process is of considerable importance in many states with limited (justice) budgets. At the same time, justice should be an affordable option for the parties. Principle 1113. recommends that fees (e.g. of the enforcement agent) are reasonable and not excessive, are prescribed by law, are fixed and transparent and are made known to the parties in advance so that they may foresee enforcement events and act appropriately within a reasonable time. Some member States consider the use of variable interest rates on fees as an effective incentive on defendants to pay their debts more quickly.

As regards the practical actions taken by the enforcement agent, Principle 1114. underlines the importance of the principle of proportionality when carrying out the enforcement process with regard to the amount of income and/or assets needed to be attached to satisfy the claim. In so doing, the interests of the (vulnerable) defendant should be borne in mind.

In the light of the above, it is recommended that enforcement agents take the most appropriate and effective means of action that is best suited to the claimant and defendant and which is proportional to the objective of the enforcement (e.g. not seizing excessive amounts of assets to satisfy the amount adjudged). As previously mentioned, alternative solutions should be sought where it is practicable to do so.

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7 This is without prejudice to the Council Regulation (EC) No 1348 of 29 May 2000 on the service in the (EU) Member States of judicial and extrajudicial documents in civil or commercial matters.

8 It is also one of the reasons why many states seriously consider allowing enforcement agents to become self-employed because, in doing so, the operation of enforcement becomes a cost neutral operation for the State.
44. Principle 1171.5 recommends that a defendant should generally bear the costs of enforcement because the enforcement will usually only have been initiated because of the defendant’s failure to pay or to comply with a court order, or to contact the court or claimant to explain his/her failure to do so. Where a claimant is offered an ‘enhanced’ form of service for an extra fee, it would only be fair for the defendant to bear that fee if he/she had been warned of the possibility that the claimant might access that service if the defendant did not comply with a court order.

45. Principle 111.5 places a general onus on the defendant to bear costs. It does not preclude the possibility of other parties who abuse the process to bear costs also. States may however make exceptions to this principle, for instance in family law cases.

46. With regard to the search and seizure of defendants’ assets, Principle 1171.6. highlights the importance of collecting information using (electronic) registries of assets (e.g. land, company and tax registers) and other available sources (e.g. banking information). This information should, where appropriate, be accessible to enable effective enforcement. In so doing, the dematerialization of assets may be avoided.

47. In the same Principle, States are also invited to consider the useful option of making defendants declare their assets - preferably in writing and as early as possible - to avoid the temptation for parties to act irresponsibly or even fraudulently.

48. At all times during the search and seizure of defendants’ assets, States should take account of relevant Human Rights and data protection provisions in particular the right to respect for private and family life pursuant to Article 8 of the ECHR and the Convention for the Protection of individuals with regard to automatic processing of personal data (ETS No. 108) and its Additional Protocol regarding supervisory authorities and trans-border data flows.

49. Principle 111.7. further highlights the importance of being prompt in the sale of defendants’ assets, particularly when selling by auction, to ensure that the highest market value is obtained and to avoid depreciation. The aim of this Principle is to best realize the potential value of assets in the interests of both the claimant and defendant.

**Principle IV — Enforcement agents**

50. The reference, in Principal IV. 1. to “enforcement agent” is, as previously mentioned, a generic term for persons authorized by the state to carry out enforcement but who are not necessarily employed by the state. No formal position is taken on the professional and institutional status of enforcement agents.

51. States should bear in mind their responsibilities to properly regulate the practices of enforcement agents subject to appropriate levels of monitoring and scrutiny (e.g. Ombudsperson) and to the possibility of judicial control. Enforcement agents should act, at all times, within the law even if they are paid by, or act upon the instigation of, claimants.

52. The regulation of the role, responsibilities and powers of enforcement agents is considered to be of particular importance. This also allows the parties to better understand the authority and role of enforcement agents.
53. In deciding on the extent of the role, responsibilities and powers of enforcement agents, States should consider ways of motivating enforcement agents when deciding on the level of autonomy they may exercise in their work.

54. The recruitment of enforcement agents, referred to in Principle IV.3., invites States to consider the moral standards of candidates (e.g. no criminal record) in particular because of the important and delicate role that enforcement agents play when interacting with the parties. To this end, it should be noted that enforcement agents need to be particularly sensitive to the interests of defendants.

55. Candidates’ legal knowledge and training in relevant law and procedure is of considerable importance when recruiting enforcement agents and it is recommended, in Principle IV.3., that pre-selection examinations are conducted to assess their theoretical knowledge (e.g. civil procedure law) and their practical knowledge (e.g. oral examinations, case study assessments).

56. The profile of enforcement agents is further explored in Principle IV.4. States are urged to ensure that enforcement agents are honorable and competent in their duties. This, in particular, refers to the high profile of enforcement agents as persons authorized by the state who, at all times, should act in an appropriate (competent) manner in accordance with recognized high professional and ethical standards that are fitting to the profession. Enforcement agents should act responsibly with regard to the interests of the claimant, while recognizing and responding to the needs of vulnerable defendants.

57. In member States where enforcement agents act as intermediaries between the parties, Principle IV.4 also invites States to ensure that they are professional in their dealings and do not act in a biased manner.

58. Principal IV.5. reasserts the importance of clearly defining the powers and responsibilities of enforcement agents in particular in relation to those of the judge to ensure that there is a clear delineation of authority in the carrying out of the enforcement process.

59. Principal IV.6. recommends that appropriate proceedings are used to ensure that an enforcement agent who is alleged to have abused his/her position is subject to disciplinary, civil and/or criminal proceedings so that the allegations are investigated fairly, and, if abuse is found, that the enforcement agent will be subject to appropriate sanctions. This gives the enforcement agent the reassurance that false allegations will be dismissed, and the defendant confidence that he/she has an effective remedy against the unfair behavior of an enforcement agent.

60. States who employ enforcement agents as public servants are invited, in Principle IV.7., to provide proper working conditions (e.g. premises, vehicles and computers), adequate physical resources (e.g. sufficient numbers of agents to manage and carry out enforcement) and support staff (e.g. administrative staff). The effective enforcement of court decisions necessitates a certain degree of financial commitment.

61. It should also be noted that Principle IV.7. refers only to state employed enforcement agents and not to self-employed enforcement agents who finance and remunerate themselves independently of the state.

62. In addition, state employed enforcement agents should be adequately remunerated to reflect their high profile role and responsibilities. In so doing, they may be motivated to act in the manner that is expected of them.
63. Once recruited, States are invited, in Principle P1.8., to maintain the professionalism and high standards of enforcement agents by ensuring that enforcement agents undergo initial and continuous training according to clearly defined and well-structured aims and objectives. In so doing, they may be motivated according to high professional standards.
Appendix B

Council of Europe Recommendation on Enforcement

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Recognizing that the rule of law on which European democracies are based is dependent on the support of fair, efficient and accessible judicial systems;

Considering that the enforcement of a court judgment is an integral part of the fundamental human right to a fair trial within a reasonable time, in accordance with Article 6 of the European Convention on Human Rights (hereinafter referred to as "the ECHR");

Acknowledging also that the rule of law principle can only be a reality if citizens can, in practice, assert their legal rights and challenge unlawful acts;

Considering that member states have a duty to ensure that all persons who receive a final and binding court judgment have the right to its enforcement. The non-enforcement of such a judgment, or a delay in it taking effect, could render this right inoperative and illusory to the detriment of one party;

Convinced of the need to promote greater efficiency and fairness in the enforcement of judgments in civil cases and to strike a positive balance between the rights and interests of the parties to the enforcement process;

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;

Recalling Resolution No. 3 of the 24th Conference of European Ministers of Justice on a "General approach and means of achieving effective enforcement of judicial decisions", held in Moscow on 4 and 5 October 2001, in which it was agreed that the "proper, effective and efficient enforcement of court decisions is of capital importance for States in order to create, reinforce and develop a strong and respected judicial system";


Having regard to the importance of information technology in improving the efficiency of the enforcement process and the relevant Council of Europe legal instruments in this field, including Recommendation Rec(2003)14 on the interoperability of information systems in the justice sector and Recommendation Rec(2003)15 on the archiving of electronic documents in the legal sector,
Recommends that governments of member states:

- facilitate the efficient and cost-effective enforcement of judicial decisions, as well as of other judicial or non-judicial enforceable titles, as appropriate;

- take or reinforce, as the case may be, all measures which they consider necessary with a view to the progressive implementation of the "Guiding principles concerning enforcement" set out below.

**Guiding principles concerning enforcement**

**I. Definitions**

For the purpose of this recommendation,

a. "Enforcement" means the putting into effect of judicial decisions, and also other judicial or non-judicial enforceable titles in compliance with the law which compels the defendant to do, to refrain from doing or to pay what has been adjudged;

b. "Enforcement agent" means a person authorized by the state to carry out the enforcement process irrespective of whether that person is employed by the state or not;

c. "Claimant" means a party seeking enforcement;

d. "Defendant" means a party against whom enforcement is sought.

**II. Scope of application**

1. This recommendation applies to civil matters, including commercial, consumer, labor and family law. It does not apply to administrative matters. This recommendation may also apply to criminal matters which are not concerned with the deprivation of liberty.

2. Moreover, this recommendation applies to the enforcement of judicial decisions, as well as of other judicial or non-judicial enforceable titles.

**III. Enforcement procedures**

1. In order for enforcement procedures to be as effective and efficient as possible,

   a. enforcement should be defined and underpinned by a clear legal framework, setting out the powers, rights and responsibilities of the parties and third parties;

   b. 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;

   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;

   d. defendants should provide up-to-date information on their income, assets and on other relevant matters;
e. states should set up a mechanism to prevent misuse of the enforcement process by either party which should not be considered as a re-adjudication of the case;

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;

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;

h. certain essential assets and income of the defendant should be protected, such as basic household goods, basic social allowances, monies for essential medical needs and necessary working tools.

2. Enforcement procedures should:

a. be clearly defined and easy for enforcement agents to administer;

b. prescribe an exhaustive definition and listing of enforceable titles and how they become effective;

c. clearly define the rights and duties of defendants, claimants and third parties, including, in the two latter cases, their rankings and entitlements to monies recovered and distributed amongst claimants;

d. provide for the most effective and appropriate means of serving documents (for example, personal service by enforcement agents, electronic means, post);

e. provide for measures to deter or prevent procedural abuses;

f. prescribe a right for parties to request the suspension of the enforcement in order to ensure the protection of their rights and interests;

g. prescribe, where appropriate, a right of review of judicial and non-judicial decisions made during the enforcement process.

3. Enforcement fees should be reasonable, prescribed by law and made known in advance to the parties.

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.

5. The necessary costs of enforcement should be generally borne by the defendant, notwithstanding the possibility that costs may be borne by other parties if they abuse the process.

6. 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.

7. Assets should be sold promptly while still seeking to obtain the highest market value and avoiding any costly and unnecessary depreciation.

IV. Enforcement agents

1. Where states make use of enforcement agents to carry out the enforcement process, they should comply with the principles contained in this recommendation.

2. Enforcement agents' status, role, responsibilities and powers should be prescribed by law in order to bring as much certainty and transparency to the enforcement process as possible. States should be free to determine the professional status of enforcement agents.

3. In recruiting enforcement agents, consideration should be given to the moral standards of candidates and their legal knowledge and training in relevant law and procedure. To this end, they should be required to take examinations to assess their theoretical and practical knowledge.

4. Enforcement agents should be honorable and competent in the performance of their duties and should act, at all times, according to recognized high professional and ethical standards. They should be unbiased in their dealings with the parties and be subject to professional scrutiny and monitoring which may include judicial control.

5. The powers and responsibilities of enforcement agents should be clearly defined and delineated in relation to those of the judge.

6. Enforcement agents alleged to have abused their position should be subject to disciplinary, civil and/or criminal proceedings, providing appropriate sanctions where abuse has taken place.

7. State-employed enforcement agents should have proper working conditions, adequate physical resources and support staff. They should also be adequately remunerated.

8. Enforcement agents should undergo initial and ongoing training according to clearly defined and well-structured aims and objectives.
EXPLANATORY MEMORANDUM

I. INTRODUCTION

1. The Council of Europe has, for many years, been dealing with questions concerning the enforcement of court decisions in the framework of its work aiming at setting standards in the field of Human Rights and the Rule of Law and at promoting law reform in States.

2. The European Court of Human Rights decided, in the landmark case of Hornsby v Greece in 1997, that enforcement forms an integral part of the fundamental human right to a fair trial within a reasonable time in accordance with Article 6 of the European Convention on Human Rights. The Court has, since then, recurrently reaffirmed that States are under a duty to ensure that all persons in receipt of a final and binding court decision have the right to enforcement and that the right of access to a court "would be illusory if a Contracting State's domestic legal system allowed a final binding judicial decision to remain inoperative to the detriment of one party".

3. The Conclusions adopted by the participants of the Council of Europe multilateral seminar on "The execution of court decisions in civil cases" held at the Palais de l'Europe, Strasbourg, on 15 and 16 October 1997, reaffirmed the legal and political importance of enforcement in the proper functioning of the judicial system in a State governed by the rule of law.

4. In Resolution No. 3 of the 24th Conference of European Ministers of Justice on "The implementation of judicial decisions in conformity with European standards", held in Moscow on 4 and 5 October 2001, it was agreed that the "proper, effective and efficient enforcement of court decisions is of capital importance for States in order to create, reinforce and develop a strong and respected judicial system". To this end, the European Ministers of Justice invited the Committee of Ministers to instruct the European Committee on Legal Co-operation (CDCJ) to identify common European enforcement standards and principles as regards the procedures to be applied and the role and practices of enforcement agents (e.g. bailiffs).

5. During the Council of Europe multilateral seminar on "The role, organization, status and training of enforcement agents" held in Varna, Bulgaria, on 19 and 20 September 2002, the Conclusions adopted by the participants reasserted the importance of fair and efficient enforcement carried out by an effective profession of enforcement agents.

6. As a follow-up to Resolution No.3 of the Conference of European Ministers of Justice, and on the basis of the legal co-operation activities carried out by the Council of Europe on a bilateral, regional and multilateral level, the Working Party of the Committee of experts on efficiency of justice (CJ-EJ-GT) held two meetings at the Palais de l'Europe in Strasbourg (24-26 June 2002 and 9-11 October 2002) to prepare a draft Recommendation on enforcement for the attention of the CJ-EJ at its meeting held at the Palais de l'Europe on 13-15 November 2002. The draft Recommendation has been submitted to the European Committee on Legal Co-operation (CDCJ) which approved it on 23 May 2003.
II. COMMENTS ON THE DIFFERENT PARTS OF THE RECOMMENDATION

7. Directly following the Preamble, the Recommendation invites the governments of member States to facilitate the enforcement of those judicial decisions and enforceable titles of a judicial and non-judicial character requiring enforcement.

8. The Recommendation applies to judicial decisions and to other judicial and non-judicial enforceable titles which are, in the wider sense, acts of a binding nature often issued by other authorities (e.g. settlements of a public notary, arbitral awards). It must be understood that not all such decisions and titles require action to be taken to enforce them as is the case, for example, for acts of a declaratory or self-executory nature or for judgments that change existing relationships (e.g. divorce or annulment of contracts).

Principle I - Definitions

9. Principle I concerns the definitions of the main references relating to enforcement: the process of enforcement, the enforcement agent, the claimant and the defendant.

10. The reference to "enforcement agent" covers a wide variety of persons responsible for carrying out the enforcement process (e.g. bailiff, huissier de justice, enforcement judge etc). It must be pointed out that, in many states, the role, responsibilities, organization and professional status of these persons vary considerably as does their working conditions and remuneration.

11. At the time of preparation of this Recommendation, many states were re-examining their enforcement procedures and practices. In the majority of Council of Europe States, enforcement agents are classed either as civil servants subordinated to the Ministry of justice, judicial officers subordinated to the courts, self-employed persons acting independently or are employed as a combination of the above.

Principle II - Scope of Application

12. Principle II concerns the legal scope of application of the Recommendation.

13. This Recommendation applies to civil matters (including matters of a commercial, consumer, labor and family nature) and may apply to certain specific criminal matters (e.g. fines, confiscation and, in so far as it is not considered a civil matter, compensation for victims). This Recommendation does not deal with the question of immunity and enforcement.

14. In contrast, the Recommendation does not concern criminal matters involving the deprivation of liberty often relating to custody in prison nor does it concern administrative matters. In the latter instance, reference should be made Recommendation Rec (...) of the Committee of Ministers to member States on the execution of decisions in the field of administrative law, the provisions of which are without prejudice to the present Recommendation.

15. States may apply the principles contained in the Recommendation to other appropriate areas.

Principle III - Enforcement procedure

16. Throughout the Recommendation States are invited to consider different ways of improving the effectiveness of enforcement procedures and practices.
17. Principle III.1. a. makes clear that enforcement procedures should be clearly defined and laid down in a legal framework with reference to the powers, rights and responsibilities of the parties, including third parties such as maintenance claimants and defendants of an attached debt. This Principle underlines that enforcement is more effective when procedures are clear and easy to follow. This also enables the parties to more effectively understand their roles and comply with their responsibilities.

18. The reference, in Principle III.1.b., to 'compliance with the relevant law and judicial decisions' envisages two recurrent problems in many States: (i) the misuse and abuse of enforcement procedures by the parties thereby delaying the process and justice as a whole, and (ii) the risks of private forms of justice emerging when the enforcement process is inefficient.

19. To combat the emergence of such problems, States are invited to develop detailed legislation with legal certainty, transparency and easy applicability to encourage the parties to use and to rely upon enforcement to strengthen the credibility and visibility of the process.

20. The reference, in Principle III.1.c., to the duty of the parties to co-operate appropriately is necessary to increase compliance with, and reduce misuse of, the enforcement process (e.g. vexatious appeals). By co-operating and, therefore, by better communicating with each other, the vulnerability of the defendant and adverse reactions to the enforcement process (e.g. hiding assets), may be reduced. For example, a cooperative claimant may be more open to agreeing with the defendant on the assets to be attached or on payment arrangements (e.g. by installments). In member States where these actions are permitted enforcement agents can therefore play a key role in facilitating such co-operation.

21. In addition, the co-operation of third parties, such as banks, can be extremely beneficial in the search and seizure of defendant's income and assets subject to Human Rights and data protection standards.

22. In the same vein, Principle III.1.d. refers to the duty of defendants to provide up-to-date information on their income, assets as well as other relevant matters (e.g. declarations referring to the whereabouts of a child) so that they may feel more responsible (even liable) and thereby discouraged from acting adversely. Defendants should provide such information if and as required by national law.

23. Principle III.1.e. reasserts the importance of preventing and deterring abuses of procedures by inviting States to establish mechanisms which combat procedural abuses for example by giving judges and/or enforcement agents more authority to penalize parties who are abusive (e.g. issuance of fines, increasing investigative powers).

24. In the light of the above, States should consider the ways in which the parties and the actors (i.e. judge and enforcement agent) may play a more active role during enforcement to empower and motivate them.

25. Principle III.1.f. reasserts the importance of avoiding unnecessary delays which may be brought about by unnecessary postponement of enforcement (e.g. vexatious appeals by the parties, by the decision of the enforcement agent). States are invited to overcome such delays by requiring reasons to be prescribed by law, which are subject, ultimately, to judicial review.
26. Considering the different positions of the (demanding) claimant and (often vulnerable) defendant, it is extremely important that enforcement procedure and practice strikes an appropriate and considerate balance of their interests which respects in particular Articles 6 (right to a fair trial) and 8 (right to respect for private and family life) of the European Convention on Human Rights (ECHR).

27. 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 the rights of children, the best interests of the child should be a primary consideration in accordance with international and national law. The main application of this Recommendation in family matters is to issues concerning the maintenance of dependants.

28. Nothing in this Recommendation should supersede the European Convention on recognition and enforcement of decisions concerning custody of children and on restoration of custody of children and other relevant international instruments concerning the unlawful removal of children.

29. In certain family law cases, relevant authorities, such as social services, may have an important role to play in promoting co-operation both between authorities and between the parties concerned.

30. The vulnerable and precarious position of the defendant is further emphasized in Principle III.1.h. It recommends that certain basic assets and income of the defendant should not be seized so that he/she has sufficient means to live as a measure of respect for that person's private life and human dignity. Similar exemptions can be found in the enforcement and civil procedural codes of many states. These essential items should, nevertheless, be underlined.

31. States should also ensure that the rights of claimants' dependants such as children (e.g. maintenance) are guaranteed.

32. In some states, the law exempts the attachment of the principle dwelling of the defendant (e.g. family house) while in many other states it does not. In the latter event, the seizure of the principle dwelling and the eviction of the defendant and his/her dependants is a stressful event causing unnecessary hardship especially in states with low levels of social security and alternative housing plans. The opportunity to attach alternative assets, where appropriate, should be available within the enforcement system.

33. In Principle III.2.a., States are invited to ensure that enforcement procedures are clearly defined and easy for enforcement agents to administer to reduce any unnecessary complexity that may cause confusion and delays as well as to avoid their misuse and/or abuse.

34. In the light of the above, Principle III.2.b. invite States inter alia to exhaustively list, for the benefit of both legal certainty and transparency, all titles which may be enforced.

35. Principle III.2.c. reasserts the importance of the clarity and transparency of the enforcement process by underlining the rights and duties of the parties and of third parties in particular as regards their rankings and (percentage) entitlements to monies recovered and distributed amongst claimants.

36. States often employ different methods of serving documents pertaining to the enforcement process. Some states use the postal service as an efficient and affordable means of service while in
other states documents are served personally. In certain states, the service of documents is more problematic because of a lack of public service infrastructure.

37. Taking account of these variations and difficulties, Principle III.2.d. invites States to employ the most effective and appropriate methods of service. In strengthening the efficiency of enforcement it is therefore important that service is both assured and rapid.

38. The coercive measures referred to in Principle III.2.e. highlights the utility of measures such as fixed and variable penalties for late payment and the freezing of defendant's assets after judgment, to encourage parties to comply with, rather than to abuse, enforcement procedures.

39. In the same vein, disciplinary sanctions provide a similar incentive to combat situations where State employed enforcement agents abuse their position (e.g. suspension from office, deduction in salary).

40. Principle III.2.f. (coupled with the limitations to postpone enforcement in Principle III.1.f.) reasserts the importance of protecting the interests and rights of the parties. This is reinforced in Principle III.2.g. by the right of review of judicial and non-judicial decisions. These safeguards are offered by most if not all states but should, nevertheless, be underlined.

41. The cost-effectiveness of the enforcement process is of considerable importance in many states with limited (justice) budgets. At the same time, justice should be an affordable option for the parties. Principle III.3. recommends that fees (e.g. of the enforcement agent) are reasonable and not excessive, are prescribed by law, are fixed and transparent and are made known to the parties in advance so that they may foresee enforcement events and act appropriately within a reasonable time. Some member States consider the use of variable interest rates on fees as an effective incentive on defendants to pay their debts more quickly. In countries where between claimants and enforcement agents there is freedom of contract concerning enforcement fees, the part of Principle III.3. which provides for enforcement fees to be prescribed by law may be restricted to fees to be born by the defendant. Indeed, in these countries, claimants should continue to have the possibility to negotiate with enforcement agents the amount of the enforcement fees, while defendants will be protected by paying the enforcement fees as prescribed by law.

42. As regards the practical actions taken by the enforcement agent, Principle III.4. underlines the importance of the principle of proportionality when carrying out the enforcement process with regard to the amount of income and/or assets needed to be attached to satisfy the claim. In so doing, the interests of the (vulnerable) defendant should be borne in mind.

43. In the light of the above, it is recommended that enforcement agents take the most appropriate and effective means of action that is best suited to the claimant and defendant and which is proportional to the objective of the enforcement (e.g. not seizing excessive amounts of assets to satisfy the amount adjudged). As previously mentioned, alternative solutions should be sought where it is practicable to do so.

44. Principle III.5 recommends that a defendant should generally bear the costs of enforcement because the enforcement will usually only have been initiated because of the defendant's failure to pay or to comply with a court order, or to contact the court or claimant to explain his/her failure to do so. Where a claimant is offered an `enhanced' form of service for an extra fee, it would only be
fair for the defendant to bear that fee if he/she had been warned of the possibility that the claimant might access that service if the defendant did not comply with a court order.

45. Principle III.5 places a general onus on the defendant to bear costs. It does not preclude the possibility of other parties who abuse the process to bear costs also. States may however make exceptions to this principle, for instance in family law cases. This is without prejudice to the way in which the costs of the enforcement, including costs based on a fixed scale, may be calculated.

46. With regard to the search and seizure of defendants’ assets, Principle III.6. highlights the importance of collecting information using (electronic) registries of assets (e.g. land, company and tax registers) and other available sources (e.g. banking information). This information should, where appropriate, be accessible to enable effective enforcement. In so doing, the dematerialization of assets may be avoided.

47. In the same Principle, States are also invited to consider the useful option of making defendants declare their assets - preferably in writing and as early as possible - to avoid the temptation for parties to act irresponsibly or even fraudulently.

48. At all times during the search and seizure of defendants’ assets, States should take account of relevant Human Rights and data protection provisions in particular the right to respect for private and family life pursuant to Article 8 of the ECHR and the Convention for the Protection of individuals with regard to automatic processing of personal data (ETS No. 108) and its Additional Protocol regarding supervisory authorities and trans-border data flows.

49. Principle III.7. further highlights the importance of being prompt in the sale of defendants' assets, particularly when selling by auction, to ensure that the highest market value is obtained and to avoid depreciation. The aim of this Principle is to best realize the potential value of assets in the interests of both the claimant and defendant.

Principle IV - Enforcement agents

50. The reference, in Principle IV.1. to "enforcement agent" is, as previously mentioned, a generic term for persons authorized by the state to carry out enforcement but who are not necessarily employed by the state. No formal position is taken on the professional and institutional status of enforcement agents.

51. States should bear in mind their responsibilities to properly regulate the practices of enforcement agents subject to appropriate levels of monitoring and scrutiny (e.g. Ombudsperson) and to the possibility of judicial control. Enforcement agents should act, at all times, within the law even if they are paid by, or act upon the instigation of, claimants.

52. The regulation of the role, responsibilities and powers of enforcement agents is considered to be of particular importance. This also allows the parties to better understand the authority and role of enforcement agents.

53. In deciding on the extent of the role, responsibilities and powers of enforcement agents, States should consider ways of motivating enforcement agents when deciding on the level of autonomy they may exercise in their work.
54. The recruitment of enforcement agents, referred to in Principle IV.3., invites States to consider the moral standards of candidates (e.g. no criminal record) in particular because of the important and delicate role that enforcement agents play when interacting with the parties. To this end, it should be noted that enforcement agents need to be particularly sensitive to the interests of defendants.

55. Candidates' legal knowledge and training in relevant law and procedure is of considerable importance when recruiting enforcement agents and it is recommended, in Principle IV.3., that pre-selection examinations are conducted to assess their theoretical knowledge (e.g. civil procedure law) and their practical knowledge (e.g. oral examinations, case study assessments).

56. The profile of enforcement agents is further explored in Principle IV.4. States are urged to ensure that enforcement agents are honorable and competent in their duties. This, in particular, refers to the high profile of enforcement agents as persons authorized by the state who, at all times, should act in an appropriate (competent) manner in accordance with recognized high professional and ethical standards that are fitting to the profession. Enforcement agents should act responsibly with regard to the interests of the claimant, while recognizing and responding to the needs of vulnerable defendants.

57. In member States where enforcement agents act as intermediaries between the parties, Principle IV.4 also invites States to ensure that they are professional in their dealings and do not act in a biased manner.

58. Principle IV.5. reasserts the importance of clearly defining the powers and responsibilities of enforcement agents in particular in relation to those of the judge to ensure that there is a clear delineation of authority in the carrying out of the enforcement process.

59. Principle IV.6. recommends that appropriate proceedings are used to ensure that an enforcement agent who is alleged to have abused his/her position is subject to disciplinary, civil and/or criminal proceedings so that the allegations are investigated fairly, and, if abuse is found, that the enforcement agent will be subject to appropriate sanctions. This gives the enforcement agent the reassurance that false allegations will be dismissed, and the defendant confidence that he/she has an effective remedy against the unfair behavior of an enforcement agent.

60. States who employ enforcement agents as public servants are invited, in Principle IV.7., to provide proper working conditions (e.g. premises, vehicles and computers), adequate physical resources (e.g. sufficient numbers of agents to manage and carry out enforcement) and support staff (e.g. administrative staff). The effective enforcement of court decisions necessitates a certain degree of financial commitment.

61. It should also be noted that Principle IV.7. refers only to state employed enforcement agents and not to self-employed enforcement agents who finance and remunerate themselves independently of the state.

62. In addition, state employed enforcement agents should be adequately remunerated to reflect their high profile role and responsibilities. In so doing, they may be motivated to act in the manner that is expected of them.
63. Once recruited, States are invited, in Principle IV.8., to maintain the professionalism and high standards of enforcement agents by ensuring that enforcement agents undergo initial and continuous training according to clearly defined and well-structured aims and objectives. In so doing, they may be motivated according to high professional standards.