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ENFORCEMENT OF THE COURT DECISIONS AND OTHER DOCUMENTS THAT CONTAIN OBLIGATION

ABSTRACT

Through the research in this paper will be presented the latest developments in the enforcement system, and the start of privatization of enforcement services in Kosovo by making comparisons with systems in countries of the region.

Reform of the system of enforcement of the court decisions, and other obligatory documents is the most important part of the reform of justice. Our state has made significant strides in reforming the legal and judicial systems as a result of EU membership process, by foreseeing that legislation, procedures and practices to be harmonized with internationally accepted standards, such are the recommendations of the Council of Europe.

Progress Report of the European Commission notes that the existing enforcement systems in Kosovo and countries in the region do not meet the today's requirements. Courts have large number of remaining cases, and mainly subject to the execution. The possibility of excessive use of remedies causes lengthy and unnecessary procedures in the courts.

There should be identified some causes related to the legislative framework, where laws have had a high degree of protection of the debtor in enforcement cases. Performance and high standards of accountability, assessment and performance are absolutely critical for achieving improved enforcement system.

Key words; Obligatory, performance, standards, enforcement, accountability

1. Introduction

In organized societies in states, primarily self-judgment is forbidden and punished. The state is the one that gives legal protection of the right to subjects for subjective rights that were violated by others. State is doing this

by bodies which operate according to the laws.¹⁶⁵ Protection of violated individual rights is made in the proceedings held in regular courts, administrative bodies or through private agencies specialized for enforcement. The obligation of the state to protect legally subjects does not end only with the issuance of decision, or the finding of violations of individual rights and the obligation of the opposing party to perform certain actions, or to refrain in certain actions.

If the party which has the obligation does not perform his obligation voluntarily, then the other party for the realization of this right should request the support of the competent courts or private enforcement agent.

Fast, effective and efficient enforcement of the judgments is the key to public confidence in the courts, while the successful enforcement of judgments creates and maintains the credibility of the courts. Effective systems for the enforcement of judicial decisions represent vital element for economic growth, job creation, foreign investments and prosperity increase.

In recent years, many countries in the region, and even beyond, have made efforts and have introduced the most effective solutions related with these ineffective enforcement procedures, our country has been also part of these processes.

Delays in execution of court decisions in Kosovo severely damage the right to a fair judgement within a reasonable time, by undermining the rule of law in general.

The most problematic cases arise when dealing with the enforcement of decisions based on reliable documents, such as bills of public services due to the large number of cases, and cases where the debtors are state bodies such as municipalities or ministries.

Thomas Hammarberg, Commissioner for Human Rights at the Council of Europe in 2009 said, "incomplete enforcement of final judiciary decisions must be seen as a refusal to accept the rule of law, and is a serious problem for human rights"¹⁶⁶.

¹⁶⁵ Brestovci, Faik *The Law on Civil Procedure II*, Pristina 1997 page 17.

¹⁶⁶ Thomas Hammarberg, the Commissioner for the Human Rights within the European Council. *A flawed Implementation of Court Decisions Erodes Trust on State Justice*" 31 August 2009. Available in web page http://www.coe.int/t/commissiner/viewpoints//090831_en.asp. accessed in internet on 27 September 2011.

The European Commission regarding Kosovo Progress Report for 2010 states "unexecuted judgments have violated the public trust, in the ability, professionalism and fairness of the judiciary, by limiting effective access to justice".¹⁶⁷

2. Implementation of international acts in enforcement of judicial decisions

The European Court of Human Rights (ECHR), which judges the legal issues arising from domestic cases, and that involve civil and penal issues, has found that the enforcement procedures should be seen as an integral part of the judgement for the purpose of Article 6 of the Convention.

The European Court of Human Rights is very clear in the interpretation of this provision: "It would be no conceivable that Article 6 paragraph 1 to describe in detail the procedural guarantees granted to parties of proceedings that are fair, public and expeditious, if implementation of judicial decisions are not protected. If Article 6 is interpreted as has to do only with access to the court and the conduct of proceedings, it would lead to a incompatible situation with the principle of the rule of law, which was taken over by the contracting states, and which have to be respected during the ratification of the convention. Enforcement of the judgment given by any court should be seen as an integral part of the "judgement" for the purposes of Article 6, and the court has already accepted this principle in cases related to the length of proceedings".¹⁶⁸

In *Delcourt against Belgium* case, the court stated that: "in a democratic society within the meaning of the Convention, the right for the right exercise of justice with a limited interpretation of article 6 (1) would not correspond to the intent and purpose of that provision in such important country".¹⁶⁹

Kosovo's Constitution Article 22 stipulates that "Human rights and fundamental freedoms guaranteed by international agreements and instruments are guaranteed by this Constitution, are directly applicable in the

¹⁶⁷ European Commission, The Progress Report for Kosovo for year 2010, Brussels 9 November 2010.

¹⁶⁸ OSCE Report, Delays on execution of the final court decisions present violation of domestic law, and the right to fair judgement, September 2007 page 3-4. <http://www.osce.org/sq/kosovo/28298> (accessed on 25 July 2011).

¹⁶⁹ Nuola Mole and Catharina Harby, *The Human Rights Manuals*, no.3.

Republic of Kosovo and, in the case of conflict, have priority over provisions of laws and other acts of public institutions”¹⁷⁰.

Based on this, it can be particularly mentioned Article 6, paragraph 1 of the European Convention on Human Rights which deals with civil issues.

In reforming the justice system our country has made the harmonization of laws with those of the EU and within this, in Law on Enforcement Procedure No.04 / L-139 has taken into account the recommendations of the Council of Europe on enforcement, by foreseeing organizational changes, offering effective enforcement mechanisms, and by the gradual development of legal and logistical infrastructure, believing that standards of accountability, assessment and performance are of a vital importance for an effective system of enforcement.

On 17 December 2009, European Commission for Efficiency CEPEJ has published a guideline for better implementation of enforcement based on the recommendation of European Council.¹⁷¹

The recommendation (and instructions) is based on efficiency, transparency and its easy understanding. But it does not describe the ideal system. There is no ideal system for enforcement. But what is possible, is a forecast of basis and principles of enforcement. As such, these recommendations and guidelines can be used to assess the enforcement procedures and practices. It is clear that the Recommendation REC(2003)17 and the guidelines have no

¹⁷⁰Article 22 of the Constitution of Republic of Kosovo [Direct Applicability of International Agreements and Instruments]

Human rights and fundamental freedoms guaranteed by the following international agreements and instruments are guaranteed by this Constitution, are directly applicable in the Republic of Kosovo and, in the case of conflict, have priority over provisions of laws and other acts of public institutions:

- (1) Universal Declaration of Human Rights;
- (2) European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols;
- (3) International Covenant on Civil and Political Rights and its Protocols;
- (4) Council of Europe Framework Convention for the Protection of National Minorities;
- (5) Convention on the Elimination of All Forms of Racial Discrimination;
- (6) Convention on the Elimination of All Forms of Discrimination Against Women;
- (7) Convention on the Rights of the Child;
- (8) Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment;

¹⁷¹ Guidelines for better implementation of existing recommendations of the Council of Europe for enforcement, of the European Commission for the efficiency of justice (CEPEJ), CEPEJ (2009) 11th review, hereinafter CEPEJ (2009) the 11th revision (see Annex).

obligatory force. However, it can be taken as a reference point for further definition of an effective and efficient enforcement. Recommendations and guidelines prescribe a number of guiding principles related to enforcement. More specifically, it prescribes certain principles and standards regarding the definition, the legal scope of application of the recommendation, the procedure of enforcement and enforcement officials.

Perhaps the recommendations and guidelines can be considered as "regulation" or guideline. National systems are so different that it is very difficult to create an ideal system of enforcement, or ideal enforcement official.

But what is adequate enforcement system? How does it work? Do we have the ideal system? Is there an ideal enforcement system? There are no answers yet. This is utopia. However, through the recommendations and guidelines can be possible to apply the certain bases and principles of a system.¹⁷²

In Resolution no. 3 of the 24th Conference of Ministers of Justice in Moscow (4 and 5 October 2001) is noted that the "proper, effective and efficient enforcement of court decisions is of capital importance for States in order to create, implement and develop a strong and respected judiciary". Based on this conclusion, the Committee of Ministers of the Council of Europe has adopted a recommendation for enforcement.¹⁷³

3. Enforcement of the judiciary decisions by the judicial authorities

As regards to competence in judicial practice there have been different interpretations, about that if creditors have a right to go to court again with the entry into force of the new Law on enforcement procedure no. 04 / L-139.

In Article 5 paragraph 2 of this law is cited "the competent court has substantial competence to order and carry out enforcement, and to decide the issues in the proceedings in accordance with the provisions of this Law,

¹⁷² The enforcement agent in Europe: Utopia or reality, Kluwer, 2004, page 313, in March 2004 in Utrecht of Netherlands was held an international conference titled : "Enforcement Agent in Europe: Utopia or reality?". Douwe Strikma, enforcement agent one of the speakers, said: "When the enforcement agents in Europe can work on the same bases of working model, there will be an adequate enforcement system, so legally sound and pragmatic".

¹⁷³ Recommendation 17/2003, adopted on 09 September 2003.

unless the courts and other enforcement authorities have jurisdiction to order and carry out enforcement, and also to decide for the issues in the proceedings.

Whereas article 5, para. 6, states "The court is competent to decide on the enforcement procedure and to implement the enforcement of judicial decisions related with:

- all issues from the family law
- the return of employees and civil servants in work and other compensations

This provision is exceptional one, in order for the court to decide on other issues unless provided by law to decide on issues such as to decide for the issues relating to any objection, complain, irregularities in enforcement proceedings under article 52 and 67 of this law, or any procedure against actions taken by the enforcement agent, the competence has the competent Court in the territory of which the debtor has residence, or if there is no residence in Kosovo, then in the territory in which is the place of residence if he is the natural person.

If the debtor is a legal person, the territorial competency has competent Court within the residential area of debtor. If the debtor does not have temporary residence in Kosovo, the competency has the competent Court in the territory of which are located movable and immovable assets which are subject to enforcement.¹⁷⁴

Regarding the issue for decision, in the first instance the procedure of enforcement is conducted by the enforcement agent, and exceptionally is conducted by the individual judge (only) when the Law assigns the enforcement to be determined and applied by the court (the first instance organ). There is defined also a timeline where the enforced body decide for the enforcement proposal within 7 days of receipt of proposal.¹⁷⁵

According to the above mentioned provision "in the second instance decision is issuing individual judge", which has not been the practice until now, knowing that in the second instance decides the panel for review of complain.

¹⁷⁴ See article 5 parg.5, LEP no.04/L-139

¹⁷⁵ See article 3 parg.1 LEP no.04/L-139

4. Enforcement of the decision for return in working place and hand-over of child

Most important and sensitive issues have been remained within the competence of court. The Court has exclusive competences for the enforcement of decisions regarding the return of employees, and civil servants in work.

The decision body for the proposal of enforcement based on enforcement document, with which the employer is ordered to return the employee to work, or to systemize in appropriate working position, and apply the enforcement, is the Court of territorial competency in territory where is created the working relation.¹⁷⁶

The proposal for enforcement based on document of enforcement for return to the workplace, with which the employer is ordered to return the employer to work, can be presented within ninety (90) days from the day the decision becomes final.

Enforcement, based on the enforcement document by which the employer is obligated to return the employee to work, or to systemize in appropriate working position, is applied through the determination of fines in money against employer and responsible person in it.

Cash penalty determined under the provisions of article 15 and 16 of this law, and enforcement provisions for purpose of realization of credit for the action which can be committed only by the debtor.¹⁷⁷

Pursuant to article 317 of LPE the proposer of enforcement reserves the right of payment or compensation of monthly wage, or other payments while the person was unemployed because of an illegal decision of employer for the dismissal from work, and can request the case to be treated in contentious procedure.

If the enforcement Court has only partially approved the request for payment of monthly salaries, then it will instruct the creditor of the enforcement that the rest of the request to realize in judicial contested procedure.¹⁷⁸

¹⁷⁶ See article 312 of LEP no.04/L-139

¹⁷⁷ See article 314 of LEP, no.04/L-139

¹⁷⁸ See article 317 par.2 of LEP, no.04/L-139

As for the delivery and receipt of child, these provisions are implemented accordingly also in the cases of contact of the child, because in the practice court acts according to these proposals.

To decide on proposal for enforcement of the Court decision with which is ordered delivery of child to parent, or to other person, respectively to institution to whom the child was entrusted for the care and education, competent is the Court which is of the general territorial competency for the party who requests the enforcement, but also the Court in whose territory is child. For the implementation of enforcement, in territorial view is competent the Court in whose territory is the child at the time of enforcement.¹⁷⁹

The proposal for enforcement of decision can present parent, or other person to whom the child is entrusted for the care and education, as well as custody. Special importance is paid to the way of application of enforcement where the court carries out the need to protect the interests of the child to the greatest possible extent.

5. The role of Judges and enforcement officials

In our system it is the competence of the judge to allow the enforcement, but that does not mean that even at this stage of proceedings to not have the help of enforcement officer, especially in cases that are not complex.

Pursuant to law the judge has the responsibility for these enforcement actions:

- To verify the proposal for enforcement,
- To decide on objections and complaints, and disputes that arise during the enforcement procedure,¹⁸⁰
- As well as other duties prescribed by law that are in competence of enforcement judge such is delivery of child.

The enforcement officer has administrative tasks that include:

- Maintaining of the enforcement records,
- The proceeding of the informations for the parties,

¹⁷⁹ See article 318 of LEP no.04/L-139

¹⁸⁰ Article 73 of Law on Enforcement Procedure Nr.04/L-139.

- As well as compilation of the minutes regarding the registration, and sequestration of the movable items, sequestration of pledges, emptying and delivery of the immovable.

The obligations of the judges and enforcement officer are:

- Respect of the debtors dignity,
- Timely proceeding of the enforcement proposals, and according to the order of their receipts.

In enforcement procedure the court is obliged to act with urgency.¹⁸¹ The court has a duty to receive cases for procedure according to the order in which received proposals for enforcement, except when the nature of the credit or special circumstances requires for the court to act differently.

The law has not clearly defined which are those special circumstances, but the court will act by assessing each case individually, unless the cases are priority as the family issues, or the return of employees at the workplace.

6. The obligations of other persons in process

The role of third parties in the procedure is particularly the provision of different informations, as are cadastral services, civil registration centres, vehicle registration centre, the Kosovo Police Service.

Another category of third persons in procedure are debtors of debtor's, where in practical cases are numerous, especially in terms of the enforcement procedure of sequestration of collateral. Third parties may be commercial banks where in most cases the debtors have open accounts in banks where they receive personal incomes through these accounts, or different business activities where various payments are done through bank accounts.

Important role for the development of the enforcement procedure has Cadastral Service. It would be impossible to develop an enforcement procedure regarding immovable property without the help of these services in providing necessary information. The same value for identification of persons, different addresses has civil registry service. For the safety of judges

¹⁸¹ Article 6 of Law on Enforcement Procedure Nr.04/L-139.

and other personnel, if necessary is requested assistance from the Kosovo Police.¹⁸²

7. The enforcement of decisions by enforcement agents

According to the Law on Enforcement Procedure No.04 / L-139 Kosovo as well as other countries in the region since 2014 have made private enforcement system operational. This system through private enforcement agents is expected to provide solutions to all the problems that already exist in Kosovo. Private enforcement agents tend to be highly motivated and professional in their work, and provide high level services to ensure their competitive success. They have direct control in the management of offices that manage and benefit personally from their performance, bringing a high level of responsibility for matters such as: engagement and removal, budgeting, information technology systems to support their work and office management.¹⁸³

In addition to this, because the process of enforcement becomes private business instead of a public function, supply and maintenance costs of enforcement offices, and the training of agents and their employees are completely removed from the state budget, although the state holds the majority of expense of monitoring of enforcement agents to ensure the legality of their operations, and their availability when required.¹⁸⁴

The private system of enforcement has also the advantage of removing the management responsibility of the enforcement process by judges and court enforcement officers. These responsibilities are transferred to private agents. The role of the courts still remains very important, because the sensitive issues such are family issues remain within the exclusive competence of the courts; also the legal remedies remain in responsibility of the courts. Other

¹⁸² Article 53.3 of LEP cites "During the enforcement procedure the police have a task to provide to an officer of the court the necessary support for conduct of the enforcement actions. The court official person, in case of need might take pertinent measures against a person who obstructs the conduct of enforcement actions.

53.4 During the action of the police under the command of an officer of the court, there are applied proper provisions of law for the internal affairs respectively judicial police.

¹⁸³ See program Enforcement system of agreements and decisions in Kosovo (SEAD), Increase of the efficiency of enforcement of contracts, 30 April 2010 page 34.

¹⁸⁴ See program Enforcement system of agreements and decisions in Kosovo (SEAD), Increase of the efficiency of enforcement of contracts, 30 April 2010 page 34.

important function is supervisory function, because parties who think that private agent has violated any of their rights can request court support.¹⁸⁵

However daily direct involvement of judges in the enforcement process ends by leaving judges with their basic responsibility of the judgement of the court contexts between the parties, and by depriving them from the burden of some management responsibilities that often take a significant part of their time.

For these reasons, enforcement systems based on private enforcement agents have become standard in most of Western Europe and in the former socialist countries, and in Central and Eastern Europe. It is also right to say that the United States and many countries that are applying customary law have private enforcement system, although at least in the USA is structured very differently than in the systems of the Balkan States.¹⁸⁶

Profession of the private agent is not comfortable profession but it is very important. The importance of this profession is shown by the fact that in some countries like in Bulgaria the first private enforcement agent is appointed former Minister of Justice, while in Belgium the number of private enforcement agents is limited and to be appointed to this position should wait many years, while the procedure is very special because the appointments is made by the king.

LEP of year 2012 has provided strict criteria for appointment of private enforcement agents, which are apparently identical to the criteria required for appointments to judge by giving importance and special treatment to this profession.¹⁸⁷

¹⁸⁵ See article 5, parag.5 of LEP, no 04/L-139.

¹⁸⁶ See program Enforcement system of agreements and decisions in Kosovo (SEAD), Increase of the efficiency of enforcement of contracts, 30 April 2010 page 23.

¹⁸⁷ Article 326 of LEP 2012 is foreseeing the conditions for the appointments of private enforcement agents

1.The person who meets the following conditions may be appointed as a private enforcement officer:

- 1.1. he/she must be a citizen of Republic of Kosovo;
- 1.2. he/she must have a legal capacity to act and must be medically fit;
- 1.3. he/she must have graduated the faculty of law, in the country or abroad, with nostrified diploma in Republic of Kosovo;
- 1.4. he/she must have passed the Bar Exam;
- 1.5. he/she must have at least three (3) years of legal experience;
- 1.6. he/she must have passed the enforcement examination;
- 1.7. he/she is not undergoing any investigation procedure for any criminal violation, respectively he is not convicted for any criminal offense with imprisonment for any act

In the region only Kosovo has provided by law that private enforcement agent has to complete the bar exam. Private enforcement agent in Kosovo cannot refuse requests for enforcement, it can be done only if the exclusion criteria are fulfilled, which apply also for exclusion of judges.¹⁸⁸

Private enforcement agent in Kosovo has no right to perform additional actions in their professional lives¹⁸⁹ as it is in some other countries. Private enforcement agent in the Netherlands has the right to perform the role of advocate for the creditor if the amount which must be realized is not exceeding 5000 euros, and it is being discussed that he or she can perform the role of advocate for cases where the amount is up to 25,000 euros, while in Belgium the enforcement agents can make evaluation of the buildings before their alienation, or evaluation of facilities near to the roads which will be built.

Some researchers believe that a competitive market in professional services such as enforcement, works better than a government structure for the provision of that goal, but with sufficient care it could work better.

Law on Enforcement Procedure has had the goal to make enforcement more efficient, but there are still many obstacles to a more effective enforcement. It is necessary to highlight that there cannot be achieved the efficient enforcement only with the laws on enforcement procedure. After analysis in the area of enforcement it is determined that necessarily should be taken into account:

- The law on courts no.03/L-199
- The law on ownership and other real rights no.03/L-154
- The law on hypothec 2002/4
- The law on obligations 04/L-077

punishable for at least six (6) months of imprisonment, which affects the integrity of enforcement agent.

1.8. he/she must provide a declaration of assets before a public notary, with all the consequences for providing false statement.

2. If criminal proceedings are pending against a person who has filed an application for appointment as an enforcement agent, the appointment decision shall be postponed until the final decision is reached in the criminal procedure.

¹⁸⁸ Article 325 of LEP (2012) The provisions of the Law of Contested Procedure that apply on the dismissal of judges shall accordingly apply to the dismissal of enforcement agent.

¹⁸⁹ See article 341 of LEP-së nr.04/L-139*

- The law on registry of civil status no.2004/46
- The law on contentious procedure 2009/03-L-006
- The law on contentious procedure – changes and additions 2012/04-L-118
- The law on out contentious procedure 2008/03-L-007
- The law on central Bank of Republic of Kosovo 2010/03-L-209
- The law on registration of pledge in registry of movables 2012/04-L-083
- The law on arbitration no.02/L-75,¹⁹⁰
- The law on mediation no.03/L-057,¹⁹¹
- The European Convention for Protection of Human Rights

8. The decisions of the enforcement body

From 1 January 2014, the decisions of enforcement procedure, issued by enforcement body are in the form of a legal verdict or enforcement order. The law here has made a difference in terminology defining how should be called the court's decision and how should be called the decisions of private enforcement agents, but in essence gave sufficient explanation of what is meant by these decisions and what should contain these decisions. Enforcement order is private enforcement agent's decision with which is accepted fully or partially the proposal for the execution of enforcement.¹⁹²

The legal verdict for the enforcement is the Court decision, by which the proposal for enforcement is fully or partially accepted, or enforcement is ordered *ex officio*.

¹⁹⁰ Article 38 of the Law of Arbitration "arbitration decision that was issued by an arbitral tribunal in Kosovo shall be enforced when declared enforceable by the court. The request that the arbitration decision to be declared enforceable is dismissed if the court determines that there are one or more reasons for canceling the decision under Article 36. Request for enforcement of arbitration decision is attached tribunal's decision or a certified copy thereof. Article 38 of Law on Arbitration"

¹⁹¹ Article 14.4 of the Law on Mediation concerning judicial enforcement of decisions of the mediation foresees "reconciliation achieved in the mediation procedure when it is if approved by the court or certified by the competent authority".

¹⁹² See article 2, par.1 subparag. 1.12 of Law No. 04/L-139 on Enforcement Procedure.

The Court enforcement officer is an employee in the judicial system which directly carries out certain enforcement actions, while private enforcement agent is a person appointed by the Minister of Justice in accordance with the provisions of this law, which in the performance of public authorities entrusted by the law decides on the actions of his competence for the application of allowed enforcement and takes action for enforcement.¹⁹³ The order for enforcement as well as legal verdict should have the same content.

9. Unsolved cases in courts

If in a whole, the courts in Kosovo expect about 200,000 cases of all natures to be solved, half of them are in the enforcement procedure. From this derives that courts in Kosovo are still not effective, since it is worrying that only for 3 months number of pending cases increases above the 500.

The Basic Court in Pristina in the third quarter of 2012 has received 457 cases based on enforcement document, at the beginning of this reporting period there were 24861 pending cases, while at the end of the reporting period there were 24895 unresolved cases, while based on reliable document in early reporting period there were 6915 unsolved cases, while by the end of the reporting period there were 6988 unsolved cases, and had received 661 cases. These data shows that the number of unsolved cases is rising. This court for this period has conducted 554 cases of all natures.¹⁹⁴

If we look at the report of the former Commercial Court then the data is very worrying, because during the third quarter of 2012, this court has received 211 cases, while has resolved 88, and 2603 still remains unresolved¹⁹⁵.

10. Challenges in solution of the remaining cases

Increase of the number of unsolved cases, based on enforcement and authentic documents took off from the mid of the last decade.¹⁹⁶ But despite

¹⁹³ See article 2, par.1 subp.1.10 and subp. 1.11 of Law No. 04/L-139 on Enforcement Procedure

¹⁹⁴ Kosovo Judicial Council Secretariat, the statistics of the regular courts, quarter -III- 2012, pg. 34.

¹⁹⁵ Kosovo Judicial Council Secretariat, the statistics of the regular courts, quarter -III- 2012, pg 8.

¹⁹⁶ The Program Enforcement System of agreements and decisions in Kosovo (SEAD), 30 April 2010 page 14.

the growth of the number of unsolved cases in those years, as well as continuous accumulation during these years, today it is clear that there are some factors that hinder the completion of the remaining cases and resolving of new cases.

Below are some barriers that contributed to the existence of the backlog of cases which are submitted based on enforcement and authentic documents in Kosovo.

11. Insufficient Resources

Now it is very clear that there are insufficient resources in the enforcement offices at Basic Courts in Kosovo to do the review of collected cases on the basis of these documents. Based on the legislation in force there are many other cases in enforcement offices that are designated as the most important priorities than civil cases of enforcement, and which consume a large percentage of the available time of enforcement officers.¹⁹⁷

In Basic Court of Pristina, which is the court with the largest number of cases in Kosovo are working two enforcement judges, and seven enforcement officers. In enforcement office annually arrive approximately 10.000 new cases, while less than half of them cannot be enforced during the year.

In this court as well as in other courts based on number of new cases, a number of them are priority cases and should be processed immediately, as cases related to child hand-over, return of the employee to work, alimony, and so many other, therefore, the old cases because of the small number of enforcement officials s cannot be processed and their numbers only grow.

The Law on Execution of Penal Sanctions has envisaged that for the execution of the penalty with fine to apply provisions of the law on enforcement procedure.¹⁹⁸ The fine penalty is a priority, and because of the limited time the court should urgently deal with these cases. Working time of enforcement officers is fully consumed by these cases with priority, and they simply do not have time to deal with enforcement of civil issues. In this new

¹⁹⁷ The Program Enforcement System of agreements and decisions in Kosovo (SEAD), 30 April 2010 page 14.

¹⁹⁸ In Article 143 of the Law on Execution of Penal Sanctions is provided "*provisions of the enforcement procedure shall be applied to the jurisdiction and procedure of execution of the punishment, unless the law provides otherwise.*"

way civil cases are added to the pile of other cases, including all new cases of authentic documents.¹⁹⁹

12. Problems related with obtaining of debtors addresses

One of the reasons for the backlog of cases is also the provision of accurate addresses of the debtors. Enforcement officials in proceedings related to these cases, in order to send notifications for enforcement encounter in inaccurate addresses. Due to the large number of cases that are presented, they proceed with notifications related to cases that are presented approximately three years ago, so it is not surprising if the addresses have changed, and of course during this decade there were a lot of movements in the direction of urban areas, and that the parties of the proceedings do not live where they used to live at the time when they are indicted.²⁰⁰

Neither the court nor the creditor has any easy method to find them. Registry of Civil Status, which the court can contact, is the only available source of information for verifying the addresses of debtors. In fact it does not contain information about the current addresses of individuals, although these data requirements often are sent to the Civil Registry, where local officials responsible for maintaining the registry in some cases even do not accept the court's requests for provision of information, or they accept them but never reply.²⁰¹

We can conclude that Kosovo Civil Registry provides no help with this problem. Civil registry is apparently doing projects to fix this issue, and it is said that would probably be able to provide information about addresses during this year. In some cases frequent justification for the lack of success of enforcement officers in the enforcement of cases of authentic documents is that the debtors have moved and cannot be found.

13. The absence of items that can be sequestrated by law

¹⁹⁹ The Program Enforcement System of agreements and decisions in Kosovo (SEAD), 30 April 2010 page 15.

²⁰⁰ The Program Enforcement System of agreements and decisions in Kosovo (SEAD), 30 April 2010 page.17.

²⁰¹ The Program Enforcement System of agreements and decisions in Kosovo (SEAD), 30 April 2010 page 17.

Another reason why the backlog cases for enforcement were not successfully enforced is the absence of the debtor's items that would be subject to enforcement as required by law. In the majority of the cases where enforcement is allowed based on the reliable documents-invoices there is nothing to be sequestrated because the debtor does not have the items, if we use the USA expression, the debtor is resistant to legal verdict.²⁰²

This problem is evident in a country like Kosovo that has high unemployment and poverty rate. The provisions of the current Law on Enforcement Procedure, do not differ much from previous laws of 1978 and 2008, which have provided a debtor with excessive protection by foreseeing a lot of items which cannot be the subject to enforcement, and in fact have only hindered enforcement.²⁰³

Movable items, as vehicles, could be transferred easily in order to avoid sequestration, while Kosovo has not effective means for their discovery and sequestration.²⁰⁴

14. Conclusion

The reform of enforcement system of the court decisions, and other obligatory documents is the most important one within the frame of justice reform. The European Court of Human Rights states "the recognized rights for a court proceeding are illusions if the country's legal system allows that the binding judiciary decision of the final form remains non-functional to the detriment of the party.

Kosovo and other countries in the region aim to join the European Union. Some have made significant strides in reforming the legal and judicial systems as a result of the EU accession process.

Based on progress reports by the European Commission it is concluded that judicial enforcement systems in Kosovo do not meet the requirements of today. Courts have large number of remaining cases, and mainly enforcement cases. The excessive possibility of use of legal remedies in the

²⁰² The Program Enforcement System of agreements and decisions in Kosovo (SEAD), 30 April 2010 page 17.

²⁰³ See article 85 of the Law on Enforcement Procedure of year 2012.

The Program Enforcement system of agreements and decisions in Kosovo (SEAD), 30 April 2010 page 18.

enforcement procedure causes long and unnecessary procedures in the courts.

In some states several causes can be identified, that have led to delays such as those related with the legislative framework, where the laws have had a high degree of protection of the debtor in enforcement cases.

Privatization has become highly successful in some countries despite numerous alternatives in the public sector. If adhered to the principles of definition and strengthening of a clear legal framework, which defines the competences, rights and responsibilities of the parties, to enable them to understand more effectively their roles, and to comply with their responsibilities to cooperate properly in the enforcement process, then will be stopped misuse and abuse of enforcement procedures by the parties, this is foreseen by the Recommendations of Council of Europe on enforcement 17/2003.

When Kosovo makes improvements, then it would be clear that is preferable to move to the next step, and to comprehend a private enforcement system as part of the comprehensive reform process.

Well planned Kosovo organizational changes, the introduction of new, efficient mechanisms of enforcement and gradual development of the necessary infrastructure, and needed conscientiousness will produce improvements in the enforcement system.

It is also recommended that the Central Bank of Kosovo should establish a special department for enforcement of court decisions, including a database of bank accounts, in which the accounts are identified and searchable by personal identification numbers, or for legal persons based on the number of business registration.

Our legislation should clearly define executive titles and the way of sending of documents.

It is envisaged that private enforcement agents should possess moral standards and legal knowledge on law and procedure.

Legislation in general should provide legal security and transparency of the process by placing balance of interests of the creditor, debtor and third parties. It is recommended for the courts to create a mechanism to request information directly from the Tax Administration, Pension Fund and other agencies (including the centre for business registration, cadastre and

department of registration of vehicles and driving licenses) which have useful information for processing of cases.

During the enforcement process should be respected also the principle of debtor protection, and enforcement should be achieved only when the debtor has the means or ability to meet the obligation.

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