



Position Paper – April 2020

« How can enforcement agents contribute to overcoming the economic crisis connected to the COVID-19 pandemic? »

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1. The International Union of Judicial Officers (UIHJ)

Founded in 1952, the UIHJ is an international, non-governmental organisation bringing together 93 associations from 89 countries, representing the profession of judicial officers and enforcement agents spread over four continents.

The UIHJ is a member of the Economic and Social Council of the United Nations, an observer member of UNCITRAL and of The Hague Conference on Private International Law (HCCH), a permanent observer member of the Council of Europe's, European Commission for the Efficiency of Justice (CEPEJ), a founding member of the European Law Institute (ELI) and a technical partner of OHADA.

The UIHJ participates in numerous expert missions on behalf of the World Bank, the IMF, the Council of Europe, the European Union, the EBRD and USAID. It is also working in cooperation with ASEAN and WAEMU.

The UIHJ aims to assist or advise its members, regarding the legal reform of their country's enforcement system and the practical implementation of legal change. In this regard, its contribution is based on and supported by international standards and principles on the enforcement of court decisions, as contained in documents adopted specifically by the Council of Europe, such as the recommendation Rec(2003)17 of 9 September 2003, of the Committee of Ministers as well as the CEPEJ guidelines of 17 December 2009 on enforcement.

In 2015 the UIHJ also published the Global Code of Enforcement, which consists of standards proposed at a global level concerning the profession of the judicial officer and enforcement proceedings.

2. Position of the UIHJ during the confinement period caused by the COVID-19 pandemic

Faced with the COVID-19 pandemic, the UIHJ is aware of recent developments in many countries, regarding essential measures taken, which also have an impact on the legal system and on the enforcement of court decisions. In this period of crisis, where there is significant risk to the health of the population, it is important that measures be taken to protect them, including confinement. Such protection does not only focus on health, but also to economic well-being.

Should measures be put in place prohibiting or limiting the enforcement of court decisions?

The UIHJ is in favour of and encourages the suspension or limiting the use of enforcement measures, during the period of confinement, as decided by the authorities of each country, except for cases of absolute necessity, for example maintenance claims. The UIHJ's position is based on two criteria:

- A need for human and moral consideration in the face of a crisis of this unprecedented scale;
- A need for practicality, as confinement requires sanitary measures, which are hardly compatible with the effective implementation of enforcement measures.



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3. Position of the UIHJ after the confinement period linked to the COVID-19 pandemic

3.1. Main issues

3.1.1. Economic and social issues

The disruption caused by COVID-19 will leave its mark on society. They will cause significant economic losses worldwide: bankruptcies, unemployment and insolvency.

Countries are taking steps to strengthen the economic situation of their citizens. This does not mean that such legislative measures during the COVID-19 crisis should only focus on the interests of debtors, regardless of their financial position. It is important to emphasise that the creditor in the enforcement procedure, is usually a small and medium-sized enterprise.

Suspending or postponing enforcement will cause serious cash flow problems. The economic system and market structure will be severely impacted. Economic stakeholders and investors will lose trust in the legal system. Corrupt practices are likely to ensue.

The implementation of enforcement procedures should remain proportionate. Such procedures should make it possible to guarantee payment for the creditor, while protecting the fundamental rights of the debtor. Socio-economic rights imply the obligation of the state to guarantee, respect and protection for all concerned.

Social and economic developments following the COVID-19 crisis will result in a different approach to enforcement systems, debt collection and the profession of enforcement agent. To do this, measures such as mediation and debt rescheduling must be favourably considered.

3.1.2. Legal issues

In a key judgment delivered on 19 March 1997, *Hornsby v. Greece*¹, the European Court of Human Rights established the existence of a right to the enforcement of court decisions within a reasonable time, on the basis of the 6§1 of the European Convention on Human Rights. The right to enforcement is therefore an integral part of the right to a fair trial.

Likewise, in another key judgment *Pini and others v. Romania* of 22 June 2004², it states that the judicial officers "*work to ensure the proper administration of justice and thus represent a vital component of the Rule of Law*".

Of course, like all human rights, the right to enforcement cannot be regarded as mandatory. As the European Court has stated, it cannot compel a state to have every judgment of civil character enforced whatever it may be and whatever the circumstances³. It recognises various limits, reflecting general interest considerations, as well as the personal interest of the debtors. In this sense, the European

¹ Appl. no. 18357/91.

² Appl. nos. 78028/01 and 78030/01, §183.

³ I.e.: *C. M. v. Belgium*, 13 March 2018, App. no.67957/12.



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Court accepts that a delay in the enforcement of a judgment may be "exceptionally" justified "by special circumstances"⁴.

Consequently, postponing enforcement is only possible on the condition that it is momentary and duly justified. Thus, national legislation which would suspend civil enforcement procedures due to the public health crisis, which we are currently experiencing is only compatible with the requirements of the right to a fair trial, if the postponement of enforcement, only lasts for a period of time, strictly necessary to find a satisfactory solution in the fight against the spread of the COVID-19 virus⁵.

Extending this period further, would represent a challenge to the necessary balance between the rights of creditors and debtors.

In addition to the disastrous, material and financial consequences which would gradually impact all sectors of the economy, the state concerned would no doubt be exposed to a possible sanction from the European Court of Human Rights, for violation of Article 6, §1 of the European Convention, because of a disproportionate departure from the very substance of the right to the enforcement of court decisions.

Furthermore, the circumstances must also discourage the use of any form of "private justice" contrary to the Rule of Law, which could ensue, for example, by threats and other intimidation targeted against debtor or by an unjustified violation of their privacy, in order to carry out their obligations. It is about maintaining the trust that litigants must have in their legal system⁶.

3.2. The solutions proposed: how can the enforcement agent contribute to overcoming the economic crisis connected to the COVID-19 pandemic?

3.2.1. The need for enforcement of court decisions

It should be emphasised that the right to enforcement is part of the general principle of the right to a fair trial.

The state should therefore put in place measures to ensure access to this right, in order to prevent citizens from turning away from state justice in favour of an uncontrollable private justice.

The enforcement of court decisions is a *sine qua non* condition for the credibility of the judiciary, the legislator and the state *ab initio*. It is the guarantor and the core of legal certainty and economic development.

What is the need for legal certainty?

It aims to give economic stakeholders, whether they are business leaders, liberal professions or employees, a clear, simple, stable and respected legal framework.

The state should provide legal security, conducive to guaranteeing investments and developing trade. Legal certainty is therefore combined with the Rule of Law.

⁴ 7 May 2002, *Burdov v. Russia*, Appl. No. 59498/00, §35.

⁵ Adde, ECtHR, 28 July 1999, *Immobiliare Saffi v. Italy*, Appl. No. 22774/93, §69.

⁶ ECtHR, 31 March 2005, *Matheus v. France*, Appl. No. 62740/00, §71.



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"Legal certainty is the right to a judge; the right to a judge is the right to a court decision; the right to a court decision is the right to its enforcement; the right to its enforcement is the right to an enforcement agent⁷."

3.2.2. The professional for the enforcement of court decisions

If the judge renders justice, the enforcement agent enforces it, thus becoming the essential element of legal certainty.

Because he is a highly qualified professional, responsible for his actions against litigants, acting under the control of his supervisory authority, because he is a lawyer close to litigants: for all these reasons, the judicial officer is one of the emblematic figures of legal certainty.

He plays an essential role in ensuring both the effectiveness and the efficiency of enforcement.

He is the interface between the citizen and the judge. The enforcement agent is at the heart of the legal process and perfectly aware of social and economic reality.

With impartiality, the enforcement agent ensures that the enforceable titles are properly enforced, in a correct and balanced manner, giving due consideration to the interest of the creditor and the debtor's circumstances.

He has acquired unique expertise and experience in this area, through his knowledge of the humane, social and economic environment which he encounters every day.

He alone can ensure that the Rule of Law coincides with the reality of the various situations he faces. His training, status, ethics and discipline, guarantee the fair treatment of all creditors whilst at the same time, protecting the rights of those in significant debt.

The enforcement agent is at the disposal of the authorities, individuals and businesses. He safeguards the integration of the judiciary in our economic and social environment.

One of the main tasks of the enforcement agent, is to settle disputes between creditors and debtors. When an individual is unable to settle his debt, the enforcement agent may establish a repayment plan, with mutual agreement between the creditor and the debtor. In addition, he works for social peace, because he resolves conflicts.

The enforcement agent also plays the role of mediator and conciliator. He is a suitable alternative to resorting to the courts.

4. Conclusion

Based on its experience, the UIHJ considers that any extension of the postponement of enforcement procedures of court decisions, after the end of a confinement period, would conflict with efforts being taken by the states to overcome the dramatic consequences, of the economic crisis linked to the COVID-19 pandemic.

The enforcement agent provides the state, the law and the economy with the benefits of a competent, accountable and efficient professional, capable of sustaining future economic prosperity.

⁷ CEDH, 15 November 2002, *Cau v. Italy*, Appl. No. 34819/97, Dr. et procéd., March-April 2003, p. 87, obs. N. FRICERO and B. MENUT.