

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

Recommendation Rec(2003)17 of the Committee of Ministers to member states on enforcement

*(adopted by the Committee of Ministers on 9 September 2003
at the 851st meeting of the Ministers' Deputies)*

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

Recognising 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";

Bearing in mind Resolution Res(2002)12 establishing the European Commission for the Efficiency of Justice (CEPEJ), adopted by the Committee of Ministers on 18 September 2002;

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 authorised 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, labour 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 honourable and competent in the performance of their duties and should act, at all times, according to recognised 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.