



Position Paper - September 2022

« *How can judicial officers contribute to overcoming the energy crisis?* »

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1. The International Union of Judicial Officers (UIHJ)

Created in 1952, seventy years ago, the UIHJ is an international non-governmental organisation bringing together today 96 associations from 100 countries representing the profession of judicial officer and enforcement agent from five continents.

The UIHJ is a member of the Economic and Social Council of the UN, 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), founding member of the European Law Institute (ELI), and technical partner of OHADA. The UIHJ participates in numerous expert missions of the World Bank, the IMF, the Council of Europe, the European Union, the EBRD and USAID. It is also in relation with ASEAN and WAEMU.

The UIHJ aims to assist or advise its members in the legal reform of their country's enforcement system and the implementation of legal changes in practice. In this respect, its contribution is based on international standards and principles on the enforcement of court decisions contained in documents adopted in particular by the Council of Europe, such as 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.

The UIHJ also developed in 2015 the Global Code of Enforcement which consists of standards proposed at global level concerning the profession of judicial officer and enforcement proceedings and, in 2021, the Global Code of Digital Enforcement.

2. Position of the UIHJ during the period of global energy crisis which is currently taking shape

2.1. Main stakes

2.1.1. Economic and social stakes

The disruptions caused by the energy crisis will have their influence within society. They will cause heavy economic losses worldwide: bankruptcies, unemployment, and over-indebtedness.

Countries are taking steps to secure the economic capacity of their citizens. This does not mean that such legislative measures during the energy crisis should only focus on the interests of debtors, regardless of their economic power. It is important to emphasise that the plaintiffs in enforcement proceedings are most often also litigants or small and medium-sized enterprises.

Non-enforcement, like postponement of enforcement, would cause serious cash flow problems. The economic system and the development of markets would be deeply affected. Economic operators and investors would lose confidence in the legal system.

The implementation of enforcement procedures should remain human. Such procedures should make it possible to guarantee the payment of the creditor, while protecting the fundamental rights of the debtor. Socio-economic rights imply the obligation of the State to guarantee, respect and protect the various interests involved.



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The social and economic developments following the energy crisis, however, require a different approach to enforcement systems, debt collection and the profession of judicial officer. To do this, instruments such as mediation and debt rescheduling should be considered.

3.1.2. Legal stakes

In an important case of 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, based on Article 6§1 of the European Convention on Human Rights. The right to enforcement is therefore a component of the right to a fair trial.

Similarly, in its landmark judgment *Pini and others v. Romania* of 22 June 2004², it affirms 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 considered as an absolute right. As acknowledged by the European Court, it cannot oblige a State to enforce every judgment of a civil nature, whatever it is and whatever the circumstances³. It knows different limits reflecting the consideration of the general interest, as well as the personal interest of the debtors. In this sense, the European Court admits that exceptionally, a delay in the enforcement of a judgment can be justified by circumstances⁴.

Consequently, a temporary suspension of enforcement is only possible if it is temporary and duly justified. Thus, national legislation that would simply suspend civil enforcement proceedings due to an energy crisis as we currently know it, is not compatible with the requirements of the right to a fair trial.

In addition to the catastrophic material and financial consequences which, step by step, would affect all sectors of the economy, the State concerned would undoubtedly expose itself to be condemned by the European Court of Human Rights for violation of Article 6§1 of the European Convention, because of a disproportionate attack on the very substance of the right to the enforcement of court decisions.

In addition, the States expose themselves to having to fully compensate those who would be deprived of their rights because of the decisions aimed at suspending enforcement, whatever the duration.

Moreover, the issue is also to discourage the use of forms of "private justice" contrary to the rule of law, which would manifest themselves, for example, in threats and other intimidation formulated against debtors or by the unjustified violation of their private life with a view to the enforcement of their obligations. It is about maintaining the confidence that litigants must have in the legal system⁵.

2.2. Proposed solutions: how can judicial officers contribute to overcoming the energy crisis?

2.2.1. The need for enforcement of court decisions

¹ Application no 18357/91.

² Applications nos. 78028/01 and 78030/01.

³ For example, *C. M. v. Belgium*, 13 March 2018, Application no 67957/12.

⁴ ECHR, 7 May 2002, *Burdov v. Russia*, Application no 59498/00, §35.

⁵ ECHR, 31 March 2005, *Matheus v. France*, Application no 62740/00, §71.



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

The State must therefore put in place all means intended to ensure the reality of this right to prevent citizens from turning away from State justice in favour of uncontrollable private justice.

The enforcement of court decisions is a *sine qua non* condition of the credibility of the judicial institution, of the legislator and hence of the State. It is the guarantor and driving force of legal certainty and economic development.

2.2.2. What is the need for legal certainty?

“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 the judicial officer⁶. »

This legal security guarantees the application of the principles of the rule of law through a clear, simple, stable, and respected legal framework. In such a legal framework, the interests of creditors and debtors must be balanced.

2.2.3. The professional in the enforcement of court decisions

If the judge says the law, the judicial officer enforces it and then becomes the essential component of legal certainty.

He is a highly qualified professional, responsible for his actions towards litigants, acting under the control of a supervisory authority, and he is a local law professional close to the litigant. 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 judicial officer is at the heart of legal technique and is aware of social and economic realities.

The judicial officer impartially ensures that enforceable titles are properly and adequately enforced, considering the interest of the creditor and the situation of the debtor.

He has acquired unique expertise and experience in this field, through his knowledge of the human, social and economic tissue that he meets every day.

He alone can make the rule of law coincide with the reality of the various situations that present themselves to him.

His training, status, ethics, and discipline guarantee the equal treatment of all creditors and, at the same time, protect the rights of the over-indebted.

The judicial officer is at the service of the authorities, individuals, and companies. He ensures the insertion of the judiciary in the economic and social field.

One of the main missions of the judicial officer consists indeed in seeking solutions to disputes between creditors and debtors. When a person is unable to settle his/her debt, the judicial officer can establish instalments accepted by mutual agreement by the creditor and the debtor. In addition, he works for social peace because he resolves conflicts.

The judicial officer also plays the role of mediator and conciliator. He is an adequate alternative to recourse to the courts.

⁶ ECHR, 15 November 2002, *Cau v. Italy*, Application no 34819/97, Dr. et procéd., Marc-Avril 2003, p. 87, obs. N. FRICERO and B. MENUT.



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3. Conclusion

On the strength of its experience, the UIHJ considers that a postponement of enforcement procedures of court decisions during the energy crisis would go against the efforts made by the States to overcome the dramatic consequences of this crisis.

The judicial officer offers the State, the law, and the economy the qualities of a competent, responsible, and efficient professional, capable of managing the consequences of the energy crisis, in the interest of all litigants and the public service of justice.