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**Poboljšanje sustava ovrhe  
u Republici Hrvatskoj**

**Improvement of the Enforcement system  
in the Republic of Croatia**



Improvement of the Enforcement system in the Republic of Croatia  
 Contract Number: 2010-01-23-010101  
 Twinning Number: HR/10/IB/JH/04



THE EUROPEAN UNION's 2010 PROGRAMME  
 Twinning Ref. Number HR/10/IB/JH/04  
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 law Enforcement/Croatian Ministry of Justice/FIIAPP

## MISSION REPORT

### Activity 1.1.3

### Preparing comparative overview of enforcement monitoring systems in two Member States with similar features of enforcement system as in Republic of Croatia

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## GLOSSARY<sup>1</sup>

For the purposes of this report, the following terms should be understood as follows:

**Court managers:** are public servants, judicial authorities at the service of the Justice Administration, dependent on the Ministry of Justice. They perform their duties as procedural and technical managers of the Court office. They act with autonomy and independence as authorities to attest documents.

**Sudski upravitelji:** državni službenici, pravosudni organi u službi pravosudne uprave, ovise o Ministarstvu pravosuđa. Obavljaju svoje dužnosti kao postupovni i tehnički voditelji sudskih ureda. Djeluju samostalno i neovisni su u svom radu kao službenici za ovjeravanje isprava.

**General Council of the Judiciary:** is the constitutional body that governs all the Judiciary of Spain such as courts and judges as it is established by the Spanish Constitution of 1978. This constitutional body, although not a court in itself, is responsible for overseeing the work of all courts and tribunals of Spain.

**Generalno sudbeno vijeće:** ustavno tijelo koje upravlja cjelokupnim pravosuđem u Španjolskoj, poput sudova i sudaca, kao što je utvrđeno španjolskim Ustavom iz 1978. godine. Ovo ustavno tijelo je, premda samo po sebi nije sud, odgovorno za nadzor nad radom svih sudova i tribunala u Španjolskoj.

**PC-Axis:** is a family of software consisting of a number of programs for the Windows and Internet environment used to present statistical information.

**PC-Axis:** softver koji se sastoji od nekoliko programa namijenjenih radu u Windows okruženju i na Internetu koji se koristi radi predstavljanja statističkih podataka.

<sup>1</sup> This glossary is for the only purpose of this Project and has been drawn up taking into consideration the glossary attached to the CEPEJ (2009) 11 REV Guidelines for a better implementation of the existing Council of Europe's recommendation on enforcement adopted by the CEPEJ at its 14<sup>th</sup> plenary meeting.



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## ABBREVIATIONS

### Acronyms & abbreviations

CGPJ	General Council of the Judiciary (SP)
CEPEJ	European Commission for the efficiency of justice
EÁR	Electronic auction system (HU)
EJNCC	European Judicial Network in Civil and Commercial Matters
FMHTV	Act L of 2009 on payment order procedures (HU)
HBNY	Register of Collateral (HU)
IT	Information Technology
JÜB	Data Supplying Network Strengthening the Security of Legal Transactions (HU)
MBVK	Hungarian Chamber of Court Bailiffs
MG	Mission Group of Experts
MoJ	Ministry of Justice
MOKK	Hungarian Chamber of Civil Law Notaries
NYUFIG	Central Administration of National Pension Insurance (HU)
OEP	National Health Insurance Fund (HU)
PAJ	Portal of the Justice Administration (SP)
PNJ	Spanish Neutral Judicial Network
ToR	Terms of Reference
VHT	Act LIII of 1994 on judicial enforcement (HU)
VIEKR	System for electronic service of enforcement documents (HU)
ZONY	National Register of Liens (HU)



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## 1. EXECUTIVE SUMMARY

DEBRIEFING REPORT EXECUTIVE SUMMARY	
<b>Experts</b>	Mr Viktor Rak Mr Peter Tanács Ms Maria Vanessa Untiedt
<b>Mission</b>	<b>Activity 1.1.3</b> <i>“Preparing comparative overview of enforcement monitoring systems in two Member States with similar features of enforcement system in the Republic of Croatia”.</i>
<b>Dates</b>	September 29 - October 3
<b>Places</b>	Zagreb
<b>Objectives</b>	<p>In the framework of this project on “Improvement of the Enforcement system in the Republic of Croatia”, the main objective of this mission is:</p> <ul style="list-style-type: none"> <li>✚ to carry out a <b>comparative analysis</b> of the enforcement monitoring system in Spain and Hungary in order to identify best practices and how they can be adapted to the Croatian enforcement system;</li> <li>✚ to prepare a <b>report</b> with recommendations on how to apply the best practices identified to the Croatian enforcement system.</li> </ul> <p>The specific objectives of this activity are to:</p> <ol style="list-style-type: none"> <li>1. Make a comparative analysis of the enforcement monitoring system in Spain and Hungary, encompassing all the means of monitoring the enforcement system in both countries.</li> <li>2. Identify the best practices in both systems.</li> <li>3. Make recommendations on which of these best practices are applicable to the Croatian enforcement system.</li> <li>4. Give a presentation before the Croatian project team and experts.</li> <li>5. Write a final Report with recommendations.</li> </ol>
<b>Methodology</b>	<p>The Group of experts has performed these steps:</p> <ol style="list-style-type: none"> <li>i. Collection, study and processing of information;</li> <li>ii. Analyze the enforcement monitoring system in Spain and Hungary;</li> <li>iii. Identify the best practices in both systems</li> <li>iv. Write a report with recommendations on how to apply the best practices to the Croatian enforcement system.</li> </ol>



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	<p>The Mission Group of experts (MG) has followed the following methodology:</p> <ul style="list-style-type: none"><li>■ Comparative analysis of the enforcement monitoring system in Spain and Hungary;</li><li>■ Analysis of the best practices in both countries ;</li><li>■ Analysis of how to apply the best practices to the Croatian enforcement system.</li></ul>
<b>Annexes</b>	PowerPoint Executive Presentation of the Technical Report.



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## 2. OVERVIEW OF THE ENFORCEMENT MONITORING SYSTEM IN SPAIN

### 2.1. ENFORCEMENT PROCEDURE

Enforcing a court decision means complying with and obtaining the full right gained by the party that won the dispute. This may involve a request by a plaintiff for the return of a certain amount of money, the right to ask a defendant to do something or to refrain from doing something, or a request to have a right recognised by registration in public registries.

The enforcement of court decisions should itself be effective and efficient. Enforcement means *"the putting into effect of court 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"*<sup>2</sup>

The execution of judgements in Spain is an activity wholly reserved to the Courts. According to the Spanish Constitution: *"The exercise of judicial authority in any kind of action, both in ruling and having judgements executed, is vested exclusively in the courts and tribunals laid down by the law, in accordance with the rules of jurisdiction and procedure which may be established therein"*.<sup>3</sup>

The Court that issued the judgment to be enforced is the court competent for ordering enforcement. When the enforceable title is not a judgment, the jurisdiction goes with the place of residence of the debtor.

Enforcement in Spain is carried out in compliance with the Civil Procedure Act (*Ley de Enjuiciamiento Civil*) and judicial decisions. The procedural law regulates a unitary provision upon the various enforcing titles, being applicable to enforcing titles of jurisdictional origin, as well as to those of non-jurisdictional origin. This legislation is detailed to provide legal certainty and transparency to the process.

The enforcement proceedings start with the application submitted by the creditor, after the expiry of the period established for the debtor to comply voluntarily with the judge's decision (20 days from the notification of the judicial resolution).

The creditor must present an enforcement order that shall express the title on which his claim is based and the actual tutelage demanded, assets belonging to the debtor liable to be seized, person or persons against whom the application is filed, and localisation measures of the debtor's assets that are requested.

Enforcement procedure in Spain prescribes an exhaustive definition and listing of enforceable titles. Enforcement must be based on an instrument which is enforceable.

<sup>2</sup> Recommendation Rec (2003) 17 of the Committee of Ministers to Member states on enforcement.

<sup>3</sup> Article 117.3 Spanish Constitution





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Only the following instruments are enforceable:

1. A final judgment;
2. Arbitration award;
3. Court decisions approving or confirming court settlements and agreements reached during the procedure;
4. Authentic public documents, provided that they are the first copies. If they are second copies, they must be issued subject to a court order mentioning the person who may be injured or the perpetrator of the injury, or they must be issued with the agreement of all the parties;
5. Authentic commercial contract;
6. Lawfully issued bearer securities or registered securities which represent liabilities payable.

The judge grants the enforcement by a final judicial order.

The debtor can oppose the order of enforcement based on one of the limited causes established by the Law. In addition to this global opposition, we can refer as well to a challenge of concrete enforcing acts, which represent a breach of procedural laws or of the enforcing title itself.

Once the order has been issued, The Court manager has jurisdiction to follow the enforcement proceeding.

The duration of enforcement measures is not pre-determined. They remain in force until enforcement is completed.

## 2.2. ENFORCEMENT AUTHORITIES

- ❖ The Court. The Judge.

As staged above the Judge is competent for the enforcement.

Some of the functions that are exercised by the judge are:

- ✓ To ascertain his/her competence to take on the execution of such arbitral or judicial decision.
- ✓ To refuse or to grant the enforcement requested by the creditor by a judicial order.
- ✓ To recognize and to enforce judgments and foreign enforcement orders, in accordance with international treaties.
- ✓ To determine the persons against whom enforcement will be directed; the amount being enforced; the measures that will need to be carried out...
- ✓ To join various enforcement actions between the same parties at the creditor's request.
- ✓ To resolve the case where a third party alleges that an asset of his has been unduly seized or that he possesses a preferential credit.



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❖ The Court manager.

After the judge's order of enforcement, is the Court manager the authority that will enforce and will ensure the execution of the decisions made by Judges and Courts in their scope of action.

Some of the functions that are exercised by the Court manager are the following:

- ✓ To issue decrees to end the enforcement procedures.
- ✓ To manage the Court bank account and deliver the payment to the creditor of any amounts received during the enforcement proceedings.
- ✓ To direct the Court Office. They are responsible for the organization, management, direction and supervision of staff in matters of procedure technique.
- ✓ To promote the use of IT applications as the Neutral Judicial Network that allows, among other actions, to seize debtor's bank account directly.
- ✓ To direct e-auctions.
- Control of Judges and Court managers

Recording of the complaints and claims regarding judicial actions which could involve a disciplinary responsibility, submitting the corresponding proposals to the disciplinary Commission of the Council so that the commission may open, where applicable, disciplinary proceedings and apply the corresponding penalty to the Judge or Court manager who has been liable for his /her conduct subject to a punishment during the period when he/she exercises the activity.

## 2.3. TYPES OF ENFORCEMENT

The Civil Procedure Act regulates the following types of enforcement with a unified treatment of the enforcement of judicial and extra-judicial decisions.

Under Spanish Law we can distinguish between monetary enforcement and non-monetary enforcement. The enforcement of arbitration awards is also regulated.

### 2.3.1. MONETARY ENFORCEMENT

The initial application for enforcement must include the exact amount of the debt.

If the amount of money owned is not voluntarily satisfied, the debtor's assets are searched and seized under the supervision of the Court manager by means of the IT applications integrated within the Case



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Management System. The seizure of goods must always be proportionate, in the sense that one must never claim a value greater than the amount stipulated in the order, unless there are no goods of lower value in the debtor's property.

There is an order of preference that must be followed at Court for the seizure of goods from the debtor. Therefore, it is not necessary to change the enforcement proceedings and it is not the creditor but the Court manager who decides the goods to be seized.

The Court manager is the main responsible to ensure that certain essential assets and incomes of the debtor are protected such as basic household goods, needs and necessary working tools...

The debtor can pay his debt at any stage of the proceedings either directly to the creditor or by depositing it in the Court Bank account (Deposits and Consignments Account).

The enforcement of monetary obligations entails the sell-up of the debtor's assets, which have been seized for that purpose. It can take place by means of a unique sale by auction, or by alternative methods of compulsory sale, such as a realisation agreement or the realisation by a specialised person or entity.

### 2.3.2. NON-MONETARY ENFORCEMENT

Non-monetary enforcement is the second form of general enforcement under Spanish Law. The Civil Procedure Act introduces requests and fines, designed to secure the compliance with the obligation to do or not to do something, or to hand over certain assets, as distinguished from the former Spanish Procedure Act that tended to provide immediate compensation, renouncing the fulfilment of the initial duty.

### 2.3.3. ENFORCEMENT OF AN ARBITRATION AWARD

A distinction should be drawn between the enforcement of (a) arbitration awards rendered in Spain and (b) international arbitration awards.

- Enforcement of arbitration awards rendered in Spain

Arbitration awards rendered in Spain are enforced in accordance with the rules governing enforcement of judgements. Nevertheless, the Arbitration Act provides some specific requirements which apply to these proceedings. Among others:

# The petition for the enforcement of the award must be submitted before the Court with jurisdiction in the place where the award was rendered.

# The petition for enforcement must be filed along with the documents required by law



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# The Court will notify the petition for enforcement to the other party. The latter will be granted a 4-day period in which to declare if a petition to set aside the award is pending. Should this be the case, the Court will order a stay in the enforcement proceedings. Otherwise, it will proceed as in the case of the enforcement of judgements.

- Enforcement international arbitration awards

Spain as well as Croatia signed the New York Convention of June 10, 1958, which applies to the enforcement of any foreign arbitration award; even if it was rendered in a non-contracting State. Under Spanish Law, the general system for recognition of a foreign arbitration award is the “exequatur” before the Supreme Court, as explained in section 4.9.4. The “exequatur” is the declaration that a foreign arbitration award produces effects in Spain and may, therefore, be enforced in Spain as a domestic award.

#### 2.4. TEMPORARY ENFORCEMENT OF JUDGEMENTS.

Temporary Enforcement is carried out through independent proceedings that may be initiated by the party who has provisionally obtained a favourable judgement (creditor) which has been appealed by the losing party (debtor), and which is, therefore, not yet final.

This procedure entitles the creditor to receive, prior to the result of the appeal, the amount, specific performance or whatever other order may have been made by the contested judgement.

Notwithstanding this, if the contested decision is finally reversed (totally or partially), the creditor will have to return to the defendant, in full or in part, the amount or the thing (or performance) received, and pay the judicial costs as well as any compensation due for the damage caused by the Temporary Enforcement.

This application can be filed at any time up until a decision is reached by the Court of Appeal. The creditor does not have to give any caution or guarantee in order to obtain the Temporary Enforcement.

Once the Temporary Enforcement is requested by the creditor, the Court will immediately grant it provided that the judgement does not contain a declaratory judgement but a condemnatory decision.

#### 2.5. LEGAL REMEDIES

An appeal is not possible against specific measures laid down in the decision granting enforcement, but the debtor may oppose the adoption of specific measures.

1. - The debtor may oppose the enforcement that is going ahead against him on one of the following grounds in which case the proceedings will not be suspended.

- Payment or compliance with what is ordered in the judgment;



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- Lapsing of the enforcement action;
- The existence of agreements to avoid enforcement provided that is recorded in a public document.

2. - But when the enforcement instrument is a court decision or judgment or an arbitration decision against the defendant, or if it approves a settlement or agreement reached during the process, the debtor may, within ten days following the notification of the act in which enforcement is granted, oppose this in writing on one of the following:

- Payment, documentary evidence of which may be provided;
- Offsetting of a payable claim based on a document that is enforceable;
- *Plus petition* or excess in the evaluation of debts in cash;
- Limitation and lapsing;
- Acquittal, respite, or an agreement or promise not to sue, recorded in documents.
- A settlement, provided that it is set down in a public document;

If the opposition is formulated in these cases, enforcement is suspended.

## 2.6. STATISTICS

As part of its transparency policy, European Countries compile statistical data that can be seen by citizens on the internet as real data regarding length of proceedings, clearance rate and number of pending cases.

The court activities should be monitored through a comprehensive and publicly available data collection system and evaluated on a regular basis. The monitoring systems include publishing of an annual activity report and the measurement of the number of incoming cases, decisions delivered, postponed cases and the duration of proceedings<sup>1</sup>

### 2.6.1. GENERAL COUNCIL OF THE JUDICIARY

The Judicial Statistical Service is organized as part of the "Service for the Judicial Organization and Modernization". Its functions are regulated by the "Judicial Statistical Bylaw 1/2013 of the general Council of the Judiciary"<sup>4</sup>. Thanks to the information provided by the Judicial Statistics, The General Council of the Judiciary has a real knowledge of the strengths and weaknesses of the Courts, and acts through the Inspection Service.

There is currently an Executive Committee for the Inspection Service, consisting of four members of the General Council of the Judiciary and the Inspectorate is composed of a Service Departments with a Director, a Deputy and a Secretary, who make up the Central Unit and thirteen Inspection Units,

<sup>1</sup> "The EU Justice Scoreboard: A tool to promote effective justice and growth. COM (2013) 160 final"

<sup>4</sup> [Reglamento de la Estadística Judicial, 1/2003 del Consejo General del Poder Judicial](#)



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composed of two, three or four lawyers, each of which is assigned either all the courts in a particular jurisdictional system or all the Courts of First Instance.

The Inspection Service:

- Monitors the activity of courts and tribunals. The function of monitoring is aimed at verifying the degree of compliance with established standards in the operation of the courts, detecting any possible deviations.
- Detects incipient anomalies through statistical data, inspections and complaints by members of the public and establishing action plans for swift improvement.

Statistical data can be consulted by the General Council of the Judiciary, the Ministry of Justice, and the Courts by intranet through the IT application: Neutral judicial Network (The PNJ is one of the most useful IT application used in Spanish Courts. It provides the ability to query and interconnect Judicial Bodies with third parties). The Judicial Statistical Service collaborates as a technical body with the national Judicial Statistical Commission, the National Statistical Institute and the Higher Statistical Council. In the international scope, it collaborates with the CEPEJ in the issuing of the biannual report..

Judicial Statistical Database (PC-AXIS). PC-Axis is a family of software consisting of a number of programs for the Windows and Internet environment used to present statistical information. The main module has options to change between stub and heading (pivot function), export tables into other software like MS-Excel, it brings footnotes on different levels, and it can make simple diagrams and has a link to the map program PX-Map. PC-Axis works with PC-Axis files. The PC-Axis Family is a worldwide cooperation project on dissemination of statistics. The statistical report is annual since 1995. The statistical tables are grouped together into different jurisdictional organs. There is specific information related to Civil Courts and more specific to civil enforcement.

The General Council of the Judiciary publishes an annual report. As part of its policy of transparency, the General Council of the Judiciary (GCJ), has taken, for another year, the step of compiling "The Spanish Judiciary in figures", which sets out the key statistics for 2013 describing quantitatively the Spanish Court system.

The full document is published in the internet, in National Statistics Plan section, origin of data for this publication, where the complementary and most updated information is also available.

## 2.6.2. MINISTRY OF JUSTICE

The Ministry of justice works in partnership with the General Council of the Judiciary on the processing of statistical data. It is possible to get almost all the statistical data directly from the Court IT management system. It is expected that on 2016 all data will be obtained from the Court IT management system. The



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courts shall quarterly report the statistical data. The Ministry of Justice guarantees the judicial bodies cooperation and that the Court Managers, who are responsible of the statistical data collection, provide the General Council of the Judiciary with the relevant information.

### 2.6.3. COURT

Statistical process: statistical data collection is quarterly prepared by the Court manager, and is adapted to the different courts. There are 28 different models. Data are mostly taken from the IT management system.

Statistical bulletins are periodically updated in order to adapt them to the new orders, regulations and directives. Changes are made generally at the beginning of the year with the first report unless important key issues occur and, therefore, a change needs to be incorporated during the year without waiting for the annual update.

Changes of the bulletin are approved by the General Council of the Judiciary and the National Judicial Statistics Commission.

The process of filling and sending the bulletins is done thorough the Neutral Judicial Network which is connected with all Spanish Courts, The General Council of the judiciary, different authorities with judicial competences and the National Statistics Institute.

In order to Access to the bulletin and to fill it, the Court manager uses a user name and a password. When the Court Manager accesses to the IT application he or she must fill all the statistical data from the court. The bulletin shows the previous bulletin with the last pendency that is now taken as an initial data. The system itself makes the different operation of adding or subtracting the data and shows the final results of the new pendency. All the mistakes detected are shown in red and must be changed in the correct version.

After filling the bulleting, a list of mistakes is shown in order to be solved before sending the bulletin.

Once it is finished the Court Manager sends the bulletin to the General Council of the Judiciary that supervised every single bulletin. If all data are right the General Council of the Judiciary sends the conformity by fax. If not, they send a fax with the mistakes detected that have to be corrected by the Court manager.

The bulletins have to be sent within 10 days following the end of each quarter. If not, the General Council of the Judiciary makes a formal complaint to the responsible Court manager who depends on the Ministry of Justice: the Chancellor Court manager.



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## 2.7. BRIEF REFERENCE TO ENFORCEMENT OF EUROPEAN JUDGMENTS

Judgments of the courts of EU and EFTA Member States under Regulation 44/2001, Lugano II Convention dated 30 September 2007 and Brussels Convention dated 27 September 1968.

Recognition of these judgments is automatic, except if the other party challenges such recognition. Should that be the case, the Spanish Courts may reject recognition and/or enforcement only in very limited circumstances, e.g., if the judgment is contrary to public policy, including any contradiction or substantial incompatibility with a court resolution issued or pending in Spain.

Prior to enforcement, the claimant must apply for a declaration of enforceability of the judgment to the Court of First Instance, or to the Commercial Court if appropriate, of the domicile of the party against whom the enforcement is sought or of the place of enforcement. The competent court will decide on the declaration of enforceability without hearing the party against whom enforcement is sought. Once the judgment is declared enforceable, the claimant is able to seek enforcement.

## 2.8. GOOD PRACTICES IN THE MONITORING OF ENFORCEMENT PROCEDURE IN SPAIN

Transparency of the debtor's assets is the key to efficiency of enforcement. It is more important than the nature of the authority responsible. The system sets forth coercive measures against the debtor which are efficient enough to achieve enforcement (such as the debtor's statement regarding his assets) or require the collaboration of the administration in order to gather information about the employment and salary of the debtor.

It is important that statistical data are obtained directly from the Court IT management in order to get some reliable statistical information. Court inspections are determined essential, taking into account statistical data from Courts.

Citizens can complain for the shortcomings of the justice. These complaints go to the General Council of the Judiciary and the Court manager must explain the reasons for the complained shortcomings.

The Centre for Legal Studies (an independent body attached to the Spanish Ministry of Justice) offers initial and on-going training according to clearly defined and well-structured aims and objectives to the Court managers. When important changes of the law are adopted the Court manager is required to follow specific legal framework training.

In Spain, the Neutral Judicial Network is an efficient and effective IT application in order to reduce the length and the cost of the enforcement proceeding. The Neutral Judicial Network allows the access to the multiple-source information on the debtor's assets and some debtor's assets like bank accounts and tax offices credits can be seized directly through this IT application.





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## 3. OVERVIEW OF THE ENFORCEMENT MONITORING SYSTEM IN HUNGARY

### 3.1. ENFORCEMENT PROCEDURE IN HUNGARY

The enforcement procedure is governed by Act LIII of 1994 on Judicial Enforcement (hereinafter: VHT). According to Section 1 of VHT, the decisions of the courts and other judicial forums, furthermore, claims based on certain documents shall be executed by judicial enforcement proceedings. The procedure consists of two parts: ordering of enforcement and implementation of enforcement.

#### 3.1.1 ORDERING OF ENFORCEMENT

##### ➤ Enforcement Orders

According to Section 10 of VHT enforcement shall be ordered by the issue of an enforcement order. Enforcement orders are the following:

- a) Certificate of enforcement issued by the court or a notary public.
- b) Document with an enforcement clause issued by the court or a notary public.
- c) A judicial order of garnishment, or decree of transfer, furthermore, a decree of direct judicial notice.
- d) Judicial notice and resolution ordering criminal attachment connected to criminal matters.
- e) The decree for the freezing of assets in connection with the implementation of restrictive measures imposed by the European Union relating to liquid assets and other financial interests.
- f) A request made to the central Hungarian authority designated under Council Regulation (EC) No. 4/2009 for obtaining information concerning an individual who owes or who is alleged to owe maintenance.

##### 1. - Certificate of enforcement

Certificate of enforcement is the most common type of enforcement orders. It can be issued by several different authorities.

The first instance court issues a certificate of enforcement on the basis of

- i. a court verdict in a civil case,
- ii. the clause of a court verdict in a criminal case to award judgment for the civil law claim,
- iii. a court-approved settlement.

The district court issues a certificate of enforcement based on:

- i. a judgment by the court service tribunal awarding damages,



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- ii. the resolution of the public prosecutor, the investigating authority or the misdemeanor authority on the payment of forensic expert's fee,
- iii. a decision of the misdemeanor authority or the court ordering payment for compensation for damages caused by a misdemeanor offense.

The district court at the seat of the county court issues a certificate of enforcement based on:

- i. a resolution by a foreign court,
- ii. a decision of the Council of the European Union, the European Court of Justice or the European Commission,
- iii. a decision by the Internal Market Harmonization Office (trademarks and consumer designs),
- iv. a judgment (court settlement) issued abroad and certified as a European Enforcement Order in accordance with Regulation (EC) No. 805/2004,
- v. a judgment (court settlement) issued abroad and certified according to Article 42 of Council Regulation (EC) No. 2201/2003,
- vi. a European order for payment as declared enforceable under Regulation (EC) No. 1896/2006,
- vii. a judgment given in the European Small Claims Procedure under Regulation (EC) No. 861/2007,
- viii. maintenance decisions under Council Regulation (EC) No. 4/2009.

The county court issues a certificate of enforcement based on a judgment of agreement in an arbitration court either within or outside of Hungary

The notary public issues a certificate of enforcement based on:

- i. a resolution containing a condemnation adopted by a notary public,
- ii. a settlement approved by a notary public having the same effect as a court-approved settlement,
- iii. the list of charges to include the costs and fees for services rendered by the notary public in a non-litigious proceeding,
- iv. a European order for payment is issued by a Hungarian notary public (the notary public issuing the European payment order has exclusive competence to issue the certificate of enforcement).

## 2. - Enforcement clause

Enforcement clauses can also be issued by several different authorities.

The court issues an enforcement clause for:



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- i. a resolution passed by the clerk of a village, town or Budapest district in conclusion of a property dispute to award payment for lost profit, damages and costs,
- ii. a resolution by the ethics committee of certain institutions as laid down in VHT,
- iii. private documents with full probative force on a contract for the termination of co-ownership of an immovable property by auction,
- iv. a decision adopted by the Hungarian Intellectual Property Office for the distribution of costs,
- v. a resolution adopted by the village, town, Budapest district clerk in connection with damage cause by or to wild animals,
- vi. certain instruments of employers,
- vii. the binding decisions passed by the arbitration board or the negotiated settlement approved by resolution, and upon the agreements concluded before the medical mediation council.

The district court at the seat of the county court issues an enforcement clause upon:

- i. the authentic instruments referred to in Council Regulation (EC) No. 44/2001,
- ii. the authentic instruments referred to in Council Regulation (EC) No. 2201/2003,
- iii. the authentic instruments made out in a State that is not covered by the Hague Protocol in connection with maintenance decisions under Council Regulation (EC) No. 4/2009,
- iv. an authentic instrument issued abroad and certified as a European Enforcement Order in accordance with Regulation (EC) No. 805/2004,
- v. the authentic instruments made out in a State covered by the Hague Protocol in connection with maintenance decisions under Council Regulation (EC) No. 4/2009.

Furthermore, the notary public drawing up the document affixes an enforcement clause on a notarial document, if it contains:

- i. a commitment for performance and consideration, or an unilateral commitment,
- ii. the names of the obligee and the obligor,
- iii. the subject matter, quantity (amount) and legal grounds of the obligation,
- iv. the manner and deadline of performance.

### 3. - Judicial order of garnishment

Instead of issuing a certificate of enforcement or an enforcement clause, the relevant court of jurisdiction issues a decree on judicial order of garnishment for claims which are to be satisfied exclusively from the debtor's wages.

### 4. - Direct judicial notice

The court, in its judgment for ordering a person receiving wages to pay support, simultaneously notifies the employer to withhold the judgment amount and to pay it to the beneficiary thereof.



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### 3.1.2. AUTHORITIES ORDERING ENFORCEMENT

As seen above, enforcement can be ordered either by a court or by a notary public. In certain cases, VHT delegates the power of ordering enforcement to a specific court (mostly the district court at the seat of the county court). The court that has jurisdiction to issue the enforcement order is considered the court to order enforcement. In cases where the enforcement is ordered by a notary public, the notary public is considered the court to order enforcement.

Based on statistics, nowadays almost 2/3 of all enforcement cases are ordered by notaries public.

### 3.1.3. PROCEDURE OF ORDERING ENFORCEMENT

Ordering enforcement is an ex parte non-litigious procedure in which the court/notary public decides about ordering the enforcement without the hearing of the parties, solely based on the application of the creditor.

An enforcement order is issued upon application of the creditor. The application shall meet the general conditions of enforcement. These general conditions are that the document to be enforced

- contains an obligation (ruling against the debtor),
- is legally binding or is subject to preliminary enforcement, and
- the deadline of performance has expired.

The document on which the enforcement is based must be attached to the application.

The court has to decide on whether it orders the enforcement or not in 15 days. The court examines the application in two steps. First, based on a formal/technical examination, the court can make the following decisions:

- refer the case to another court
- order completion of remediable deficiencies
- reject the application
- continue with the examination on the merits

The court rejects the application without examining it on the merits if e.g. it doesn't have jurisdiction or isn't competent, the creditor has no legal capacity, if the application was submitted by a legal representative and it has deficiencies, or if the creditor has not completed the remediable deficiencies.

Based on the examination on the merits, the court can either

- refuse to issue a certificate of enforcement/enforcement clause
- order the enforcement deviating from the application



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- order the enforcement

The court refuses to issue a certificate of enforcement/enforcement clause if the application is fully unsubstantiated, i.e. the general and specific conditions of enforcement are not met and the application has irremediable deficiencies. The court issues a decree thereon.

The court orders the enforcement deviating from the application if the application is partially unsubstantiated, i.e. the conditions of enforcement are met only for a part of the claim to be enforced. The court issues a decree thereon.

If the application is fully founded and substantiated the court issues the certificate of enforcement or the enforcement clause.

### 3.2. PROCEEDING AFTER THE ENFORCEMENT ORDER (IMPLEMENTATION OF ENFORCEMENT)

After the enforcement is ordered, the enforcement order is implemented using executive force by the authorities involved. In Hungary, a system of gradual enforcement on debtor's assets is applied.

VHT lays down the amount and the movables which are exempt from enforcement, and also defines the percentage of the salary which can be seized.

In the course of implementation of enforcement, most tasks are done by the bailiff.

If necessary, the bailiff can request information about the address and property of the debtor – among others – from the police, from the register of citizens and addresses, the register of motor vehicles, the land register, the register of liens, the collateral register, the company register, and also from the financial institutions and the tax authority. If there's a direct electronic connection to the register in question the request is sent and the data is received electronically.

In case of enforcement on movable property, it is the bailiff who establishes the value of the movable by way of estimation, seizes the property, organizes and holds the auction.

Regarding immovable, the value is established based on an official tax and value certificate or on the expert assessment of a forensic expert. The seizing of the real estate is done by the bailiff by way of requesting the land register to register the enforcement. Auctions are organized and held by the bailiff.

An electronic auctioning system (developed and maintained by MBVK) is used for both movables (in certain cases as provided for by VHT) and real estates. Electronic communication between the bailiff and the parties and other authorities is also possible and in certain cases obligatory. A central IT-system maintained by MBVK is used for this. If the enforcement is based on a payment order issued by a notary public, the enforcement order is served to the bailiff electronically via the interconnection between the central IT-system of MOKK and that of MBVK.



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The disbursement of the sum collected in the course of the enforcement procedure is done by the bailiff. If the sum does not cover all claims the bailiff prepares a plan of apportionment and the sum collected is disbursed based on that.

### 3.2.1. TYPES OF ENFORCEMENT

The types of enforcement are the following:

#### a) Enforcement of monetary claims

- on wages and other emoluments
- on accounts administered by financial institutions
- on movable property
- on immovable property

#### b) Special enforcement procedures

- enforcement of a specific act (e.g. surrender of specific movable property)
- enforcement of protective measures
- sale of pledged goods by the simplified enforcement procedure
- enforcement of foreign resolutions

### 3.2.2. AUTHORITIES IMPLEMENTING ENFORCEMENT

Enforcement is implemented in most parts by bailiffs (as seen above under point 3.2.) and to some extent by the court.

There are two types of bailiffs:

- independent court bailiffs
- county court bailiffs

The work of independent court bailiffs is supported by substitute independent court bailiffs and assistant bailiffs, while the county court bailiffs are supported by substitute county court bailiffs and assistant bailiffs.

The court to implement enforcement is the court to which the independent court bailiff has been appointed or the district court at the seat of the county court to which the county court bailiff has been appointed. The court has tasks mainly related to legal remedies. Beside that it decides on the change in the person of the parties, imposes fines, suspends the procedure, terminates or limits the enforcement procedure, permits the lien holder's direct involvement in the enforcement procedure and decides on the exclusion of the bailiff from the procedure.



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### 3.3. TYPES OF MONITORING ENFORCEMENT IN HUNGARY

Enforcement is monitored in several ways in Hungary including institutional monitoring and gathering of statistical data. In a broad sense legal remedies can also be considered as means of monitoring. In the following sections these means of monitoring will be explained in detail.

### 3.4. LEGAL REMEDIES

VHT contains provisions on legal remedies in Part IV, separately for ordering of enforcement and for implementation of enforcement. In addition, common provisions for all types of legal remedies are also set, including the suspensory effect of legal remedies, the role of the public prosecutor and the application of the provisions of the Code of Civil Procedure.

- Legal remedies in connection with ordering of enforcement

Depending on in which form the court/notary public ordered the enforcement, different types of legal remedies are open for the parties involved.

#### 1. Withdrawal of certificate of enforcement / Cancellation of enforcement clause

According to Section 211 of VHT, if the court / notary public has issued a certificate of enforcement or an enforcement clause in violation of the law, such certificate of enforcement must be withdrawn or such enforcement clause must be cancelled.

The court to order enforcement can order the withdrawal of a certificate of enforcement /the cancellation of an enforcement clause upon the request of either party, on the basis of the bailiff's report or on its own initiative. The withdrawal / cancellation is ordered in form of a decree. This decree is delivered to the parties who may lodge an appeal against the decree. The appeal is decided on by the second instance court.

#### 2. Appeal in connection with ordering of enforcement

If the court has ordered enforcement by way of a decree, or adopted a decree when ordering enforcement deviating from the application, the parties may lodge an appeal against such a decree. An appeal filed against the decree has no suspensory effect concerning the enforcement procedure, however the things seized may not be sold and the sums collected during the enforcement procedure may not be remitted to the claimant.

Against a decree on refusing to issue a certificate of enforcement/enforcement clause, only the creditor may lodge an appeal.

If enforcement is based on a direct judicial notice the parties may lodge an appeal against the decision which contains the direct court notice.



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### 3. Motion for review in connection with ordering of enforcement

A motion for review may be filed against a decree becoming legally binding at the 2<sup>nd</sup> instance in which the court has ordered the issuing of an enforcement certificate for a foreign resolution and/or the enforcement thereof.

#### ➤ Legal remedies in connection with implementation of enforcement

#### 1. Objection

Against any action of the bailiff or failure to take action which significantly violates the rules of enforcement and the right or lawful interest of any party or person concerned, an objection can be filed with the court to implement enforcement. Significant violation of the rules of enforcement means any infringement that had a material impact on the outcome of the enforcement procedure. Any compliant lodged against any action of the bailiff shall be considered as an objection.

The objection needs to be filed within 15 days of the contested action and submitted to the bailiff, and the bailiff forwards it to the court to implement enforcement within 3 working days, together with copies of the documents relating to the contested action. After a period of 3 months, no objection can be filed; there's no possibility of excuse for failing to keep this deadline.

The court examines the objection within not more than 8 working days to determine whether it contains any remediable deficiencies, or whether the case should be referred to another court or should be rejected without any examination as to merits, and takes the measures necessary.

The court to implement enforcement decides on the objection in priority proceedings within 45 days, after hearing the parties and after taking evidence. The decision can be the following:

- the court sustains the contested action and dismisses the objection if the measure contested is found lawful, or if the infringement is deemed insignificant;
- the court annuls the contested action in full or in part if the infringement is found significant;
- the court revises the bailiff's action in full or in part if the relevant legislation permits it and if the facts required for the decision can be established;
- the court orders the bailiff to carry out the omitted action.

#### 2. Appeal in connection with implementation of enforcement

Against any decree of the court passed in the course of implementation of enforcement an appeal may be lodged. This appeal is decided by the 2<sup>nd</sup> instance court.





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### 3.5. INSTITUTIONAL MONITORING

The authorities involved in the procedure are of different nature and status. While courts are public authorities and judges are employed by the state, both independent court bailiffs and notaries public are independent professionals applying state power and being part of the judicial system. Therefore the monitoring of their activities differs significantly.

#### 3.5.1. COURTS

- Judicial independence

In Hungary judges and court clerks are independent: they judge on the basis of the law according to their beliefs, and they should not be influenced and ordered concerning their case activity. Control of their decisions is provided primarily by the system of legal remedies.

- Control of judges and court clerks

The president of the municipal court is responsible for the proper operation of the court, the president ensures keeping the administrative rules and in this context the president controls whether the judges and court clerks keep the procedural deadlines.

The administrative activity of the president is controlled by the president of the county court, whose activity is controlled by the president of the National Office for the Judiciary which was established under the law on the courts from the year 2011. The newly organized control system of the courts aims to ensure the effective operation of the courts in addition to providing maximum independence: court proceedings on a high level and finish them in a reasonable time. In this system the president of the National Office for the Judiciary is controlled by a panel of judges, named the National Judicial Council.

- Evaluation of judges and court clerks

The work of the judges is periodically evaluated, and must be evaluated if for some reason the judge is not able to perform the professional activity. The evaluation study is based on finally completed cases, and it has to explore the practice of the judge. If it is found that the judge is incompetent, an incompetency process is started against the judge, which might lead to the release of the judge from the court.

Like the judges, the work of the court clerks is continuously evaluated, and the court has to take measures in order to terminate the wrong practice in the work of the court clerk.



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- Disciplinary offences

Judges are subject to disciplinary sanctions for acting in violation of their duties or threatening the prestige of the courts with the lifestyle or behaviour. A special tribunal was established to conduct the proceedings, and the serious disciplinary offences can be sanctioned with the release of the judge from the court.

Like the judges, court clerks are also subject to disciplinary sanctions for acting in violation of duties described by the law.

- Code of Ethics

There is a Code of Ethics for judges that set down principles and rules of behaviour that bind judges both on and off duty. The National Judicial Ethics Council which consists of judge members decides whether the behaviour of the judge was unethical. The resolution of the council made anonymously is published in the bulletin of the judges and on the intranet of the courts.

### 3.5.2. NOTARIES PUBLIC

The status of notaries public and the basic provisions of their procedures are governed by Act XLI of 1991 on notaries public (hereinafter: KJTV). Five territorial notarial chambers are functioning as self-governing bodies of the notarial community and MOKK is responsible for the tasks related to the notarial community as a whole. KJTV also contains rules on the supervision of the activities of notaries public in its Chapter VII.

- Monitoring of the activities of notaries public

The activities of notaries public are supervised in two ways:

1. Supervision by the president of the county court

The lawfulness of the notary public's acts is supervised by the president of the county court competent in the area of the notary public's seat. It needs to be stressed that this supervision is not of a general nature, but it's based on the findings of the county court as the second instance court to which appeal is possible against the notary public's decrees and action. If – based on these findings – the president of the county court deems it necessary to take measures; he/she can initiate an investigation by the territorial notarial chamber or initiate disciplinary action.

2. Supervision by the presidency of the territorial notarial chamber

Besides the supervision of the county court, the presidency of the territorial notarial chamber is responsible for the regular supervision of the business administration, official activity and conduct of civil law notaries. The presidency of the territorial notarial chamber investigates the notary public's activity following one year from his/her entry into office and at least every four years subsequently. Beside this



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regular ordinary investigation, the president of the county court or the presidency of the territorial notarial chamber can order the investigation of the notary public's operation at any time in any justified cases.

The presidency of the territorial notarial chamber initiates the investigation ex officio and appoints the chamber members conducting the investigation. Within the framework of the investigation, the appointed investigators may enter the notary public's office, inspect his/her registers and make copies thereof. The notary public shall promote the conduct of such investigation, shall comply with the chamber's announcement and decision, and shall make it possible to conduct the on-site investigation. The detailed rules on such investigations are laid down in the guideline issued by MOKK. The guideline is reviewed every year according to the developments and modifications of legislation.

Based on the findings of the investigators, the presidency of the territorial notarial chamber releases a decision about the results of the investigation. If the presidency of the territorial notarial chamber establishes in its decision that the notary public has breached his/her obligations prescribed by law or the chamber guidelines, it can:

- call the notary public to act in compliance with the statutory provisions and to remedy any failures to act,
- upon the a well-founded suspicion of disciplinary offence, report the case to the president of the disciplinary court (against such a decision no appeal can be lodged).

The presidency of the territorial notarial chamber also deals with complaints against notaries public. Based on the complaint an investigation is conducted. If the result of the investigation is that the complaint is founded and the notary public was in breach of his/her duties and obligations, an investigation (as described above) or disciplinary proceeding can be initiated.

➤ Disciplinary measures

Chapter VIII of KJTV governs the disciplinary responsibility of notaries public.

A notary public, deputy notary public or candidate notary public commits disciplinary offence, if

- he/she wrongfully breaches or neglects his/her obligations set forth in KJTV or other statutory provision; and/or
- his/her wrongful behavior violates the guidelines of MOKK, and such behavior is, due to its gravity or otherwise, suitable to damage the reputation of the notarial community.

If the wrongful behavior is not so grave, and the breach of duty has no or only minor consequence, the disciplinary action and disciplinary sanction may be omitted.

Disciplinary sanctions can vary from a warning to removal from office depending on the degree of the offense.



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The disciplinary court sends its final decision to the presidency of the territorial notarial chamber and MOKK. MOKK keeps a register of the disciplinary court's decisions. The final disciplinary sanction is also indicated in the name register of notaries public, deputy notaries public and candidate notaries public.

➤ Monitoring of the activities of notarial chambers

In addition to the monitoring of the activities of notaries public, the minister of justice oversees the lawfulness of the functioning of the notarial self-governing bodies. Oversight of lawfulness does not extend to matters where it is within the jurisdiction of the court to proceed. In the framework of this monitoring, the guidelines adopted by MOKK are to be sent to the minister of justice who – if he/she considers that the guidelines aren't in conformity with the law – can initiate a court proceeding.

### 3.5.3. BAILIFFS

Judicial enforcement is implemented by independent court bailiffs, county court bailiffs, substitute independent court bailiffs, substitute county court bailiffs and assistant bailiffs.

→ Supervision of independent court bailiffs by the Chamber

The self-governing body of bailiffs is the Hungarian Chamber of Court Bailiffs (in short: Chamber). Independent court bailiffs, independent bailiff substitutes and independent assistant bailiffs become members of the Chamber when appointed, or when registered in the register of bailiff substitutes or assistant bailiffs.

Regular control of the administration, official activities and the conduct of independent court bailiffs is exercised by the Chamber. The Chamber supervises the activities of bailiffs, bailiff substitutes and assistant bailiffs, within the framework of which it is to audit the operations, administration and financial standing of bailiffs, inspect the documents and records of bailiffs, to investigate their conduct, to request data from the data disclosure and data transfer records concerning any data obtained during the enforcement procedure with a view to ascertain the relevant facts of a case, furthermore, to participate in acts of enforcement procedures carried out by bailiffs.

The Chamber processes complaints filed in connection with bailiffs, bailiff substitutes and assistant bailiffs, with the exception of the cases under court jurisdiction. The Chamber conducts disciplinary actions and elects the disciplinary tribunal's investigating officers.

The Chamber may issue mandatory directives to its members concerning, in particular, the following in connection with bailiffs, bailiff substitutes and assistant bailiffs:

- training and further training;
- code of conduct;
- disclosure of data for statistical purposes;
- audit of operations and processing of complaints.



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#### → Evaluation of bailiffs

The Chamber supervises the activities of bailiffs by way of the procedure decreed by the minister of justice, including the implementation of comprehensive control of the activities of all court bailiffs at the intervals specified in a decree adopted by the minister. If so justified, the President of the Chamber may ex officio order an investigation of a bailiff's activities by means of a reasoned written resolution; at the minister's request the investigation is ordered. When ordering the investigation of a bailiff, the President of the Chamber also appoints the persons conducting the investigation.

In the interest of the investigation, the person conducting the investigation has access to the bailiff's office, including the bailiff's documents, records and financial statements related to his enforcement activities, is entitled to make copies of them and to participate in any enforcement procedure carried out by the bailiff, and to request information from the Chamber's records and may call upon the bailiff to disclose data and information as pertaining to the object of the investigation. The bailiff shall comply with the requests of the person conducting the investigation, and shall make available all data and documents for the purposes of the investigation, provide for the conduct of site inspections, provide access to his office and also to his documents, records and financial statements for review; the bailiff's failure to comply with this obligation and his failure to appear at the site inspection does not preclude the completion of the investigation.

The findings of the investigation are recorded in a report, a copy of which is sent to the President of the Chamber and to the minister as well. In connection with the investigation of a bailiff the minister takes action within sixty days of receipt of the investigation report, or initiates disciplinary proceedings against the bailiff, however, if neither of these measures is deemed necessary, the minister returns the documents to the Chamber.

#### → Supervision of independent court bailiffs by the minister of justice

An independent court bailiff is appointed by the minister, and also the minister has significant powers related to the termination of bailiff's service.

The minister exercises general supervision over the organization of enforcement, and the minister is the supervising authority of the Chamber.

The Chamber draws up its organizational and operational regulations in which it sets forth - within the framework of VHT - the detailed rules of its organizational structure and operating procedures, and for carrying out the duties. The Chamber submits its organizational and operational regulations and its directives to the minister for approval within thirty days of completion.

If the organizational and operational regulations or the directives are found unlawful, or if a decision of the Chamber is unlawful or it violates any clause in its organizational and operational regulations, the minister - within his powers under judicial supervision - calls upon the Chamber to remedy the situation within a specific deadline. If the Chamber doesn't comply a lawsuit can be initiated against it.



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#### → Disciplinary offences

Independent court bailiffs, substitute independent court bailiffs and independent bailiff assistants are guilty of professional misconduct if

- they breach or fail to comply with their professional obligations defined in VHT and/or in other legal regulations, or
- they engage in conduct undermining public confidence in their official status, or which may diminish the reputation of the profession, and
- also if they engage in any conduct that constitutes a serious violation of the Chamber's directive and, in respect of independent court bailiffs, in the event of failure to pay Chamber membership dues.

If the violation is of a lesser gravity, and the misconduct in question did not result in detrimental consequences or resulted in moderate damage, no disciplinary procedure and sanctions shall be implemented.

Disciplinary sanctions can vary from a warning to removal from office depending on the degree of the offense. The disciplinary cases are heard by the disciplinary tribunal of court bailiffs.

#### → Supervision by the county court

In connection with the legitimacy of the bailiff's procedure the president of the county court responsible for the place where the bailiff is functioning has powers to initiate disciplinary proceedings and to motion for a chamber investigation concerning the activities of such bailiff.

#### → County court bailiffs

County court bailiffs are judicial officers in a service relationship with the county court. The county court bailiffs are responsible for the implementation of enforcement on certain claims, typically costs advanced by the state.

In connection with the legitimacy of the county court bailiff's procedure the president of the county court has powers to initiate disciplinary proceedings. Regular control of the administration, official activities and the conduct of county court bailiffs is exercised by the president of the county court. The president of the county court supervises the activities of county court bailiffs.

### 3.6. STATISTICS

Gathering statistical data is essential for backing and supporting decisions concerning the judiciary. Hungarian legislation provides for gathering statistical data at every authority involved in the enforcement procedure, i.e. at courts, notaries public and bailiffs. All statistics are forwarded to and



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gathered by the MoJ and the Hungarian Central Statistical Office. Statistical data are available to the public, the MoJ provides detailed information on request. Statistical data is taken into account at the evaluation and investigation of courts, notaries public and bailiffs. Decisions concerning the judicial system (including organizational and HR decisions and the need to modify legislation) are also based on these data.

### 3.6.1. COURTS

Statistical data at courts is gathered based on the provisions of Act CLXI of 2011 on the organization and administration of courts and of Act XLVI of 1993 on statistics. It is the task of the president of the National Office for the Judiciary to decide about the set of data which is to be collected at courts.

The district courts and the county courts collect data about the cases dealt with at the courts (including the enforcement cases) monthly and forward these data to the National Office for the Judiciary. The National Office for the Judiciary processes these data and publishes a yearly report on its website. Also, the statistical data is forwarded to the Hungarian Central Statistical Office.

### 3.6.2. NOTARIES PUBLIC

According to KJTV one of the tasks of MOKK is the supply of statistical data. MOKK gathers the data from the notaries public monthly and forwards it to the MoJ and the Hungarian Central Statistical Office.

The data is collected electronically, using the uniform case-management software of the notaries public and – in case of the enforcement cases based on a payment order – the central IT-system of MOKK. At the end of the months the notary public collects the data from the case-management software and from the IT-system of MOKK [each notary public has his/her own profile in the central IT-system for managing and processing the cases dealt with by him/her; access to this profile is only granted to the notary public in question], and forwards it electronically to MOKK. MOKK then gathers the data from all the notaries public generates the cumulative statistics and sends them to the MoJ and the Hungarian Central Statistical Office.

### 3.6.3. BAILIFFS

VHT lays down that MBVK is responsible for gathering and supplying statistical data. Bailiffs collect and forward statistical data through their supervisory body and in the form determined by the supervisory body. For independent court bailiffs the supervisory body is MBVK, for county court bailiffs it is the president of the county court.

Bailiffs collect the above data monthly. County court bailiffs send the data to the president of the county court who forwards the cumulative data quarterly to the MoJ. In case of independent court bailiffs the data is forwarded to MBVK through the case-management system of bailiffs electronically. MBVK forwards the data quarterly to the MoJ. The MoJ sends the data to the Hungarian Central Statistical Office.



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### 3.7. GOOD PRACTICES OF THE MONITORING OF ENFORCEMENT IN HUNGARY

In order to have an efficient system of monitoring, the work and activities of the authorities involved need to be evaluated and supervised on a regular basis. In the event that deficiencies are discovered, measures are taken both on organizational and personal level (leading to disciplinary measures if necessary).

The supervision of independent professionals (notaries public and bailiffs) by their respective self-governing bodies (chambers) is efficient and effective with the addition of control and supervisory measures by the MoJ. Complaints against the actions of notaries public and bailiffs are also dealt with by the respective chambers.

Strict and dissuasive disciplinary measures guarantee that the professionals involved in the procedure act in accordance with the rules and laws governing the procedure. It also contributes to filtering out those who are not fitted to act as a judge, notary public or bailiff.

The interest of the parties involved is protected through the system of legal remedies. Whether it is the court or a notary public who orders enforcement, the final legal remedy is always decided by the competent court. Judging the objections against the actions of bailiffs by the courts can ensure the lawfulness of their procedures.

The gathering of reliable statistical data is at utmost importance in order to have a real and well-founded overview of the activities of the courts, bailiffs and notaries public and to see where changes are necessary in the organization of workload and of procedure. Statistical data is collected and forwarded through centralized case-management IT-systems, making it easier to process these data.

## 4. COMPARATIVE ANALYSIS BETWEEN SPANISH AND HUNGARIAN SYSTEMS.

### Similarities

Disciplinary proceedings and fines are almost the same in Spain and Hungary for the Court. There are disciplinary Courts for Notaries and Bailiffs.

IT Case management data collection in Hungary comes from the Notaries, Bailiffs and Courts as in Spain from the Courts.

Spain and Hungary have a judicial academy where judges, Court managers are trained frequently. Notaries and Bailiffs have trainings organized by the chambers.





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The enforcement procedure is controlled by legal remedies which in the end are solved by a judge if the nature of the legal remedies makes it necessary.

 Differences.

The two systems are quite different, as the Hungarian has three enforcement authorities: notaries, bailiffs and the court, while in Spain there is just one enforcement authority: the Court. These system differences lead to different needs of monitoring.

In Spain statistical data are sent quarterly from court while in Hungary every month Notaries and Courts send their data. Bailiffs collect the data monthly but send them quarterly. In Spain statistical data have consequences of inspection.

Inspection authorities and proceeding are not the same.

## 5. RECOMMENDATIONS BASED ON THE GOOD PRACTICES IN SPANISH AND HUNGARIAN ENFORCEMENT SYSTEM<sup>5</sup>

Reliable statistical data. Statistical data must be reliable in order to have a more effective monitoring system. Data should be collected directly from the IT management system.

Initial and continuous training. Enforcement agents should be required to follow specific training, especially when the applicable legislation is modified.

Supervision, control and disciplinary procedures. Disciplinary measures should be applied in order to minimize the shortcomings and the number of unlawful actions of the enforcement agents.

Less legal remedies. A large number of legal remedies hinders the effective control of the enforcement proceedings therefore simple and transparent system of legal remedies should be applied to be able to monitor the proceeding efficiently.

Evaluation of enforcement activities. Periodically evaluation guarantees the professionalism.

Information about debtor's assets accessible to the enforcement agent. An IT – system connected to several state registers for locating the debtor's assets could contribute to the efficiency of enforcement. The use of such IT application needs to be monitored on a regular basis and by qualified professionals.

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<sup>5</sup> According to the European Commission of the efficiency of justice CEPEJ.



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## 6. ANNEXES

Two power points.

