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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
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 Consortium: Spanish Ministry of Justice/Hungarian Ministry of Justice and
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MISSION REPORT

Activity 1.1.6

Drafting comprehensive and detailed practical guidelines for bailiffs' processes designed for all different types of object of enforcement; printing and disseminating at least 300 guidelines for bailiffs' processes to Ministry of Justice and municipal courts.

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1. - EXECUTIVE SUMMARY

DEBRIEFING REPORT EXECUTIVE SUMMARY	
Experts	Ms. María Rosario Palacios González Ms. María Vanessa Untiedt Mr. Zoltán Várady
Mission	Activity 1.1.6. Drafting comprehensive and detailed practical guidelines for bailiffs' processes designed for all different types of object of enforcement; printing and disseminating at least 300 guidelines for bailiffs' processes to Ministry of Justice and municipal courts.
Dates	February 2 - 13
Place	Zagreb
Objectives	In the framework of this project on "Improvement of the Enforcement system in the Republic of Croatia", the main objective of this mission is to draft comprehensive and detailed practical guidelines for bailiffs As specific objectives this activity pursues: <ol style="list-style-type: none"> 1. To identify the different processes where bailiffs have a participation. 2. To find uniform solutions and additional help in each specific phase of the enforcement process. 3. To design a practical guide for bailiffs.
Methodology	The Group of experts has performed the these steps: <ol style="list-style-type: none"> i. Study "the Enforcement Act", "the Rules of the procedure of the court" and "the Civil Servant Act" ii. Identify the concrete articles where actions of the bailiffs are regulated. iii. Carry on consultations with bailiffs, court advisors and judges in order to identify the practical problems they encounter in their daily work and the best practices currently followed ad the way to improve them.
Annexes	Guidelines for bailiffs' processes



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2. INTRODUCTION

This activity 1.1.6 has been developed during the period of 10 working days at the premises of the Ministry of Justice in Zagreb.

Bailiffs in the Republic of Croatia have an important role in the enforcement system. They face multiple problems in their daily work that make them difficult to undertake the actions in the enforcement procedure ordered by a judge.

As the figure of bailiff does not exist in Spain and in Hungary the roles of bailiffs are very different, it was necessary to carry on consultations with some bailiffs by email in order to identify the problems they encounter in their daily work.

Interviews that were held in activities 1.1.1 and 1.1.2 with bailiffs from the Municipal Court of Zagreb have been taken into account to draft the guidelines. . Consultations by email were helpful, although the STEs would have appreciated some more cooperation, since only a few of the requests for information were answered. The meeting at the premises of the Municipal Court of Zagreb was very useful.

A deep study of the “Enforcement Act”, “Rules of Procedures of the Court” and “Civil Servant Act”, underlining the articles where the bailiffs’ roles in the enforcement are regulated, was necessary for elaborating the guidelines.

Afterwards, with the regulations and the consultations, the guidelines were made with the purpose of elaborating a useful tool for bailiffs that encompasses all different types of object of the enforcement.



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3. BAILIFFS

A bailiff is a Croatian enforcement agent authorized by the State to carry out the enforcement process according to Recommendation (2003) 17 of the Committee of Ministers to Member States on enforcement.

In “The Enforcement Act” the term ‘bailiff’ means: *“an employee of the court who at the order of the court directly undertakes certain actions in the enforcement procedure or in the security procedure”* (Article 2, item 10 of the Enforcement Act)

The enforcement of court decisions should itself be effective and efficient. The enforcement of a court decision forms 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.

The first mandate of CEPEJ shows the importance being given to enforcement. By stating that the purpose of improving efficiency of justice is to ensure effective enforcement of legal rights of citizens, the scope of activities is clearly not linked solely to the stage of courtroom adjudication. The Resolution that established the CEPEJ included several statements related to enforcement of court decisions.

In a court system of enforcement, the dominant responsibility for the enforcement is given to judges. Sometimes, judges involved in enforcement cases discharge a part of their judicial tasks in litigation; but, sometimes, such judges are specialized and limit their whole activities to enforcement cases.

We can say that the Republic of Croatia mainly follows a court system of enforcement. In a court system where the dominant responsibility for enforcement is given to judges, such “enforcement judges” may be assisted by lower court officials that fulfil some essential or technical tasks in the enforcement process. These officials may include prospective candidates for the post of (enforcement) judge, but also include less educated technical staff (“court executors”) with very limited power and authority. Therefore, in this system, it is hard to speak about “bailiffs” in any substantial sense (except to the extent to which enforcement judges would be considered to be bailiffs).

Such “enforcement judges” are therefore a mixture of roles and functions: on one hand, they are regarded to be (more or less) full-fledged judges, associated to judicial branch of government and, as judges, they may enjoy most or all of the rights that are usually associated with judicial status (independence, impartiality, immovability etc.). On the other hand, the nature of their activities is not, strictly speaking, a judicial one, i.e. it does not pertain to determination of cases – resolution of disputed issues of facts and law.

When the judge is an enforcement agent, he or she may, in some states or legal entities, share this attribute with other enforcement agents with a public status: bailiffs working in a public institution (Croatia, Denmark and Liechtenstein), a court (Bosnia-Herzegovina) or clerks of courts (Serbia). Where the judge is not the only enforcement agent, this attribute is shared only with public agents.



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According to the CEPEJ:

- All judicial decisions shall be executed in an effective manner and within a reasonable time limit.
- Bailiffs, where they exist, or any other enforcement agents, shall carry out their work according to the law, fairly, impartially, efficiently and transparently.

In formulation of recommendations that would apply to bailiffs, it was recognized that in the member states of the Council of Europe there are different systems of enforcement, in the procedural and in the organizational sense.

Therefore, the very notion of a “bailiff” was somewhat controversial. Starting with the problem of translation, the term “bailiff” is used for persons of rather different professional and social status. One typical demonstration of such differences relates to the social status and respect enjoyed by those who are called “bailiffs” in different legal systems. In some legal systems, the bailiff’s profession is a highly desired, esteemed, and attractive post, whereas in the others it is associated with hard and poorly paid jobs. Further differences exist in respect of education, knowledge, skills and authority of bailiffs (http://www.alanuzelac.from.hr/pubs/B20Tempus_improving_eff.pdf).

A more comprehensive term was used in the Rec (2003)17 - the notion of enforcement agent, defined as “a person authorized by the State to carry out the enforcement process irrespective of whether that person is employed by the State or not”. This definition would include “bailiffs” in the narrow sense of the word and also cover all other persons who fall within the scope of the phrase “authorized to carry out enforcement”.

When bailiffs are acting as enforcement agents while carrying out seizures or evictions, by representation they are performing an act on behalf of the State. Since the bailiff is acting as a public officer, she/he may request the assistance of the police should the circumstances demand it. Force may be required in some cases to overcome either the obstruction or the resistance of a debtor. (http://www.huissier-justice.fr/images-contenu/FrenchBailiffs_BD.pdf)

Regardless of what status is chosen, the roles, responsibilities and powers of the enforcement agents should be clearly prescribed by law “in order to bring as much certainty and transparency to the enforcement process as possible.” Specifically, the powers and responsibilities of enforcements agents should be clearly distinguished from those of the judge.



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4. LEGAL FRAMEWORK

Legislation which regulates the professional status and competences of bailiffs is the following:

- The Enforcement Act (OG 37/14). Articles: 2.10; 16.6; 47; 48; 89; 95.a; 137; 140; 141; 145; 151; 162; 177; 225; 230.8; 231; 250; 256; 257; 262; 264; 272.
- The Rules of Procedures of the Court. Article 303-311, item 2.
- Civil Servant Act (*Official Gazette no. 92/2005*)
- Family Enforcement Act (articles from 336-360)

5. RIGHTS AND DUTIES OF THE BAILIFFS

Bailiffs in the Republic of Croatia do not have a specific statute or chart that regulates their role, functions, rights or duties. Therefore, “Civil Servant Act” should be applied to them (*Official Gazette no. 92/2005*)

✚ Fundamental RIGHTS of Bailiffs:

1. The right to work in suitable conditions.
2. The right to equal pay for equal work, and to be entitled to salaries for their work.
3. The right to equal treatment and equal opportunity. They shall be provided with equal opportunities for advancement, rewards and legal protection.
4. The bailiffs shall be entitled to professional development and professional training through education and other forms of additional training.
5. The right to be protected from any and all unjustified or unnecessary transfer or removal from the workplace.



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6. The right to be entitled to submit proposals pertaining to exercise of rights in the civil service, submit petitions and complaints, and to receive a response there to.

 DUTIES of bailiffs:

1. To perform their tasks as foreseen in their post description correctly, duly, conscientiously and professionally.
2. To act in compliance with the principles of legality and protection of the public interest; bailiffs are prohibited from abusing their authority to achieve personal interests or the interests of some other natural or legal person.
3. To refuse proffered gifts for their personal gain; bailiffs may neither offer nor give gifts or other benefits to other civil servants.
4. To provide the public information and explanations on performed task.
5. To perform their tasks in a cost effective and timely manner, avoiding unjustifiably complex or scarcely foreseeable procedures and preventing situations that may lead to conduct damaging to preservation of the legal interests of the State or their clients.
6. Non-disclosure of official secrets and respect for privacy.
7. To ensure a high quality of professionalism in their work, improving their professional skills and participating in additional professional training for personal advancement and enhancement of the efficiency of the civil service
8. To behave in a manner that neither diminishes their own reputation nor the reputation of the civil service.
9. To execute orders of superiors in compliance with the law and refuse execution of orders that are illegal or whose execution would run contrary to the rules of the profession or code of ethic.
10. Not to perform tasks which exceed the authority granted to them pursuant to the post to which they are assigned



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11. To report to the superior any potential conflicts of interest.

Referring to civil enforcement, bailiffs have the following specific rights and duties:

1. The right to be respected in the exercise of its duties by legal or natural persons involved in enforcement proceedings. The court may threaten with fines or imprison those persons who undertake any actions hindering the bailiffs' activities. (Art. 16, Enforcement Act)
2. The right to remove any person obstructing the enforcement execution and they shall request the help of the police that in this case shall act upon the order of bailiff. (Art. 48, Enforcement Act)
3. The right to have an official identification card. (Art. 303, Rules of Procedures of the Court)

✚ Specific duties related to enforcement:

1. To proceed with due respect for the person of the enforcement debtor and members of his household during the search of the enforcement debtor's apartment or during other enforcement actions. (Art. 47)
2. To carry out the enforcement actions in the presence of two witnesses or a notary public when the enforcement debtor (natural or legal person), his legal representative, proxy or an adult member of his household is not present.
3. To open the premises in the presence of two adult witnesses or a notary public when the bailiff needs help of a locksmith because the enforcement action has to be carried out in a room which is locked and the enforcement debtor or his representative is not present.
4. To draw up special minutes of the previous actions which shall be signed by the invited witnesses or the notary public or other persons who have participated in the actions.
5. To confirm all cash payments received issuing a receipt that shall be provided to the payer, one copy provided to the to the Head of Department of Accounting and another copy shall be retained in the block of receipts. (Art. 305, Rules of Procedures of the Court)



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6. To hand over to the enforcement creditor, all cash, securities and valuables which he was given by an enforcement debtor or which were confiscated by him. If this is not possible then she/he shall hand over to the authorized employee of Department of Accounting. (Art. 306)
7. To submit a special report to the enforcement judge where she/he shall include the outcomes of the enforcement actions. (Art. 307)
8. To keep a list on performed activities where he shall specify: file case number, date of performing the activity, performed action, or the information that the activity has not been performed.

6. THE ROLE OF THE BAILIFF IN THE CIVIL ENFORCEMENT PROCEDURE



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In accordance with the legal regulation in the Enforcement Act, the bailiffs take part in the civil enforcement implementing directly the orders of the court in the enforcement procedure. The bailiffs undertake different actions or tasks in various types of enforcement proceedings. The role of bailiffs is featured below, in accordance with different types of enforcement, distinguishing their intervention in the enforcement on real estates, on chattels, on motor vehicles, on securities, on shares, enforcement for surrender and delivery of chattels, enforcement for the fulfilment of an obligation to do that can be performed only by the enforcement debtor, enforcement for the establishment of a prior status and enforcement by division of things.

➤ **ENFORCEMENT ON REAL ESTATES**

1. - Visits to real estate subject to enforcement

The court can order in its conclusion on sale that the parties interested in purchasing the real estate may visit the real estate in the presence of the bailiff.

The bailiff is the body in charge of implementing the ruling on removal rendered by the court, when the enforcement debtor or other persons prevent or hinder the visit to the real estate. (Art. 89, Enforcement Act)

2. - Enforcement for the eviction and surrender of real state

The bailiff is a competent body to:

- Remove persons and things from the real estate.
- Surrender the real estate into the enforcement creditor's possession. (Art. 256-257, EA)

When the enforcement debtor (natural or legal person), his legal representative, proxy or an adult member of his household is not present, the bailiff shall carry out the enforcement actions in the presence of two witnesses or a notary public.

The bailiff shall request to the enforcement creditor, at least eight days before the enforcement action, to provide all necessary labour and means of transport for the eviction and removal of persons and things from the real state.

The removed things from the real state shall be surrendered to the safekeeping person or to the enforcement creditor.

The police and social services shall provide all necessary help in the implementation of the actions above mentioned.

➤ **ENFORCEMENT ON CHATELS**



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1. - Notification of attachment

The bailiff shall hand over to enforcement debtor the writ of execution before proceedings with the attachment and ask him to pay the amount with respect to which enforcement was ordered, with interest and costs. (Art. 137)

They shall notify to the enforcement creditor the time and place of attachment and of what needs to be provided for dispatching and storing the chattels.

2. To draw up the attachment list

Attachment is carried out by drawing up an attachment list with the chattels in the possession of the enforcement debtor and his chattels in the possession of the enforcement creditor. In Article 135 of the Enforcement Act the list of chattels that may not be an object of enforcement is set up. (Art. 138)

3. Handing over and safekeeping the attached chattels

The bailiff shall take the listed chattels from the enforcement debtor and hand them over to the enforcement creditor or a third party for safekeeping. (Art. 140)

The bailiff have the obligation to confirm all cash payments received by issuing a receipt that shall be provided to the payer, one copy shall be provided to the to the Head of Department of Accounting and another copy shall be retained in the block of receipts. (Art. 305, Rules of Procedures of the Court)

Cash, securities and any valuables chattels shall be deposited as a court or notarial deposit. Before the chattels are seized and dispatched, the bailiff shall examine whether the conditions for their accommodation is appropriate to keep them safe against any damages, decay or deterioration in general and he/she shall draw up the corresponding minutes.

The bailiff shall follow the seized chattels to the location where they shall be placed for safekeeping. He shall draw up the corresponding minutes, which have to be signed by the person to whom the chattels are submitted for safekeeping. (Art. 141)

4. - Appraisal

Except in the case when the court has ordered that the appraisal shall be done by a court appraiser or special expert, the appraisal of attached chattels shall be made by the bailiff at the same time with the attachment list. (Art. 145)

The bailiff shall draw up the minutes in order to specify, inter alia, the seized chattels and their appraised value, and statements of the parties and participants in the procedure, as well as statements of third parties on the existence of any rights that prevent enforcement. (Art. 146)



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5. - Sale of chattels

The sale of chattels is another task performed by bailiff. Chattels can be sold in an oral public auction or by direct dealing and both shall be led by bailiff, except in the case when the court entrust the conducting of the auction to a notary public.

Chattels' sale shall be made at the electronic public auction on the proposal of the enforcement creditor, in which case the auction shall be carried out by FINA in the manner prescribed by Article 132, item a) of Enforcement Act. (Art. 149)

6. - Hand over the chattels to the purchaser

A bailiff shall hand over the chattels to the purchaser even if he fails to deposit the purchase price when the enforcement creditor agrees to that at his own risk. (Art. 151)

➤ **FEATURES/SPECIFICITIES OF MOTOR VEHICLES**

When the enforcement creditor fails to fulfil the court's order to deliver within 8 days the vehicle with all the accessories and documents to a person whom the vehicle was entrusted to by a writ on execution, the bailiff at enforcement creditor's proposal shall seize the vehicle at any location where it is found. The police shall provide all necessary assistance to the bailiff performing the actions. (Art. 162)

➤ **PRELIMINARY MEASURES**

As a measure for the purpose of securing a monetary claim the Court shall order the sale of attached chattels susceptible to fast deterioration or if there is a danger from the fall in price of such things. The enforcement act in the article 336 remits to the provisions of this Act on execution on chattels, so the bailiffs shall sold the listed chattels in an oral public auction or by direct dealing following the prescriptions of article 149.

➤ **ENFORCEMENT OF THE ENFORCEMENT DEBTOR'S MONETARY CLAIMS BASED ON SECURITIES**

The bailiff is entrusted with the attachment of the securities transferable by endorsement or for the realization of which the security itself is necessary. He/she shall carry out the attachment by taking the securities from the enforcement debtor and by surrendering them to the court or notary public. (Art. 177)

➤ **ENFORCEMENT OF SHARES**

The bailiff shall inspect the book of shares and other documents of a joint stocks company upon the court's decision. Penal measures can be applied against a joint stock company, the members of the management board and other responsible persons who prevent or distract the bailiff.



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When the bailiff is entrusted by the court with the sale of shares, those previously shall be assessed. The bailiff shall ascertain the market value of the share through an expert witness or an authorized appraiser. Once (when) shares have been appraised they can be sold at an auction or by direct settlement. The bailiff shall enter into an agreement on the sale of shares on behalf of and for the account of the enforcement debtor, pursuant to a conclusion of the court authorizing them to do so. (Art. 231)

The Enforcement Act provisions relating to enforcement on chattels shall be applied in the next enforcement actions conducted to enforcement on shares.

➤ **ENFORCEMENT FOR SURRENDER AND DELIVERY OF CHATTELS**

In the enforcement for the delivery of one or more defined things kept by the enforcement debtor, the bailiff shall seize these things from the enforcement debtor and shall surrender them to the enforcement creditor with a receipt. (Art. 250)

➤ **ENFORCEMENT FOR THE FULFILMENT OF AN OBLIGATION TO DO THAT CAN BE PERFORMED ONLY BY THE ENFORCEMENT DEBTOR**

The minutes made by the bailiff on the performance of the action, are considered doubtless evidence to prove to the court that the enforcement debtor has fulfilled his obligation to do that can be performed only by him, within the time limit set by the court. (Art. 262)

➤ **ENFORCEMENT FOR THE ESTABLISHMENT OF A PRIOR STATUS**

The court can order that the bailiff shall help the enforcement creditor to establish the prior status when the enforcement debtor's behavior was against the obligation contained in the enforcement title document, upon the enforcement creditor's request. (Art. 264)

➤ **ENFORCEMENT BY DIVISION OF THINGS**

Another bailiff's task is to carry out individual actions in order to get the physical division of a shared thing. (Art. 272)



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7. - ENFORCEMENT ON FAMILY MATTERS.

The Family Act regulates the enforcement of decisions adopted in subjects covered by this Act, in the Title V (Articles from 336 to 360). The Family Act establishes that the enforcement proceedings and the security proceedings shall be conducted according to the provisions of the Enforcement Act but with the special cases defined by the mentioned Act.

The Family Act provides three types of proceedings:

- The enforcement in order to surrender a child to a parent.
- The maintenance enforcement and security measures.
- The enforcement for the sake of ensuring meetings and association of a parent with a child.

The intervention of bailiff in this type of proceedings shall take place mainly in the case for the surrender of a child to a parent.

When finally and after seeking an agreement between parties the court decides that the child shall be surrendered to a parent, the absence of a person from whom a child shall be removed shall not prevent the implementation of enforcement actions. The bailiff shall carry out individual actions in order to get the minor to be surrendered and then shall draw up the minute. When the person against whom the enforcement is ordered is not present during the implementation of enforcement actions the presence of two adult persons is required. The court can also call the Social Welfare Centre to be present during the implementation of the enforcement.

The enforcement decision shall be delivered to:

- The party from whom the child shall be removed
- The parent to whom the child shall be surrendered
- The person to whom the enforcement decision does not refer but with whom the child is located.



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