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Procédures civiles d'exécution en France et en Bosnie Herzégovine : étude comparative et propositions de réforme

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RÉSUMÉ

La procédure d'exécution est la partie la plus importante de l'ensemble complexe de procédure civile. Les failles de la procédure d'exécution entraînent l'imperfection du système dans son ensemble. La clôture réussie de la procédure d'exécution représente un moyen pour la partie à la procédure civile d'obtenir la concrétisation de la finalité du procès civil : le recouvrement de sa créance. Si la procédure d'exécution n'est pas efficiente et efficace, toutes les actions et tous les efforts déployés dans le cadre de la procédure civile n'ont aucun sens. Si la partie en est arrivée au point d'engager une procédure d'exécution, cela signifie que le débiteur n'a pas rempli son obligation dans le délai indiqué dans le titre exécutoire. Après qu'elle a été initiée, la procédure d'exécution doit être facile à mener, rapide, simple et efficace. C'est la seule chose qui compte. Rien de tout cela n'est véritablement mis en œuvre, en ce qui concerne la procédure d'exécution en Bosnie-Herzégovine. Par conséquent, le système doit être modifié dès que possible et sans plus tarder. La procédure d'exécution doit être radicalement réformée. Le modèle de ce changement peut être trouvé dans le système d'exécution existant en France. La mise en place d'un système d'exécution entièrement nouveau fondé sur le système Français, mais tenant également compte des coutumes locales, de la tradition bosniaque et enfin de la législation de l'Union européenne conduira certainement la Bosnie-Herzégovine à l'efficacité de la procédure d'exécution, par conséquent à l'efficacité des tribunaux, à l'amélioration de la confiance du public dans le système judiciaire et, enfin, à faire de la Bosnie-Herzégovine un partenaire futur de l'Union européenne.

Mots-clés:
Procédures civiles d'exécution- huissier de justice privé- secrétaire du tribunal- juge chargé de l'exécution- Union européenne- Droit comparé- Bosnie-Herzégovine et France

Enforcement procedure in France and Bosnia and Herzegovina: comparative overview and proposal of reform

SUMMARY

Enforcement procedure is the most important part in the complex puzzle named civil procedure. Lack of this part of the puzzle, results with the imperfection of the system as a whole. Successful closure of enforcement procedure represents a way in which the party in the civil procedure gets to its final award - getting its claim collected. If enforcement procedure is not more efficient and effective than all actions and efforts done through the civil litigation then procedures are meaningless. If the party gets to the point to initiate enforcement procedure that means that the debtor did not fulfill his obligation within the deadline stated in the enforceable title. After it was initiated, enforcement procedure has to be easy to start, fast, easy going and efficient. That is everything that counts. None of this is on the table, regarding enforcement procedure in Bosnia and Herzegovina. Therefore, it has to be changed as soon as possible and without any further delays. Enforcement procedure has to be radically changed. Role model for this change may be found in enforcement system in France. Building completely new enforcement system based on the French one, but also taking into consideration local customs, Bosnian tradition and finally legislative of the European Union shall for sure lead Bosnia and Herzegovina to efficiency of the enforcement procedure, consequently to the efficiency of the courts, improvement of the trust of public in judiciary and finally, make Bosnia and Herzegovina better future partner for European Union.

Key words:
Enforcement system; private bailiff; court bailiff- enforcement judge; enforcement procedure; European Union; Comparison-Bosnia and Herzegovina and France

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LIST OF ABBREVIATIONS

B&H	Bosnia and Herzegovina
CCEP	The Code of Civil Enforcement procedures
CCJE	Consultative Council of European Judges
CMS	Case Management System
CEPEJ	Council of Europe's European Commission on the Efficiency of Justice
CEPEJ GT-EXE	The CEPEJ Working Group on Enforcement of Judicial Decisions
DPA	The General Framework Agreement for Peace in Bosnia and Herzegovina / The Dayton Peace Agreement
ECSC Treaty	The Treaty Establishing the European Coal and Steel Community
ECHR	European Convention on Human Rights and basic Freedoms
EEC Treaty	The Treaty Establishing the European Economic Community also known as the Treaty of Rome
EAE Treaty	The Treaty Establishing the European Atomic Energy Community
EU	European Union

EURATOM	The Treaty Establishing the European Atomic Energy Community
FB&H	Federation of Bosnia and Herzegovina
HJPC B&H	High Judicial and Prosecutorial Council of Bosnia and Herzegovina
ICT	Information and Communication Technology
IDDEEA	Agency for Identification Documents, Registers and Data Exchange of Bosnia and Herzegovina
PAGSI	Governmental Action Program for an Information Society
RS	Republic of Srpska
RSA	Revenu de solidarité active/ Solidarity labor income
RPVJ	Réseau privé Virtuel justice
SOKOP	System for Electronic Processing of Utility Cases
UNICEF	United Nations International Children's Emergency Fund

SUMMARY

INTRODUCTION

1. The modern Bosnia and Herzegovina and the Dayton Peace Agreement. Bosnia and Herzegovina (B&H) in its current political and constitutional arrangements was created by signing of the General Framework Agreement for Peace in Bosnia and Herzegovina, shortly named the Dayton Peace Agreement. The General Framework Agreement for Peace in Bosnia and Herzegovina, also known as the Dayton Peace Agreement (DPA), Dayton Accords, Paris Protocol or Dayton-Paris Agreement, is the peace agreement reached at Wright-Patterson Air Force Base near Dayton, Ohio, United States, in November 1995, and it was formally signed in Paris on 14 December 1995. These accords put an end to the three and half year long Bosnian War, one of the armed conflicts in the former Socialist Federative Republic of Yugoslavia. The current Constitution of Bosnia and Herzegovina is the Annex 4 of the DPA. [1] The DPA has ended the war operations that lasted from 1992 to 1995, but it has also established the complicated political structure of the country. It is not too much to say that the political structure of Bosnia and Herzegovina made by DPA is unique in the world and makes the state extremely inefficient, uneconomical and paralyzed in many fields. The system is complex to that extent that it is even impossible to change the system itself.

As a direct consequence of this complex political system, Bosnia and Herzegovina is faced with many functioning difficulties in whole line of segments, and it is especially tackling the judicial system.

A large number of the pending cases before the courts marks the period after the war, the first instance courts and even the courts at higher instance. Some of these cases have lasted or last for more than ten years.

[1] https://www.osce.org/bih/126173, information taken on 11th of June 2020

2. Issue of enforceable titles. Particular problem represents numerous cases of enforcement of the enforceable titles, most often, the payment of monetary claims. While the country successfully overcame most of the problems over the years, the last mentioned still paralyzes the system of the enforcement and the solution is not in sight despite numerous efforts. It has to be noted that the High Judicial and Prosecutorial Council of Bosnia and Herzegovina (HJPC B&H) have made several attempts of enforcement procedure reform[2] including currently existing Working group, with a task to propose a reform of enforcement procedure. None of the efforts so far have given any result.

§ 1. Impact of introducing private enforcement agents to the future possible entrance of Bosnia and Herzegovina to European Union

A. European Union as the idea of the unity of European countries

3. The idea to unify European countries The idea to establish a community that would unify European countries was born right after the Second World War. The basic idea was to create close cooperation between European countries and in such a way to make Europe and the countries within Europe economically and militarily stronger. This

[2] High Judicial and Prosecutorial Council of Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina number 25/04, 93/05, 15/08) as a state body was funded in 2004. It consists out of 15 members, representatives of profession – judges of Court of Bosnia and Herzegovina, prosecutors of Prosecutors office of Bosnia and Herzegovina, judge of supreme courts of Federation of Bosnia and Herzegovina and Republic Srpska, municipal courts, cantonal courts, attorneys at law, and representatives of state Assembly etc. The High Judicial and prosecutorial council has following powers: to appoint all judges and prosecutors at all levels, conducts disciplinary proceedings against judges and prosecutors, decides on appeals in disciplinary proceedings, oversees training of judges and prosecutors, is involved in yearly budgetary planning of courts and prosecutors' offices, determines criteria for yearly appraisal of judges and prosecutors, determines ethical codes for judges and prosecutors etc.)

was a lesson learned from the inability of the countries to defend themselves from German attack in the Second World War and the inability to give an adequate response to all those challenges that the Second World War brought alongside.

Therefore, right after the war ended, the idea to unify European countries was born, and the Treaty establishing the European Coal and Steel Community (ECSC Treaty) was signed. The next step was to conclude the Treaty establishing the European Economic Community (EEC Treaty) and the Treaty establishing the European Atomic Energy Community (EAE Treaty), both signed in 1957. In the end, in 1992 The Maastricht Treaty – Treaty on European Union was signed establishing European Union (EU).

4. Members of the European Union today. Today, there are 27 State Members of the European Union. France, Belgium, Germany, Luxembourg, and the Netherlands entered the EU on January 1st, 1958. 15 years later, the EU entered Denmark, the United Kingdom, and Ireland on January 1st, 1973, Greece on January 1st, 1981, Portugal and Spain on January 1st, 1986, Austria, Sweden, and Finland on January 1st, 1995, Cyprus, Estonia, Czech, Hungary Latvia, Lithuania, Poland, Malta, Slovakia, and Slovenia on January 5th, 2004. The last three countries that entered the EU are Bulgaria and Romania on January 1st, 2007, and finally Croatia on January 7th, 2013.[3] The only state that left European Union is United Kingdom that left the EU on January 31st, 2020.

Turkey, Montenegro, North Macedonia, Serbia, and Albania have the status of candidates for EU membership while Bosnia and Herzegovina has the status of the potential candidate.

At the moment, 19 countries are using EURO as their official currency and Croatia is making final preparations to introduce EURO as its official currency.

[3] More information is available on: https://europa.eu/european-union/about-eu/countries_en#tab-0-1, seen on 07.08.2021.

B. Different Treaties

a) The Treaty establishing the European Coal and Steel Community

5. The ECSC Treaty – the goal. The Treaty establishing the European Coal and Steel Community was signed in 1951. The ECSC Treaty was signed by six European countries: Germany, France, Luxembourg, Belgium, Italy, and The Netherlands. The main aim of this treaty was to ensure that the movement of coal and steel is ensured to be free between named countries. The ECSC Treaty was in force for a very long period: from 1951 to 2002.

At the time, a specific body (The High Authority) was introduced and its aim was to supervise application and compliance with the Treaty. It was the first step in the foundation of the European Union.

The aim of the treaty, as stated in Article 2, was to contribute, through the common market for coal and steel, to economic expansion, employment, and better living standards. Thus, the institutions had to ensure an orderly supply of coal and steel to the common market by ensuring equal access to the sources of production, the establishment of the lowest prices, and improved working conditions. All of this had to be accompanied by the growth in international trade and the modernization of production.[4]

6. The ECSC Treaty – results. In the practice, the Treaty created a joint market of the coal and the steel free of taxes and customs and did not allow any kind of discrimination between the states parties. In particular, the Treaty prohibits any import and export duties or any charges that would have the same effect as well as quantitate restrictions on the movement of products. Also, the Treaty prohibits the producers and the consumers to be treated differently (prohibition of discrimination) especially regarding

[4] More information available on EUR-Lex - xy0022 - EN - EUR-Lex (europa.eu) , visited on 29.07.2021.

prices, transportation, or delivery terms and the consumer was given full freedom of choice. Any other restrictions were prohibited as well. [5]

The European Coal and Steel Community shall have as its task to contribute, in harmony with the general economy of the Member States and through the establishment of a common market as provided in Article 4, to economic expansion, growth of employment, and a rising standard of living in the Member States. The Community shall progressively bring about conditions which will ensure the most rational distribution of production at the highest possible level of productivity while safeguarding the continuity of employment and taking care not to provoke fundamental and persistent disturbances in the economies of Member States.[6]

7. The practical implementation of the Treaty. It has to be noted that the Treaty solved numerous important issues regarding its practical implementation so that there was no space left for misinterpretation and only one treaty covered all important issues in terms of the assistance to the parties implementing the Treaty, financial resources, and the transparency in terms of its decisions.

It is interesting to say that the Treaty itself required that all duties are done with minimum administration. [7]

The Community was guaranteed with extensive legal personality and institutions that are necessary for its functioning in international relations. [8]

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[5] Treaty establishing the European Coal and Steel Community, 1951, article 4, available on: ECSC_Treaty_1951.pdf (pitt.edu)

[6] Treaty establishing the European Coal and Steel Community, 1951, article 2, available on: ECSC_Treaty_1951.pdf (pitt.edu)

[7] Treaty establishing the European Coal and Steel Community, 1951, article 5, available on: ECSC_Treaty_1951.pdf (pitt.edu)

[8] Treaty establishing the European Coal and Steel Community, 1951, article 6, available on: ECSC_Treaty_1951.pdf (pitt.edu)

8. Implementing bodies of the Treaty. At the same time, the Treaty constitutes institutions that necessary for its functioning: a High Authority, assisted by a Consultative Committee, a Common Assembly, a Special Council of Ministers, and a Court of Justice.[9] As it may be concluded, all these institutions may be recognized in institutions of the European Union as it exists today.

9. Amendments of the Treaty. The Treaty was amended with several amendments through the years (Merger Treaty - Brussels 1965), Treaties amending certain financial provisions (1970 and 1975), Treaty on Greenland (1984), Treaty on European Union (TEU, Maastricht, 1992 which funded European Union as it is today), Single European Act (1986), Treaty of Amsterdam (1997), Treaty of Nice (2001), the Treaties of Accession (1972 (Denmark, Ireland & the UK (1)), 1979 (Greece), 1985 (Spain & Portugal) and 1994 (Austria, Finland & Sweden)) and finally expired in 2002.

The best way to see how important this Treaty was, shows the fact that all relevant provisions of this Treaty, upon its expiring, were incorporated in the Treaty establishing the European Economic Community.

10. Signing the EEC Treaty and the member countries after initial signing. The Treaty establishing the European Economic Community was signed in the 1957 together with the Treaty establishing the European Atomic Energy Community which was signed in the same year and both of these treaties are still in force. The countries that signed EEC Treaty were: Belgium, Germany, Italy, Luxembourg, France, and the Netherlands. This Treaty was amended several times to its current content.

11. The aim of the EEC Treaty. The EEC Treaty established European Economic Community with a clear aim to, as it was stated in the Treaty, article 1, establish European Community. The task of the Community was to, by establishing a common market and an economic and monetary union and by implementing the common policies or activities

[9] Treaty establishing the European Coal and Steel Community, 1951, article 7, available on: ECSC_Treaty_1951.pdf (pitt.edu)

referred to in Articles 3 and 3a, promote throughout the Community harmonious and balanced development of economic activities, sustainable and non-inflationary growth respecting the environment, high degree of raising the standard of living and quality of life and economic and social cohesion and solidarity among the Member States.[10]

12. The activities of the EEC Treaty. The Treaty of Rome set up a set of activities for the Community to reach aims stated in Article 2 of the Treaty. Firstly, The Treaty of Rome predicted the elimination of custom duties and other restrictions or any other measures which may have a similar effect, related to the import and export of goods between the Member States with no distorted competition in the internal market.

13. Forming the internal market. It was predicted that the Member States shall set up an internal market characterized by the abolition of obstacles to the free movement of goods, persons, services, and capital including the movement of persons in the internal market based on the strengthening of economic and social cohesion as well as strengthening of the competitiveness of Community industry. It was predicted that common policies shall be set up in severe spheres: commercial, agriculture, fisheries, transport, social sphere comprising a European Social Fund, and the environment, development cooperation.

14. Adoption of relevant legislation and promotion of research.

Very important issue tackled by The Treaty of Rome was an obligation for the Member States to adjust legislation to make The Treaty and the common market functional. It has an obligation to promote research and technological development and to encourage the establishment and development of trans-European network as well as strengthening of consumer protection, civil protection, and tourism.[11]

[10] The Treaty establishing the European Economic Community, article 2, available on https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:11992E/TXT&from=EN

[11] IBIDEM, article 3

15. Forming relevant bodies and introducing citizenship for the residents.

In addition to the institutions organized by ECSC Treaty, the Treaty of Rome organized a Court of Auditors, a European System of Central Banks, European Central Bank, and European Investment Bank.[12]

Another important novelty introduced by the Treaty of Rome is the introduction of citizenship of the Union. Every person holding citizenship of Member States is automatically a citizen of the Union with the right to freely move from country to country, to vote and to be elected, and numerous other rights.[13]

The Treaty of Rome was amended several times and finally got its name changed so today, the title of the Treaty is the Treaty on the Functioning of the European Union.

16. The establishment of EUROATOM. The other Treaty that was signed at the same time as the Treaty of Rome is the Treaty that established the European Atomic Energy Community (EURATOM). The main aim of the Treaty was to establish the European Atomic Energy Community so-called EURATOM and its aim is to speed up establishment and growth of nuclear industries.[14]

17. Promotion of joint values of the Member States. The duties of the Member States given by this Treaty were to promote research and ensure dissemination of the technical information, to establish uniform safety standards and to protect the health of workers as well as to ensure application of those standards. Furthermore, regulations of the Treaty ruled on all important issues related to the development of nuclear energy including financing, investments, technical issues, ownership, etc. It is important to say that use of the nuclear energy according to the Treaty is predicted as strictly peaceful. This

[12] IBIDEM, articles 4, 4a and 4b

[13] The Treaty establishing the European Economic Community, article 8, 8a, 8b, 8c, 8d, available on https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:11992E/TXT&from=EN

[14] Consolidated Version of the Treaty Establishing the European Atomic Energy Community, 2012/C 327/01, article 1, available on: EUR-Lex - 12012A/TXT - EN - EUR-Lex (europa.eu)

means that development and investment in nuclear energy, according to this Treaty, is not meant to be used for the military purposes.

b) The Treaty on European Union

18. Introduction. The Treaty on European Union (The Maastricht Treaty) was the final step towards the creation of European Union as a Union of European countries as we know it today. All above-described treaties were a prelude to the formation and to making this final step.

19. The signing of the Maastricht treaty. The Maastricht Treaty was signed in Maastricht on February 7th, 1992. It initially and officially established European Union as an even closer union among the people of Europe.[15]

20. Objectives of the Treaty. The Union in the Treaty set itself the following objectives: - to promote economic and social progress which is balanced and sustainable, in particular through the creation of an area without internal frontiers, through the strengthening of economic and social cohesion and through the establishment of economic and monetary union, ultimately including a single currency in accordance with the provisions of this Treaty; Treaty on European Union Title I - to assert its identity on the international scene, in particular through the implementation of a common foreign and security policy including the eventual framing of a common defense policy, that might in time lead to a common defense; - to strengthen the protection of the rights and interests of the nationals of its Member States through the introduction of a citizenship of the Union; - to develop close cooperation on justice and home affairs; - to maintain in full the acquits Communautaire and build it on with a view considering, through the procedure referred to in Article N (2), to what extent the policies and forms of cooperation introduced by this

[15] The Treaty on European Union, article A, available at: treaty_on_european_union_en.pdf (europa.eu)

Treaty may need to be revised with the aim of ensuring the effectiveness of the mechanisms and the institutions of the Community. The objectives of the Union shall be achieved as provided in this Treaty and they should be following the conditions and the timetable set out therein while respecting the principle of subsidiarity as defined in Article 3b of the Treaty establishing the European Community.[16]

21. EEC and its transformations. European Economic Community by Maastricht Treaty was renamed in European Community and The Treaty establishing European Economic Community introduced amendments and changes to establish European Community.[17]

22. Purpose of the amendments to the treaties - introducing unique currency.
All amendments were introduced to make Member States closer and more cooperative so that the Union could become stronger. Amendments are related to the security policy, judiciary, monetary policy including introducing joint money – EUR, they introduce some new joint policies, stronger citizenship authorizations and some changes that are institutionally related, for example, more powers for European Parliament.

§ 2. The purpose and the scope

23. Type of the enforcement procedure in B&H. Bosnia and Herzegovina has a traditional court system of enforcement of enforceable titles and authentic documents where the court, meaning enforcement judge is a main actor in the course of enforcement process.

24. Enforcement in B&H as a court procedure. The entire enforcement procedure in Bosnia and Herzegovina is judicial, conducted by the court bailiffs. The court bailiffs are employees of the court. Their work is under direct supervision of the

[16] The Treaty on European Union, article B, available at: treaty_on_european_union_en.pdf (europa.eu)

[17] IBIDEM, article G

enforcement judge and at the initiative for all procedures starts from the enforcement creditor.

25. Role of enforcement creditor. According to the currently applying laws, during the entire enforcement process, the creditor must have an active role in the process, otherwise, the process ends (is suspended) and case is closed despite the fact that the claim was not collected and the creditor did not receive a money out of the process of enforcement for the claim he has.

26. Statute of limitation for enforceable titles. According to the laws on obligations applying in Bosnia and Herzegovina, statute of limitation for the claims which were established by an enforceable title (judgment, other decision issued by the court or other authorized body, court settlement etc.) is 10 years. So, in terms of what was previously said, it may be conditionally said that it is acceptable to have long lasting enforcement procedure if enforcement creditor obtained enforceable title. If enforcement procedure was initiated based on enforceable title, if the procedure was suspended out of procedural reasons, the creditor has possibility to initiate enforcement procedure repeatedly, until ten years out of issuing enforceable title, elapsed and statute of limitation comes into the force.[18]

27. Statute of limitation for authentic documents. However, the problem comes up when enforcement procedure was initiated based on authentic document where statute of limitation is one year long for physical persons and three years long for legal entities. In such case it is almost for sure that the creditor shall not collect his claim.

28. The formalistic system of enforcement. The system itself is formalistic and inefficient and court bailiffs, as a state employee, do not have any special interest to have the procedure completed successfully for the creditors by fulfilling the claim. In large

[18] Even when time of 10 years elapse it does not mean that motion for enforcement may not be filed. It may. The court does not recognize statute of limitation automatically, but enforcement debtor is the one which needs to object decision on enforcement in this term and if he does not object, enforcement procedure may be lead for indefinite period of time.

percent of enforcement cases, the ultimate goal is to formally complete a procedure, regardless of whether it achieved its objective-collection of the claim. This means that, no matter if the claim, for which the procedure was initiated and conducted, had been collected, the ultimate goal is to formally close a case. But, this is not so surprising if we know that most of the enforcement procedures are, upon request of the creditor, performed on movable assets of the debtor and court bailiff with almost 100% security, we how know how this case will end. It will end by suspension of the case out of procedural reasons.

29. Impact of quota system for judges to enforcement procedure. An additional "motivation" for court employees to get the process formally closed regardless of the obtained result , in the tangible sense, gave the system of quota (norms) for the judges. System of quota which was introduced in the recent years is formally set measure to track the quantity of the work done by judges. Judges (and thus the court bailiffs) have an interest in suspending the procedure and "showing the case completed", even if it is only for procedural reasons.

30. Quota system for judges as an element to appraise work of a judges. It is necessary to try to make it clear how in practice it is possible to have a judge aiming to formally close the case instead of solving it in merit? In this contest, it must be said that appraisal of the judges is based, among other things, on a number of cases he solved and on the number of solved "old" (meaning cases not initiated in the year of salvation) cases. It is disciplinary offence if a judge does not solve enough "old" cases (75% out of total number of solved cases in one year) irrelevant of how complex those cases are.

31. Necessity to change enforcement procedure in B&H. Bearing in mind all above mentioned, it has to be underlined that, final legal step in the process of creditor getting his claim confirmed and collected, is performed formally and with no real interest to gain final goal-to collect money from the debtor. That final step is enforcement procedure. It is obvious that enforcement procedure initially was put on wrong feet, is performed with wrong aims, and therefore must be changed as soon as possible.

32. Enforcement procedure should be out of court procedure. Enforcement proceeding is not and should not be a court proceeding. It has to be taken into

consideration that in the cases where the proceedings are conducted based on enforceable title, the court proceeding had already been implemented and there was a court process (civil litigation). In civil litigation procedure the claim was established and confirmed by the court. Therefore, the person who carries out or supervises the procedure enforcement of such decision, does not have to be and should not be a judge.

33. Numerous of the pending enforcement cases. At the current system, the judges are over-burned with the enforcement cases. It is even more frustrating if we know that these cases should not be even dealt with by the judge, since the enforcement debtor had a litigation procedure to exercise his right to access to the court and to file all available legal remedies so the enforcement procedure should be pure enforcement and not turned into new litigation case.

34. Professionals to be included with enforcement cases. It is essential that a person – a professional dealing with an enforcement case possesses all necessary skills and education, but it is almost out of the same importance that he or she has access to the information about the assets of the debtor.

35. Access to the information out of crucial importance. In the current legal system, the creditor has no access or has very limited access to the information about assets of the debtor. He may access the public registers[19] but still has no possibility to access information weather one person has money income (e.g. if the person has salary, pension or some other income). This information may be collected from Tax registry and during the course of enforcement procedure, that information is normally provided to the court file on the court written request.

Therefore, if there is such situation that the professional who is performing enforcement procedure is being well-educated lawyer with access to the debtors' assets information, it is not necessary for him to be a judge. Of course, this statement is not absolute since

[19] For instance, police registry of cars, land registry and some others public registries.

certain procedures, such as handing over a child, due to their specificity and sensitivity should remain with the court/judge.

36. Impact of low court fees to the number of new cases. Significant factor for parties to initiate enforcement procedure in Bosnia and Herzegovina easily is the fact that court fees are quite low. For instance, for the motion for enforcement and decision on enforcement in the case where value of the case is up to EUR 250,00, costs EUR 5,00, each, meaning EUR 10,00 in total for motion and decision on enforcement. In practice, this means that in concrete case, to collect amount of EUR 250,00, the court shall work up to, at least one year, and spend at least 10 times more budgetary funds with no collection of single EUR for enforcement creditor. There are no other fees during enforcement procedures except for the objection on decision on enforcement.[20] There is even no obligation to pay a fee for appealing decision during the enforcement procedure event taking into account that there is a possibility to appeal almost every decision made throughout the enforcement procedure.

Judicial system as it is at the moment, has no real motivation to perform efficient enforcement procedure. Furthermore, and out of same importance, as statistics shows, such system creates no ambient for foreign investments. Besides that, all this leads to the conclusion that judiciary in Bosnia and Herzegovina is inefficient which is also an obstacle to investments and donations.

37. Aim of proposing new enforcement procedure in Bosnia and Herzegovina.
This paper aims to propose a completely new system of enforcement in Bosnia and Herzegovina, following the example of the system in France, which would, of course, be adapted to the political system of Bosnia and Herzegovina. The new system would mean that, instead of having the enforcement carried out within the court, under the full supervision of the enforcement judge and without recognizing categories of socially

[20] It is necessary to mention that in Bosnia and Herzegovina each state level body has different law on court fees (10 cantons, Republic of Srpska, Brcko District and State of Bosnia and Herzegovina level). This is the fact that makes complete situation even more complex.

vulnerable population, the enforcement procedure would be carried out efficiently and only to those categories of citizens who have the ability to fulfill their obligations.

38. The status of the vulnerable category of population in new enforcement system. The system (state) would provide financial support to those residents who are on the verge of existence, which is why this category of the population would not enter the debt zone and would not become subject against whom, usually in vain the enforcement procedure would be led. This means that basic needs of that population would be met at the expense of the country (e.g. payment of utilities).

39. Introducing of personal bankruptcy in B&H. A very important institute that should be part of the overall picture of the new system of enforcement in Bosnia and Herzegovina is institute of personal bankruptcy. At the current system in Bosnia and Herzegovina, there is no such thing as personal bankruptcy and this institute is completely unknown to the legal system. There are laws on bankruptcy and liquidation for legal entities, which regulate situation when legal entity gets into financial difficulties but the private persons, according to the current legislation, may not go bankrupt. In the practice, this means that any physical person may go in deep financial crisis and be in a position to go deeper and deeper without having anyone to help or to prevent further debts.

40. Impact of financial organizations to the case income. After-war period created fertile ground for numerous small financial organizations that were offering loans under special conditions: without real creditworthiness and charging interest which might go up to 50% per a year. Those were short period credits for amount up to 5.000,00 EUR but they still ended up as a cases before a court for non-payment of the loan. Very often, the clients took these credits only to cover current needs of the households while they had no investment and no real chance to pay the credit within the time limit.

In terms of this, introducing personal bankruptcy would be an important step towards reduction of caseload of enforcement cases due to limitation of possibility to over debt for citizens.

41. Strengthening the public trust into judicial system as a goal of new system.
The ultimate goal for introducing a new system of enforcement procedure is to strengthen public confidence in the judicial system of Bosnia and Herzegovina, which at the time of writing this paper is facing a significant crisis.

42. New system as a chance for new investors and effective enforcement of enforceable titles. At the same time, this change would lead to the strengthening of investors' confidence to the system, increase investments, and finally it would lead to an improved economic power of the country. In addition, the goal for Bosnia and Herzegovina is also to establish a modern and above all efficient enforcement system in accordance with the regulations of the European Union and in line with European trend. This would make it easier for the country to enter into this community.[21]

43. French system of enforcement as another point of view. In order to implement the above-mentioned measures, a certain portion of this paper consists of the study and analysis of the enforcement system in France, both theoretically and practically. The aim of the author is to gain a comprehensive understanding of how Bosnian and French systems work, not only the execution, but also all the other spheres which have a direct impact of French system on the execution (social policy, personal bankruptcy, access to the information of the debtor, etc.). In addition, it is very important knowing to what extent the French court is still active participant in the process of execution and what are its powers.

[21] It has to be noted that legal system in Bosnia and Herzegovina is not resistant to changes. For example, in year 2002 public notaries were introduced into system and were excepted and organized in short period of time now overtaking all inheritance cases from all courts in Bosnia and Herzegovina.

§ 3. Methods

44. The historical method. With the help of this method, the author intends to present the historical development of the enforcement system in Bosnia and Herzegovina and France. In connection with the use of this method in the analysis of the enforcement system, on the one hand the aim is to present the historical reasons why the enforcement system in Bosnia and Herzegovina is to this extent ineffective while on the other hand taking a look at how the enforcement system works in France in terms of historical development.

45. Normative method. With this method, the author will present the legal solutions in France, not only those related to the enforcement procedure but also all those that the author finds relevant to create a complete picture of what makes the enforcement system in this country effective.
In addition, the normative method will be used to show weaknesses of the system in Bosnia and Herzegovina and in this regard, when proposing a new system, in addition to new regulations related to the enforcement procedure, the author will analyze weaknesses of other regulations which should be changed so the newly proposed system could operate effectively.

In this context, the author will also analyze regulations of the European Union that have an impact on this matter. Considering that France is a member of the European Union and its regulations are aligned with the regulations of European Union and Bosnia Herzegovina aspires to get the status of a Member and is already at a stage where the new regulations undergo verification of compliance with the regulations of the European Union.

46. Positive and comparative method. These are the methods that will be used to make a comparison of legal material and procedural regulations governing the process enforcement and other spheres (social benefits, provisions for taxes, etc.), of Bosnia Herzegovina and France, and bearing in mind provisions of the European Union.

47. Comparative method. Will make comparison between national regulations governing the enforcement procedure and regulations of France bearing in mind provisions of the European Union with which domestic laws must be harmonized.

48. Logical methods (analysis, synthesis, induction, deduction) research methods. Based on which will a final conclusion, recommendation and proposal of a new enforcement system in Bosnia and Herzegovina be brought, as a result of the study.

49. Other methods. The other methods for which there is a need-abovementioned list is not detailed and in the course of doctoral thesis elaboration other methods will be used if needed.

§ 4. The structure of the thesis

50. Introduction. In terms of the structure of the thesis, author performed a transparent and detailed analysis of the applicable enforcement system in Bosnia and Herzegovina and France in a different chapter. Significant part of the paper is an analysis of international acts that regulate this area. Furthermore, comparison of the enforcement systems in Bosnia and Herzegovina and France was made and the possibility of the French system implementation in Bosnia and Herzegovina was analyzed. The most important part of this paper is a proposal of a whole new enforcement system in Bosnia and Herzegovina.

51. Complete structure of the paper. The thesis in terms of the structure consists out of two parts. Part one is named the Enforcement Systems and it consists out of three titles. First title named The enforcement system in Bosnia and Herzegovina consists out of two chapters, guiding principles and actors in legal procedure. These two chapters in detail present guiding principle of the enforcement system in Bosnia and Herzegovina and give detailed analysis of the actors of the enforcement procedure. Title two is about the enforcement system in France and in two chapters it describes guiding principles and main actors of the enforcement procedure in France. Title three is presenting international standards that need to be respected when it comes to the enforcement procedure. Three chapters of this title are analyzing the Global Code of

Enforcement, European Convention for the Protection of Human Rights and other relevant international standards. Second part of the paper is about perspectives of the evolution of enforcement procedure in Bosnia and Herzegovina. Title one of this part is the part where comparison between two legal respective systems, French and Bosnian were compared and their main similarities and differences were given. In second title, proposal of completely new enforcement system for Bosnia and Herzegovina is given and finally, third title is analyzing the impact of information and communication technology on enforcement procedure. In this regards, importance of introducing all benefits and possibilities of ICT is emphasized in this part of the paper.

PART 1: THE ENFORCEMENT SYSTEMS

52. Introduction. To introduce any novelty in any already functioning system is without a doubt extremely challenging especially if the novelty should completely replace existing system. It's not only that completely new legislative has to be written, but also it has to be adopted and all necessary analysis and calculation have to be made. It has to be noted that introducing a whole new system into one section of the country, which is not functioning, may also be an opportunity to start over and to overcome all shortcomings of the old system.

For these purposes, it is necessary to analyze the enforcement system in Bosnia and Herzegovina. Only analysis of current system may show how important it is to bring deep changes into it.

It is important to have another system, suitable for comparison so that there is a guideline for a country aiming to change its system and to have a clear picture about what kind of system does it wants to achieve at the end of the process.

And finally, it is not possible to ignore international standards related to the field of interest, especially if the country is aiming to join international community. As Bosnia and Herzegovina is aiming to join European Union it is out of crucial importance to bear in mind all international standards that are regulating legal field of enforcement.

Event though, B&H is not member of European Union and its regulations and rules are not obligatory for this country, still, there is clear will to join the Union in close future, and therefore, its legislation must not be ignored and must be taken into consideration.

TITLE 1 THE ENFORCEMENT SYSTEM IN BOSNIA AND HERZEGOVINA

Introduction

53. Complexity of Bosnian political and legal system. Bosnia and Herzegovina, as a country with an extremely complex constitutional order, consequently has an extremely complex legal system. With the signing of the Dayton Peace Agreement in December 1995, Bosnia and Herzegovina was politically and territorially divided into several constitutional units with different competencies that start from the state level and then spread horizontally and vertically.

54. Political structure of Bosnia and Herzegovina – constitutional units.
In terms of political organization, firstly there is the highest level of the polity: state Bosnia and Herzegovina itself keeps a certain jurisdiction. Looking from position of competencies and legislation the state has very restricted number of competencies, for example its competency is state defense. In such situation, state level parliament adopts legislation and then there are state bodies that implement and apply them. Also, other level's bodies apply state legislation when they act in cases related to state competencies.

Secondly, there are constitutional units, Federation of Bosnia and Herzegovina, Republic of Srpska and District Brčko. Federation of Bosnia and Herzegovina consists out of ten cantons. It has to be said, that state level, Federation of Bosnia and Herzegovina, Republic of Srpska, Brčko District and every canton has its own constitution and political bodies (parliament, budget, ministers etc.). In terms of such political division, it has to be noted that in Bosnia and Herzegovina there are three main religious groups: Catholic, Orthodox and Muslims, which in the Dayton Peace Agreement were named Croats, Serbs and

Bosniaks. There is a minor number of other different religions such as Judaism or some other religions and ethnicities.

All above named ethnic groups are now constitutional categories and citizens, which are not Bosniaks, Serbs or Croats, constitutionally are named as Others. All constitutional units of Bosnia and Herzegovina are created and divided according to religious groups: Republic of Srpska is where major populations are Serbs, Federation consists out of Croats and Bosniaks and its constitutional units-cantons are divided upon its major population.

55. Political structure of Bosnia and Herzegovina – constitutional units of Federation of Bosnia and Herzegovina. In order to make it more clear how complex constitutional organization of Bosnia and Herzegovina is here are some information on cantons in Federation of Bosnia and Herzegovina: Law on Federal Units adopted in 1996 formed these constitutional units of Federation of Bosnia and Herzegovina. The cantons are furthermore divided into cities and municipalities. Each canton has its own constitution and government. Cantons are also marked by the majority of its population (Bosniaks, Serbs or Croats). The cantons are named as following: Una-Sana Canton, Posavina Canton, Tuzla Canton, Zenica-Doboj Canton, Bosnian-Podrinje Canton Goražde, Central Bosnia Canton, Herzegovina-Neretva Canton, West Herzegovina Canton, Sarajevo Canton and Herzeg-Bosnia Canton.

56. Backlog of court cases and reforms performed. After the war ended, the courts in Bosnia and Herzegovina were overloaded with backlog of cases, mostly civil and enforcement cases. From year 2003 a comprehensive reform of the judicial system was done. It included a reform of complete system, starting from the number of courts (for example, some courts were closed, some courts took over competences of the others etc.)[22], the number of judges was reduced and the mode of work on particular cases

[22] Two existing courts in Sarajevo, the capital city, were joint together into one court which became large, inefficient apparat to which for instance, still takes a years only to send a civil claim for response to the defendant.

changed in terms of regulations. Basically, all this changed the basic principles on which the judicial system in Bosnia and Herzegovina rested.

57. Introduction of CMS and SOKOP system. In all court's electronic system (CMS Case Management System) for management and processing of the court cases was introduced. Also, there is a System for Electronic Processing of Utility Cases (so called SOKOP), enforcement and civil litigation, that has been introduced in certain number of courts. The others could not accept SOKOP system due to complicity of the court system in the state. Recently, SOKOP was made a part of CMS system but still did not come to live in all courts in Bosnia and Herzegovina.

58. Change of the basic legal procedural principles. In connection with change of the procedural principles that were present for a long time through history, there have been some important changes that were introduced. For example, in the civil proceedings, the principle of material truth has been completely abandoned and the principle of litigation (or process) truth was taken into account so that the truth becomes what was proven before court.

59. New laws in enforcement at some levels. In terms of the enforcement procedure, new laws on enforcement procedures were made and adopted at all levels. These laws were repeatedly changed up to year 2013 when Brčko District adopted a completely new law that suffered significant changes compared to the new one, but that law even after a few years following the adoption, was not completely implemented. The new Law on enforcement procedure in Brčko District introduced some novelties in enforcement procedure but this procedure still remains as jurisdiction of the courts and it is still in hands of court bailiff.

60. New law in Brčko District represents move forward towards private bailiffs.
It has to be noted that this new law on enforcement procedure represents important move towards private bailiffs in that part of Bosnia and Herzegovina. It gives more freedom to the courts and to the court bailiffs in terms of taking over an initiative in the course of procedure. It also allows enforcement creditor to access the information. This law would have been a great solution for transitional period. However, as it was not adopted in all

constitutional units of Bosnia and Herzegovina, it remains only an attempt of one of the constitutional units to improve enforcement procedure within that unit.

61. Role of HJPC in ongoing reforms. A significant contribution to the ongoing reforms in the area of enforcement procedure gave the High Judicial and Prosecutorial Council of Bosnia and Herzegovina as an umbrella judicial institution with the necessary competences and powers to carry out reforms in all courts in Bosnia and Herzegovina, regardless of the level.[23]

[23] High Judicial and Prosecutorial Council according to the Law on High Judicial and Prosecutorial Council of Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina 15/02, "Official Gazette" of the Federation of Bosnia and Herzegovina, 29/02, "Official Gazette" of the Republic of Srpska, 40/02, "Official Gazette" of Brcko District, 11/02) has following powers (prescribed in article 17): "The Council shall have the following competences : 1. Selection and appointment of judges including Presidents of the Court of Bosnia and Herzegovina, of the Appellate Court of Brcko District and of the Basic Court of Brcko District.; 2. Selection and appointment of the Prosecutor and deputy prosecutors of Prosecutor's Office of Brcko District; 3. Coordinating the co-operation of High Judicial and Prosecutorial Councils of the Entities and the Judicial Commission of Brcko District; 4. organization of training of judges and prosecutors as referred to in Items 1. and 2. of this Paragraph; 5. coordinating with the Boards of the Judicial and Prosecutorial Training Centers of the Federation of Bosnia and Herzegovina and of Republic of Srpska and the corresponding institution of the Brcko District on planning a program for compulsory initial training of candidates for the function of judge or public prosecutor throughout Bosnia and Herzegovina; 6. coordinating the continuing training of judges and prosecutors, and consulting with the Boards of the Judicial and Prosecutorial Training Centers of the Federation of Bosnia and Herzegovina and of Republic of Srpska and the corresponding body of the Brcko District prior to the adoption of programs of training; 7. Coordination of international representation of judiciary and of prosecutorial service of Bosnia and Herzegovina or any of its component parts; 8. Deciding on issues of incompatibility of other functions performed by judges and prosecutors as referred to in Items 1. and 2. of this paragraph and also as to their immunity; 9. Receiving the complaints against judges and prosecutors as referred to in Items 1. and 2. of this paragraph; 10. Initiating and conducting inquiries and disciplinary proceedings, determining disciplinary liability and imposing disciplinary sanctions as well as suspension of judges,

But, powers of this institution are quite limited when it comes to the adoption of laws since enforcement procedure and its regulations are competence of the constitutional units and the enforcement laws are to be adopted at each constitutional unit levels (state, entity, cantonal and Brčko District).

62. Procedure to pass the law. However, due to the complex political system, the process of passing any law is quite lengthy and diverse. Sometimes the initiative for the adoption of laws or legislative amendments and / or additions is initiated at the same time in the Federation of Bosnia and Herzegovina, Republic of Srpska and Brčko District. Brčko District adopts laws very quickly. Republic of Srpska does it relatively quickly, while in the Federation of Bosnia and Herzegovina this is time-consuming and laborious process that is often not even completed and laws remain in their earlier forms. For

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prosecutors and deputy prosecutors as referred to in Items 1. and 2. of this paragraph and deciding upon appeals in disciplinary proceedings; 511. Ruling on complaints lodged by judge or prosecutor as referred to in Items 1. and 2. of this paragraph who considers that his/her rights provided for by this or other law, or more generally his/her independence, or that of the legal process, are threatened or ignored in any way whatsoever; 12. proposing the number of judges, of the Court of Bosnia and Herzegovina, Appellate and Basic Court of Brcko District and of deputy prosecutors of the Prosecutor's office of Brcko District after soliciting an opinion or upon the initiative of a president of the respective court or the prosecutor and after consultation with the relevant budgetary authority, to the respective legislative body; 13. Collecting information and maintaining the documentation on the professional status of judges, a prosecutor or deputy prosecutors as referred to in Items 1. and 2. of this paragraph, including their date of appointment and termination of function and statistical information relevant to their work performance; 14. Providing opinions on draft laws, regulations, or issues of importance that may affect the judiciary, and initiating the adoption of relevant legislation; 15. making budget proposals for the Court of Bosnia and Herzegovina, Appellate and Basic Court of Brcko District and of the Prosecutor's office of Brcko District in consultation with relevant authorities, presenting these budget proposals to the respective government and legislative body and monitoring execution of these budgets to ensure adequate and continuous funding; 16. Deciding on the appointment of the Executive Director and other professional and administrative staff of the Council; and 17. Exercising other competence as determined by this or another law.

example, new law on enforcement procedure initiative was initiated in 2012. The initiative was launched simultaneously at all levels, here is what happened in practice: in Brčko District the law was adopted in 2013 with the text identical as in the proposal. In the same year, the proposed changes were adopted partly in the Republic of Srpska. In Federation of Bosnia and Herzegovina, changes have not been adopted up to the date of writing this document.

Therefore, after the adoption of new laws on enforcement procedure at all levels in Bosnia and Herzegovina in 2003, those laws were changed several times, but the system is still inefficient. Taking into account all that was said above, it might be argued that reform in this regard failed. One can hear more and more that necessity to change enforcement procedure is in its full strength.

63. Utility cases makes a most of the backlog cases. In terms of the backlog of cases before the courts, it has to be noted that the biggest percent of the cases are cases to collect payment for the delivered utility services: water, heating, telephone, fees for TV broadcasting and garbage collection. All above mentioned are known as utility cases.

In most of these cases, the enforcement procedure is carried out mainly formal, with no real will and motivation to claim the payment. In Bosnia and Herzegovina, companies that are providing these types of services are in large percent in state ownership and there is no real will to collect these claims. Mainly, the aim is to have the court decision of closing the case as a basis to write off the debt.

64. Collecting claims which state companies have towards the private persons. Question arises, why state is not interested to collect its own claim. Answer to this question is much more complex than one could imagine. It goes back in after-war period of time when large percent of population was unemployed and when politicians employed their relatives in state companies, as most popular companies to work for (secured and with no risk to go bankrupt). Those relatives might have some qualifications but most of them did not have any. This means that, as state employees ended up mostly unqualified or less qualified persons and thus, quality of services provided by these companies were low quality services. Furthermore, public companies directors have no or have very low

public responsibility and there is no one they have to file report regarding how much claims were actually collected but they report on how many procedures were performed and how many cases were closed due to "objective reasons" and due to impossible collection of their claims. Those directors might be held criminally liable only if they wrote off debt to someone or if they waive their motion for enforcement. Everything else is legally and formally acceptable.

65. Social status of the most debtors. In the context of all said above, enforcement procedure in utility cases is carried out, mainly against the same debtors and are largely ineffective, given that such debtors in a large percentage really do not have funds to pay their debt. These residents have no real income and wages and if they have a pension, the pension is so low that it cannot satisfy even their basic needs[24]. In addition, there are debtors who have the money and are financially capable to solve their debts but they use all available means to avoid payment. Very often, such debtors are abusing procedural rights in the proceedings, file all available legal remedies or use all available possibilities to delay case for indefinite period of time, in order to avoid paying their debt.

66. Delay of enforcement as a mean to put pressure on the debtor. At this point institute of delaying the enforcement case needs to be explained a little bit more in detail. Delay of case is specific institute, prescribed by the law on enforcement, where creditor and debtor have possibility to close an agreement, for example to pay in installments. In such case, creditor does not request the court to close the case but to delay enforcement procedure for certain period of time. This period has no limit by the law so the case may

[24] For instance, in June2019, as stated on official page on Pension insurance office of Federation Bosnia and Herzegovina, minimal pension amounted 190,08 EUR, page visited on 29th of October 2019: https://www.fzmiopio.ba/index.php?option=com_content&view=article&id=207&Itemid=95&lang=ba , in Republic of Srpska minimal pension in June 2019 amounted 196,87 EUR, as stated on the official web site of Pension insurance of Republic of Srpska, page visited on 29th October 2019: http://www.fondpiors.org/2019/07/10/%d0%bf%d0%b5%d0%bd%d0%b7%d0%b8%d1%98%d0%b0-%d0%b7%d0%b0-%d1%98%d1%83%d0%bd-3/

stay open for years in this way. The enforcement case is opened but no real enforcement actions are performed. The case is only laying in the court.

It has to be noted that delay of the case means that no deadlines are passing or any other actions are taking effects as long as the case is in such stage. So, in this situation, when the creditor upon agreement with a debtor requests delay of the case for certain period, that period should be opportunity for a debtor to pay his debt without further involvement of the court, the case before the court stays open for a few years but it does not really work on for that long.

In practice, it has been noted that very often, creditors fill cases to the courts in advance and right after issuing decision on enforcement, they makes request to delay the procedure. From all of this, it can be easily concluded that filing case before the court is just measure to pressure the debtor to start paying his debt. There is no real will to perform enforcement procedure.

67. Movable assets as a subject of enforcement. After the case is taken into account, in situation where a debtor has, before the same court, more than one such case, the enforcement procedure is usually carried out on movable assets of enforcement debtor. Such assets have neither real nor market value. Very often all work is done for nothing since there are no buyers to actually buy these items. What is regularly put on sale in such cases are sofas, tables, TVs, bed etc. Of course, all these items are mostly used and are very old household belongings. Furthermore, all sales are done in court building premises and advertised only on court advertising board, available only to the persons who physically come in to the court building. Basically, nobody knows about those sales even when there is something valuable to be sold.

Very often, buyers become the creditors themselves and by buying such items they are actually trying to pressure debtors to pay their debt and it is very rarely that buyer (creditor) actually takes away items he bought. By the law, the creditors are not obliged to pay the price and the act of buying the items that are on sale and not collecting them from the house of the debtor, is, as said before, nothing more than another try to pressure debtor to pay the debt.

68. Final closure of the case. Finally, the most common outcome of such enforcement procedure is that the case is suspended without the claim being collected. The creditors, which are mostly state-owned enterprises, also have no real interest in claiming the payment and they insist on the adoption of a court decision on the suspension of the proceedings only to fulfill legal requirements for writing off such claims. In this way, large amounts of money from the state budget are spent (very evaluable and expensive time of the court employees, the judges and the court bailiffs) with no real purpose and no real results. Even with no real intent to collect the claim in enforcement procedure. On the other hand, the enforcement procedure in France as one of the oldest and most effective systems, is a long-standing subject of interest and research of scientists and researchers from Europe to Canada.

69. Reasons for debts of the citizens. All above mentioned, proves that there are two sources or reasons for debts: 1. the debts that occur in order to satisfy basic needs of citizen and 2. the debts created to satisfy the other needs of the citizens. First one is related to the electricity, heating, water supply, garbage removal etc. and these are the debts which the state should be able to support rather than having acts of enforcement being brought up before the courts against such persons. It lasts infinitely long, and it is costly and ultimately futile. One legal system should have a solution for both. For the last thing mentioned, an effective system for the prevention of further borrowing (personal bankruptcy) and an effective system of collection of such claims has to be made.

70. Way to start over. Each legal system or part of the system must have principles to be based on, as well as main actors which shall represent basics from which the rest of the system shall start. Today, it is much easier to get direction and basic normative since there are severe international institutions setting those standards and very thoroughly questioning and analyzing, every single tranche of the tree named law. Not only that the principles are under the question and constant reconsideration but so are the active actors of the system. In that way, it is much easier now days to start over than it used to be in earlier period of time.

71. Importance of acknowledging the guiding principles and an actors of the legal proceedings It is very important, prior to introducing any legal change, to know what are the guiding principles and the actors in the legal proceedings of the respective area. These are two factors that have to be taken into consideration prior to taking any action in terms of the legal change and especially prior to introducing whole new system.

Chapter 1 Guiding principles

72. Introduction. When intending to make radical change in any field, it is out of crucial importance to make detailed analysis on the legal framework and the social environment in which this radical change should be made.

The change maker has to be aware of all consequences of the future novelties and all difficulties ahead. That is the only way to be ready, firstly for obstacles and most likely denials of the future stakeholders. People are normally reluctant to the changes. Furthermore, the social environment must not be neglected since no law maker wants to create social disobedience.

Every change needs time to be widely accepted, even when t is planned good. Therefore, such important change which involve and tackles lives of large number of people, professions and professionals need to be well planned and well organized and cannot afford serious mistakes.

Section I. The legal framework

73. DPA. Given the complexity of legal system of the state of Bosnia and Herzegovina in whole, the legal framework of the enforcement procedure is equally devoid of simplicity and efficiency. The legal framework consists primarily of international acts that according to the Dayton Peace Agreement are directly applicable in Bosnia and Herzegovina and have priority in the application compared to domestic sources of law. Furthermore, there is the Constitution of Bosnia and Herzegovina and constitutions within the entities, cantonal constitutions and constitution of the District Brčko.

In addition, there are numerous rules that are not laws on enforcement but that have a direct impact on the enforcement system in Bosnia and Herzegovina (e.g., the Framework Law on Pledges, the law on Obligations, family laws, etc.). For instance, the Framework law on pledges[25] is state level law and is regulating its own enforcement procedure which court bailiff must apply when enforcing certificate from registry of pledge which, according to this law, is enforceable title.

It should be noted that it is not easy to complete this list, since that there are numerous laws that are indirectly related and have indirect impact on the enforcement procedure.

74. The consistence of the legal framework. First, the legal framework consists of international regulations (§ 1). Second, it consists of of national regulations (§ 2).

§ 1. International regulations

A- The different regulations

75. The Regulation 1215/2012 of 12 December 2012. This regulation, among other issues, regulates enforcement of the judicial decisions between member states and it allows the court decision issued and enforceable in member state, to be considered enforceable in the other member states, and does not need to have confirmation of enforceability. Such decision has an equal treatment as any decision issued in that country and is to be enforced in same manner. [26]

76. The Regulation (EC) number 805/2004 of the European Parliament and of the Council of 21 April 2004. This Regulation creates a European Enforcement Order for uncontested claims. The purpose of this Regulation is to introduce European order to enforce uncontested claim in order to enable smooth flow of court decisions, court settlements and authentic documents in all member states, without any additional steps in member state prior to enforcement of such decision, Regulation is applied to all court

[25] The Framework law on pledges, Official Gazette of Bosnia and Herzegovina number 28/04

[26] Article 39 to 44 of Regulation

decision, court settlements and authentic documents for all uncontested claims. Uncontested claim is considered as a claim which was acknowledge by the debtor either by signing court settlement or by not participating in civil litigation procedure (if such action is considered acknowledgment of claim). Final goal of Regulation is to minimize formalism and procedure for member states and their citizen when enforcing court decisions in other member state.

77. The Regulation (EC) number 1896/2006. This Regulation of the European Parliament and of the Council of 12 December 2006 created a European order for payment procedure. European order for payment procedure is based on the same principle as the motion for enforcement based on the authentic document in Bosnia and Herzegovina. It functions in such way that parties have to be citizens of the different member states. Party files a motion for issuing European payment order and presents all known information. When issued, European payment order is delivered to a debtor instructing him to his right to file an objection. If such objection is filed, procedure shall be continued as standard litigation procedure.

If such objection was not filed, European payment order shall be enforced in same way as domestic enforceable title and all procedures and expenses are to be applied according to domestic law of member state.

78. The Regulation (EC) number 861/2007. This is also Regulation of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure. The Regulation number 861/2007 is establishing a small claim procedure between the member states. Its goal is to introduce European procedure for small claim cases aiming to simplify and to speed up procedure and to decrease expenses. This regulation is applied in cross-border cases in civil and commercial cases, when value of the claim is less than EUR 2.000,00 excluded expenses, costs and other fees. This regulation offers simplified and cheaper procedure to the parties and is alternative solution for parties in comparison to regular procedure, according to the regulations of member states.

In order to apply this Regulation, at least one of the parties have to be citizen of member state where court is not located.

Regulation contains a form for initiation of the procedure and by completing this form plaintiff is initiating procedure by filing it with the court. This form contains description of evidence and, if necessary, plaintiff shall attach proof of evidence to the form.

Attempting to keep the court procedure as simple as possible, the Regulation prescribes that the small claims procedure is a written procedure. This means that all actions are done in written form and without the court session. The court session shall be organized only on explicit request of the party or if the court finds it necessary but such request of the party is ungrounded and that court session is not necessary in order to have fair court procedure. Such decision on rejection of proposal for court session has to be reasoned and may not be appealed separately. Next step for the court is to file another form for response to respondent and to send it to the respondent. The respondent shall file his response within 30 days together with the proof of evidence, if necessary, and this response is to be sent to the plaintiff. If respondent is objecting that value of the claim is higher than EUR 2.000,00 than the court shall issue the decision on this objection and either finish procedure according to this Regulation or to continue the case in the accordance with the domestic law regulating civil litigation procedure.

When all information are collected, the court shall issue the decision within 30 days out of receiving response from respondent or set a court session and issues decision.

79. The Council regulation (EC) 2015/848. This is Regulation of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings. This is relatively new Regulation regulating insolvency proceedings based on laws related to insolvency in which all assets are taken from debtor; his functioning and property is under supervision of the court; there is a temporary stay of enforcement procedure approved by the court in order to enable negotiations between debtor and his creditors etc.

80. The Council of Europe Recommendation (2003) 17 on enforcement.

This Recommendation of Council of Europe is one of the most significant documents underlining how important enforcement is in judicial system as whole. This document is pointing out that the efficient enforcement of a court judgment is an integral part of fundamental human right to a fair trial within reasonable time. It is important to say that mostly, this right to a fair trial within reasonable time is violated in enforcement process. It is interesting to say how serious countries and courts are about the civil litigation cases when it comes to a finding and determination of claims. All leaders of process are attempting and making efforts to issue a judgment as soon as possible, and at the same time enforcement process is not taken seriously and therefore, this is the moment when human rights are suffering the most.

It is part of above mentioned right to a fair trial to be able to enforce a court judgment within reasonable time. It is interesting that Recommendation is not strictly mentioning private agents or court bailiffs but is giving some guidelines how enforcement should be organized and what legal frame should look like so that objectives of enforcement procedure are achieved.

B- The basic principles defined by the Recommendation

81. The characteristics to define the enforcement procedure. The Enforcement procedure should be defined and underpinned by a clear legal framework, setting out the powers, rights and responsibilities of the parties and third parties.[27]

82. Certainty as a must in enforcement process. Enforcement should be carried out in compliance with the relevant law and relevant judicial decisions. Any legislation should be sufficiently detailed to provide legal certainty and transparency of the process, as well as to provide for this process to be as foreseeable and efficient as possible.

[27] Recommendation Rec (2003)17 of the Committee of Ministers to member states on enforcement (adopted by the Committee of Ministers on 9 September 2003 at the 851st meeting of the Ministers' Deputies)

In terms of these principles, it is clear that the aim of the Council was to make enforcement procedure accessible and foreseeable for all involved parties (enforcement creditor, enforcement debtor and third persons, if involved). All involved parties have to be aware of their own powers, rights and obligations in enforcement process and there has to be possibility for each person involved to make assessment of possibility of his own success in enforcement procedure.

83. Cooperation of the parties in the enforcement procedure in terms of exercising their process rights. The parties should have a duty to co-operate appropriately in the enforcement process; in addition, and, in particular, in a family law matters, the relevant authorities should facilitate this co-operation;[28]It is very hard to make the opposing parties cooperate in any court procedure. Cooperation between the creditor and the debtor in the enforcement procedure is less likely to happen taking into consideration that this is the last step towards collecting claim of the creditor and where the debtor becomes even more aware that he shall have to pay his debt.

84. Cooperation of the other bodies involved in the enforcement procedure.
Even legal professionals very often do not realize how important for efficient procedure is that all parties are working together towards closure of procedure and that each party has its rights and obligations and that, with more or less work, those rights have to be ensured to the parties. Also, it is out of crucial importance that relevant bodies are cooperating in order to have efficient enforcement. Several bodies might be included: social services in family matters; court and civil police when enforcement agent needs this type of support; bodies collecting information on enforcement debtors' assets are also very important in this chain of cooperation. In some countries there is a strong influence of agencies for personal data protection there is a need for strong cooperation between there institutions in order to collect information about assets of enforcement debtor.

[28] Recommendation Rec (2003)17 of the Committee of Ministers to member states on enforcement (adopted by the Committee of Ministers on 9 September 2003 at the 851st meeting of the Ministers' Deputies)

85. Providing up to date information by enforcement debtor. Defendants should provide up-to-date information on their income, assets and on other relevant matters;[29]

This recommendation of the Committee is part of the document and is good in theory but in the practice, it is not quite applicable. It is hard to believe that the debtor shall provide up-to-date information on their income, assets and any other relevant matters, as Recommendation quotes. Currently applicable law on enforcement in Bosnia and Herzegovina contains exactly the same provision. There is a form which is sent to the enforcement debtor to fill it in and to declare all assets he has. As it is prescribed by law, enforcement creditors insist on this possibility and keep filing requests but this was shown as waste of time and money since no enforcement creditor is going to reveal his assets to be subject to enforcement procedure.

86. Prevention of abuse of process rights of the involved parties. States should set up a mechanism to prevent misuse of the enforcement process rights by the party that should not be considered as a re-adjudication of the case[30];

This is also recommendation that had to be implemented in each member state legal system but it is really hard to find balance between the right of party to two-instance legal system and still to unable party to misuse such possibility. Therefore, the enforcement debtor should only be given possibility to challenge enforcement process only in terms of situation when the claim was already satisfied, when enforceable title is under statute of

[29] Recommendation Rec (2003)17 of the Committee of Ministers to member states on enforcement (adopted by the Committee of Ministers on 9 September 2003 at the 851st meeting of the Ministers' Deputies)

[30] Recommendation Rec (2003)17 of the Committee of Ministers to member states on enforcement (adopted by the Committee of Ministers on 9 September 2003 at the 851st meeting of the Ministers' Deputies)

limitation or is not in force any more for any reason. All other objections should not be allowed.[31]

87. Postponement of the enforcement process. There should be no postponement of the enforcement process unless there are reasons prescribed by law. The postponement may be subject to review by the court;[32]

The postponement of the enforcement process should not be allowed in the enforcement procedure and if it does exist, it should be restricted to very, very few and rare situations. The postponement of the enforcement procedure as an institute is prescribed in order to enable enforcement creditor to pay for his debt voluntarily. But the question is, what is the point of such institute in enforcement process? In enforceable title, which is used as a base for initiation of the enforcement case, the enforcement debtor was ordered to pay for a claim to the enforcement creditor. He was given a deadline to comply with the order of the court[33]. And, obviously, he did not comply with it, sincethe enforcement procedure was initiated. Considering this, the question arises: what is the point of the postponement of the enforcement procedure when the enforcement debtor did not comply with the court order and did not pay for his debt within all previously given deadlines.

In practice, this is one of the most misused law institutes and is used mostly to prolong the enforcement procedure and with no real intention to settle the debt or to pay in

[31] In the current legal system in Bosnia and Herzegovina, there is court practice in force that enforcement creditor may file "objection of endangered existence" of himself or members of his family. So, if there is no other objection of enforcement debtor to be filed, he may file above mentioned objection. In such case, objection is sent for response to enforcement creditor and then, the court is one to decide on such objection. In such situation, in practice, the court sets a limit for enforcement on bank account or salary of enforcement debtor (for example EUR 15 per month).

[32] Recommendation Rec(2003)17 of the Committee of Ministers to member states on enforcement (adopted by the Committee of Ministers on 9 September 2003 at the 851st meeting of the Ministers' Deputies)

[33] In the small claim cases, the family cases and labor cases, the deadline given to the debtor to comply with the decision is 15 days and in the other cases the deadline is 30 days.

installments. Filing such ungrounded motion shall buy the enforcement debtor some extra time, until the court decides on motion for postponement, even if it gets denied.

88. Interests of the different parties involved in the enforcement procedure.

During the enforcement process, a proper balance should be struck between claimants' and defendants' interests, bearing in mind, in particular, the provisions of both Articles 6 and 8 of the European Convention on Human Rights (ECHR). Where appropriate, the interests of third parties should also be taken into account. When the enforcement process concerns family law matters, the interests of the members of the family should be taken into account; in addition, when the enforcement process concerns, in particular, the rights of children, the best interests of the child should be a primary consideration, in accordance with international and national law;[34]

It is always important to take into consideration the interests of the other persons which may be endangered when performing the enforcement procedure. But, the interest of the enforcement creditor always has to be in the first place and has to be a priority over the interests of the others involved. Except for the children. Since the children are the most vulnerable category, speaking in general and in particular in the enforcement procedure, they have to be given a special protection and a special treatment. This special treatment to the children has to be guaranteed by the state so that the enforcement procedure tackle involved child as less as possible.

89. Assets excluded from the enforcement procedure. Certain essential assets and income of the defendant should be protected. The basic household goods, basic social allowances, money for essential medical needs and necessary working tools need to be excluded from the enforcement procedure.[35]

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[34] Recommendation Rec(2003)17 of the Committee of Ministers to member states on enforcement (adopted by the Committee of Ministers on 9 September 2003 at the 851st meeting of the Ministers' Deputies)

[35] Recommendation Rec (2003)17 of the Committee of Ministers to member states on enforcement (adopted by the Committee of Ministers on 9 September 2003 at the 851st meeting of the Ministers' Deputies)

Certain goods of the enforcement debtor should be protected and should not be subject of the enforcement procedure and they should be excluded. When it comes to the enforcement on the house of the enforcement debtor which is his only home, question arises: does everyone has right to have his private home/house and still be in debt? Should he be left certain amount of money for living expenses and should the house be set for sale in the enforcement procedure? The question is, how far protection of the enforcement debtor should go and shouldn't there be a balance between the interests of the enforcement creditor and the enforcement debtor. Finally, isn't it the truth that at least certain percent of the rights in the enforcement procedure should go in favor of the enforcement creditor?

C- The principles of an equitable enforcement procedure

90. Basic characteristics of enforcement procedure. Enforcement procedures should[36]:

- be clearly defined and easy for enforcement agents to administer;
  Administration of the enforcement procedure should not be complex and time consuming and should leave enforcement agent enough time to actually work on claim collection and to spend as less time as possible on case administration;

- prescribe an exhaustive definition and listing of the enforceable titles and how they become effective;

  Enforceable titles are basics for every enforcement procedure and there should be no dilemma what is considered enforceable title in the legal system of one country. Also, it needs to be clear when enforceable title become effective. This is very important in order to have a predictable procedure. If enforcement procedure is kept simple and target-oriented for claim collection it is more likely that its main aim shall be met and claim fulfilled.

[36] Recommendation Rec (2003)17 of the Committee of Ministers to member states on enforcement (adopted by the Committee of Ministers on 9 September 2003 at the 851st meeting of the Ministers' Deputies)

- clearly define the rights and the duties of the defendants, the claimants and the third parties, including, in the two latter cases, their rankings and entitlements to monies recovered and distributed amongst claimants;

- provide for the most effective and appropriate means of serving documents (for example, personal service by enforcement agents, electronic means, post);

  There is no fair legal procedure nor guarantee of access to justice if there is no proper and effective service of the documents. No matter how process of enforcement is advanced if service of the documents is not good enough in order to follow the set standards. Service of the document is extremely important not only from aspect that only with proper delivery to the recipient it is possible to move forward with the procedure but also, only when delivery is done in proper manner all steps that are to be done later, may be considered as correct. At the same time, proper service of the document must not take too long so that enforcement procedure is prolonged for this reason. Therefore, there has to be balance between these three set conditions. In this regard, beside possibility that proper service is done by enforcement agent, which also may be the best way to properly serve the document, there must not be neglected opportunities given by modern technologies. Service of the documents by electronic mail must be taken as realistic option for the future.

- provide for measures to deter or prevent procedural abuses;

  One of the main issues and obstacles appear in abuse of procedural rights on both sides, enforcement and enforcement debtor. There was already some word about abuse of institute of delay of enforcement procedure when, as the law says, there is possibility that the debtor may pay in installments, the creditors file a motion for delay of enforcement procedure for several years. But there are other possibilities given by the law, that are subject to the direct abuse. Numerous of

appeals filed during the enforcement procedure must be mentioned in this place. First instance courts have no possibility to dismiss the appeal as ungrounded even when it is obvious that the only aim of the appeal is to delay the procedure. The fact that on some second instance court cases sit for more than one year to be solved, it is even more than obvious what is the purpose of the appeal which is not even feeble. This is not the only case of procedural abuse, and there must be some measures for their prevention.

- prescribe a right for parties to request the suspension of the enforcement in order to ensure the protection of their rights and interests;

- prescribe, where appropriate, a right of review of judicial and non-judicial decisions made during the enforcement process;

- enforcement fees should be reasonable, prescribed by law and made known in advance to the parties;

- the attempts to carry out the enforcement process should be proportionate to the claim, the anticipated proceeds to be recovered, as well as the interests of the defendant;

- the necessary costs of enforcement should be generally borne by the defendant, notwithstanding the possibility that costs may be borne by other parties if they abuse the process;

- the search and seizure of defendants' assets should be made as effective as possible taking into account relevant human rights and data protection provisions. There should be fast and efficient collection of necessary information on defendants' assets through access to the relevant information contained in registers and other sources, as well as the option for defendants to make a declaration of their assets;

- assets should be sold promptly while still seeking to obtain the highest market value and avoid any costly and unnecessary depreciation.

D- The principles of organization and functioning enforcement agents

91. Recommendation on enforcement. Where states make use of enforcement agents to carry out the enforcement process, they should comply with the principles contained in this recommendation.[37] This Recommendation is conceived as guideline for all states in terms of organization and functioning enforcement agents. Even though it is not too long, the document is providing main principles and instructions about what should be taken into consideration when organizing enforcement agents' profession.

92. Regulation by law as a guarantee of the certainty. Enforcement agents' status, role, responsibilities and powers should be prescribed by law in order to bring as much more certainty and transparency to the enforcement process as possible. States should be free to determine the professional status of enforcement agents.38

Enforcement agent's role, as professional and authorized by state to exercise certain state powers, needs to be well regulated and all their powers need to be exhausted from law and not from any other lower ranking legal act. All its powers need to be precisely prescribed in order to have legal certainty and possibility of prediction of any party involved.

93. Moral standards of private bailiffs as a must. In recruiting enforcement agents, consideration should be given to the moral standards of candidates and their legal

[37] Recommendation Rec (2003)17 of the Committee of Ministers to member states on enforcement (adopted by the Committee of Ministers on 9 September 2003 at the 851st meeting of the Ministers' Deputies)

[38] Recommendation Rec (2003)17 of the Committee of Ministers to member states on enforcement (adopted by the Committee of Ministers on 9 September 2003 at the 851st meeting of the Ministers' Deputies)

knowledge and training in relevant law and procedure. To this end, they should be required to take examinations to assess their theoretical and practical knowledge.39

Each profession shall be as respected as how its holders are like. Same principles apply to profession of enforcement agents. Main issue and main value is moral value of enforcement agents. In second place is their legal knowledge which has to be taken into consideration when deciding on who should be holder of enforcement agent function. In terms of this, when deciding on who shall become enforcement agent, the Recommendation is recommending that both theoretical and practical knowledge of candidates should be tested in order to select the best out of the best.

94. Other values of future enforcement agents. Enforcement agents should be honorable and competent in the performance of their duties and they should act, at all times, according to recognized high professional and ethical standards. They should be unbiased in their dealings with the parties and they should be subject to professional scrutiny and monitoring which may include judicial control.[40]

This request of the Recommendation is understandable when taking into consideration importance of role and powers which enforcement agents have and thus influence they have on people's lives, especially enforcement debtors. This is why enforcement agents need to be persons with high honorability. They also have to be highly competent when performing their duties and should act, at all times, according to high professional and ethical standards. It is highly important that enforcement agents are unbiased in their dealings with the parties. All this has to be continuously monitored internally and externally. This also may include judicial control of enforcement agents.

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[39] Recommendation Rec (2003)17 of the Committee of Ministers to member states on enforcement (adopted by the Committee of Ministers on 9 September 2003 at the 851st meeting of the Ministers' Deputies)

[40] Recommendation Rec (2003)17 of the Committee of Ministers to member states on enforcement (adopted by the Committee of Ministers on 9 September 2003 at the 851st meeting of the Ministers' Deputies)

95. Clear definition of the powers and responsibilities of the enforcement agents. The powers and responsibilities of enforcement agents should be clearly defined and delineated in relation to those of the judge.[41]

In those systems where enforcement agents are empowered by state to perform duties of enforcement powers and responsibilities of enforcement agents have to be strictly defined in order to have clear rules for all involved parties. It is out of crucial importance to have clear clue what are the powers of enforcement agents and at the same time what are his responsibilities. Basically, this means that it has to be clearly defined where is the line between what he is and is not authorized to do so that the abuse of their powers are as less as possible.

96. Disciplinary proceedings against enforcement agents. Enforcement agents alleged to have abused their position should be subject to disciplinary, civil and/or criminal proceedings, providing appropriate sanctions where abuse has taken place.[42]

Enforcement agents, bearing in mind their strong powers, have to be held disciplinary, civil and criminally responsible for abuse of their powers. It is them as well as enforcement procedure parties, who need to be aware of consequences of abuse of the power.

97. Working conditions of the enforcement agents. State-employed enforcement agents should have proper working conditions, adequate physical resources and support staff. They should also be adequately remunerated.[43]

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[41] Recommendation Rec (2003)17 of the Committee of Ministers to member states on enforcement (adopted by the Committee of Ministers on 9 September 2003 at the 851st meeting of the Ministers' Deputies)

[42] Recommendation Rec (2003)17 of the Committee of Ministers to member states on enforcement (adopted by the Committee of Ministers on 9 September 2003 at the 851st meeting of the Ministers' Deputies)

[43] Recommendation Rec (2003)17 of the Committee of Ministers to member states on enforcement (adopted by the Committee of Ministers on 9 September 2003 at the 851st meeting of the Ministers' Deputies)

Even though there is a global trend to transfer enforcement system from court to out of court system, there are still systems where enforcement agents are state-employed. In such cases, there is recommendation that those agents are adequately remunerated with working conditions that are satisfying and adequate to duties they perform.

98. Training of the enforcement agents. Enforcement agents should undergo initial and ongoing training according to clearly defined and well-structured aims and objectives.[44]

Training as crucial part of every profession is recommended for profession of enforcement agents, as well. This training needs to be initial, for those entering profession and ongoing for profession members. It is not only that enforcement agents need to be well trained but also those who are employed in their office directly dealing with parties and cases.

[44] Recommendation Rec (2003)17 of the Committee of Ministers to member states on enforcement (adopted by the Committee of Ministers on 9 September 2003 at the 851st meeting of the Ministers' Deputies)

§ 2. National regulations

99. National regulations in Bosnia and Herzegovina. National regulation that are applying in Bosnia and Herzegovina are as mentioned :

- Applicable constitutions in Bosnia and Herzegovina;
- Applicable laws in Bosnia and Herzegovina at all levels:
  - Law on enforcement procedure (Official Gazette of Bosnia and Herzegovina 18/03; Official Gazette of Federation of Bosnia and Herzegovina, 32/03, 52/03, 33/06, 39/06, 39/09 and 35/12; Official Gazette of Republic of Srpska, No 59/03, 85/03, 64/05, 118/07, 29/10, 57/12, 67/13 and 98/14; Official Gazette of Brčko District, 39/13);

    As it can be seen, there are several laws on enforcement applicable on territory of Bosnia and Herzegovina. Not all laws are the same , there is an exception with law in Brčko District, which was reformed law based on lately proposed changes, all laws are equally based and have almost the same solutions. It must be said that Law on enforcement procedure of Republic of Srpska recently also adopted some important changes regarding court bailiffs, giving the court possibility to engage court bailiff for limited period of time. What is important is that such court bailiff does not have any extra powers and only can be financed by the creditors. As they say, this was their first step towards private bailiffs.[45]

  - The Law on tax administration (Official Gazette of Federation Bosnia and Herzegovina No 33/02, 28/04, 57/09, 40/10, 27/12, 7/13 and 71/14, Official Gazette of Republic of Srpska, 80/02, 84/02, 23/03, 70/03, 55/04, 61/05, 85/05, 62/06, 61/07, 20/09, 72/09, 53/10, 101/11, 2/12, 93/12,

[45] As the candidate is applying in her work Law on enforcement in Federation of Bosnia and Herzegovina, this work shall mostly refer to this law and only exceptionally to the other laws.

47/13, 108/13, 68/14 and 105/14; Official Gazette of Brčko District, 3/02, 42/04, 8/06, 3/07, 19/07 and 2/08);

There are several laws on tax administration applicable on different federal units of Bosnia and Herzegovina. The way these laws are directly connected to the enforcement procedure in Bosnia and Herzegovina is that tax administrations have their own enforcement system and also have priority over enforcement procedure started before courts. The problem appears when there is mortgage on some property which is subject of enforcement. No matter if this mortgage is visible through the papers or not, or if tax administration reported their claim to the court, tax administration will always have priority to collect their claim over the claim of the creditor. This will happen even if this creditor starts enforcement procedure and pays for everything related to the property, in advance. There is no connection between the systems of the court and tax administration so it can easily happen that there are two parallel enforcement procedures over the same asset.

- The Framework Law on Pledges (Official Gazette of Bosnia and Herzegovina 28/04 and 54/04);

  This law was adopted on state level and is acceptable on whole territory of Bosnia and Herzegovina. The reason why this law is important is because it regulates pledge on movable assets and has its own system of pledge registration and also separated enforcement procedure. There is no link between system where pledges are recorded and court system. Also, court bailiff has no access to this system so enforcement procedure can be carried out on the item which is already burdened by pledge. Certificate from the pledge registration system is also enforceable title.

- The Law on Bill of Exchange (Official Gazette of Federation of Bosnia Herzegovina No 32/00 and 28/03; Official Gazette of Republic of Srpska, 32/01);

These laws are also directly connected to the enforcement procedure and laws on enforcement since that bill of exchange, under certain conditions, is authentic document suitable for enforcement.

- Law on Permanent and Temporary Residence of B&H Citizens (Official Gazette of Bosnia and Herzegovina, 32/01 and 56/08);

  This is one of the laws adopted on state level, applicable on whole territory of Bosnia and Herzegovina, it is indirectly connected to the enforcement system. This law regulates obligation of BH citizens, among other issues, to report to the authorities that they actually changed their residence. Since that large percent of subject of enforcement is focused on movable assets, it often happens that court bailiff goes out but does not find the debtor on stated address because he does not live there and he did not report the change of his address .

- The Rulebook on supervision of implementation of the Law on Permanent and Temporary Residence of B&H Citizens (Official Gazette of B&H 32/01);

  This Rulebook is directly related to application of previously stated law.

- Law on obligations (Official Gazette of SFRY, 29/78, 39/85, 45/89 (U 363/86) and 57/89; Official Gazette of Republic of Bosnia and Herzegovina, 2/92, 13/93 and 19/94; Official Gazette of the Federation of Bosnia and Herzegovina, 29/03 and 42/11; Official Gazette of Republic of Srpska, 17/93, 3/96, 39/03 and 74/04);

  Law on obligation is material law which is indirectly related to the enforcement system since that this law regulates statute of limitation which, of course, has important impact on enforcement system as a whole. According to Law on obligations, statute of limitation for claims confirmed by enforceable title (court judgment for example) is 10 years while statute

of limitation for claims for utility services is one year for physical persons and three years for legal entities.

- Law on the utility services (Official gazette of District Brčko, 30/04, 24/07 and 09/13; Official gazette of RS, 124/11);

  Considering that utility cases are the most numerous unsolved cases before courts in Bosnia and Herzegovina, this law is very important when it comes to the enforcement system in Bosnia and Herzegovina. It is important to be mentioned on this spot that out of all unsolved utility cases before courts in Bosnia and Herzegovina, significant percentage consists of cases valuable from 10,00 to 50,00 BAM. Important regulation in this law forbids directors of utility companies (which are mostly state-owned companies) to write off debt of any value. This means that each unpaid utility bill will has to be processed before courts even that costs to pursue such claim is much over the value of the case. This situation has to be changed.

- Instruction for Transportation and Service of the Court Documents Through Public Postal Operators (Official Gazette of Bosnia and Herzegovina, 20/12; Official Gazette of FBH 22/06; Official Gazette of Republic of Srpska, 49/05);

  Delivery of court documents at the moment is very complex due to big percent of incorrect or uncompleted addresses. In addition, one of the problems is that post service very often does not do its job professionally and, it happens that person tells to the postal worker to return a letter with note that he does not live on certain address and that is what postal worker actually does. Also, postal workers are not trained very well and delivery slips are not filled properly and the letter has to be sent again. The problem is that no one is asking the post office to send same letter on their own expense due to their mistake, as this instruction is prescribing.

- Law on Courts (Official Gazette FBH, 38/05, 22/06, 63/10, 7/13 and 52/14; Official Gazette of District Brčko, 19/07, 20/07, 39/09 and 31/11; Official Gazette RS, 111/04, 109/05, 37/06, 119/08 and 58/09);

  This is the law, which regulates: organization, jurisdiction, financing, judiciary administration and other issues of importance for the organization and functioning of municipal courts, cantonal courts and supreme courts.[46]

- Law on Property Rights (Official Gazette of FBH, 66/13 and 100/13; Official Gazette of District Brčko 11/01; Official Gazette of Republic of Srpska, 124/08 and 95/11)

  This is also the material law, which has indirect impact to enforcement procedure due to material objections in enforcement.

- Law on Bankruptcy Proceedings (Official Gazette of FBH, 29/03, 33/04 and 47/06; Official gazette of District Brčko 01/02; Official Gazette of Republic of Srpska, 26/10);

  In Bosnia and Herzegovina, there is no institution of personal bankruptcy, and this leads to numerous problems. In addition, there is different procedure for debtors if bankruptcy procedure is opened over such debtor. Enforcement procedure before the court has to be stopped and all creditors have to try to collect their claim through bankruptcy procedure.

- The Family Law (Official Gazette of FBH, 35/05 and 31/14; Official gazette of District Brčko 23/07; Official Gazette of Republic of Srpska, 54/02);

[46] See article 1 of laws on courts

It is directly connected to the enforcement since in certain cases family laws prescribe different enforcement procedure than enforcement laws do, for example abduction of a child.

- Law on Criminal Proceedings (Official Gazette of BiH, 3/03, 32/03, 36/03, 26/04, 63/04, 13/05, 48/05, 46/06, 76/06, 29/07, 32/07, 53/07, 76/07, 15/08, 58/08, 12/09, 16/09 and 93/09);Official Gazette of FBH, 35/03, 37/03, 56/03, 78/04, 28/05, 55/06, 27/07, 53/07, 9/09, 12/10, 8/13 and 49/14; Official Gazette of District Brčko, 48/04, 6/05, 14/07, 19/07, 21/07, 2/08, 17/09 and 9/13; Official Gazette of Republic of Srpska, 50/03, 111/04, 115/04, 29/07, 68/07, 119/08, 55/09, 80/09, 88/09 and 92/09);

  Laws on criminal procedure are directly related to the enforcement procedure since that fraud of the creditor is by the law defined as criminal offence. This is very important law since that most of the assets which are subject of enforcement are left to the debtor to keep them, after being seized.

- Law on Personal Data Protection (Official Gazette of BiH, 49/06 and 76/11);

  Law on data protection is state level law and has very important role in enforcement process in terms of personal data access issue. If the change of the enforcement system from bailiffs as employees of the courts to private bailiffs actually happens, this law must be amended, completely changed or differently interpreted so that bailiffs get access to all existing databases with information about debtor's assets. Now, Agency for data protection is mostly giving negative opinion, when it comes to access to information on debtors' assets related to enforcement procedure.

- Law on Court Fees (Official Gazette of FBH, please visit link to web site containing laws on court fees for each canton in FBH: http://www.pravosudje.ba/sudske_takse/; Official Gazette of District

Brčko, 5/01, 12/02 and 23/03; Official Gazette of Republic of Srpska , 73/08 and 49/09);

Law on court fees regulates all fees that are related to the court cases and it is very important factor in court burdening. It has to be noted that in Bosnia and Herzegovina it is relatively cheap to file the case to the court. At the same time, the court has to accept filed case and it cannot be conditioned with paying of court fee. Due to these reasons, sometime, even fee can cost more than value of the case.

- Law on High Judicial and Prosecutorial Council of BiH (Official Gazette of BiH, 25/04, 93/05 and 15/08);

  As the institution with jurisdiction and powers related to the judicial system as a whole, this is the law that is, although indirectly related to the enforcement, still very important for the enforcement procedure and also would have massive role if the change of the systems actually happen in the future.

- Finally, it is important to note that the European Court of Human Rights and the Constitutional Court of Bosnia Herzegovina, whose decisions are not a direct source of law but they are final and binding the laws jurisprudence, must be aligned with them, so these decisions have an increasing importance when it comes to legal (legislative framework) in Bosnia Herzegovina47.

[47] Please see, for example, European Court of Human Rights decision Hornsby v. Greece, ECtHR 19 March 1997, no. 18357/91, where this has ruled that a right to a fair trial within a reasonable time also understands the enforcement of court decisions.

§ 3. Law on enforcement procedure

100. Introduction. In order to have a clearer picture in which way enforcement procedure is currently carried out in Bosnia and Herzegovina, specific attention has to be given to the relevant laws on enforcements applicable in Bosnia and Herzegovina. As previously said, there are several laws on enforcement, which are currently applied by the competent courts in Bosnia and Herzegovina. For purposes of this paper, Law on enforcement of Federation Bosnia and Herzegovina will be analyzed. It has to be noted that all laws that are applicable in Bosnia and Herzegovina are quite similar and have similar restrictions so analyzing one of them should give clear picture to the readers about enforcement procedure in Bosnia and Herzegovina.

101. Law on enforcement FB&H. As already mentioned, Law on enforcement procedure in Federation of Bosnia and Herzegovina was adopted and published in year 2003. (Official gazette of Federation of Bosnia and Herzegovina number 32/2003) but there were several changes made and published: 52/2003, 33/2006, 39/2006, 39/2009, 35/2012 and 46/2016 and Official Gazette of Bosnia and Herzegovina number 42/2018 – decision of Constitutional court in Bosnia and Herzegovina). The law has 230 articles.

The Law on enforcement of Federation of Bosnia and Herzegovina is regulating procedure of enforcement which is used by courts in Federation of Bosnia and Herzegovina when collecting claims based on enforceable titles and authentic documents. At the same time, if different procedure is prescribed by another law, then procedure prescribed by this Law on enforcement shall not apply.[48]

[48] For instance, the Law on family matters is prescribing special procedure in family matters and in such cases, that particular law shall be applied. Also, the Law on pledge prescribe specific enforcement procedure regarding these legal issues.

102. Initiative of enforcement procedure. Enforcement procedure may be initiated by the motion of enforcement creditor. Also, the enforcement procedure may be initiated by ex officio when specifically prescribed by law. [49] [50]

Enforcement procedure is determined and guided by the court. Territorial competence of the court depends on what are the means and objects of enforcement.[51] Irrelevant of territorial competence, it is always the first instance court who is competent to carry out enforcement procedure. Enforcement procedure has a characteristic of urgent procedure and the court has duty to work on cases in order they were filed to the court except if nature of claim or some special circumstances indicate that another order should be applied.[52]

103. Third person as a party in enforcement procedure. According to the law, enforcement actions may not be performed only against debtor but also against other persons, if that is prescribed by the law.[53]This is a situation when, for instance, immobility is sold from the debtor to another person. In this case, new owner becomes a new part of enforcement procedure and the court should issue separate decision on this change.

104. Exclusion of enforcement procedure. Subject of enforcement may not be res extra commerce nor mineral goods or other natural goods. Furthermore, according to the Bosnian law on Enforcement, object of enforcement cannot be army, or equipment for army and police forces or money funds intended for those purposes. When issuing decision on enforcement, court determines what are the means and objects of enforcement according to the motion on enforcement. The court may not determine or change mean and object of enforcement even when it has information about more efficient mean and object of enforcement. If motion for enforcement contains more than one mean or object

[49] Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 3

[50] For instance, Law on criminal procedure prescribes that procedure to collect expenses of criminal procedure from accused, shall be initiated ex officio.

[51] Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 4

[52] Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 5

[5353] Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 6

of enforcement, court may limit enforcement procedure to only one or to some of proposed, if they are valuable enough to collect claim. If enforcement was not possible on specific subject or mean of enforcement, the creditor is authorized to, in order to collect that same claim, propose new object or mean of enforcement procedure, which motion shall be decided by the court with specific decision.[54]

105. Enforcement procedure as procedure in written. In enforcement procedure, the court acts upon motions and other letters. Court session may be held only when specifically prescribed by the law or when the court finds that a court session might be useful to the procedure.[55]

Enforcement procedure is led by single judge and upon his approval; legal associate might be entrusted to perform actions and issue decisions in enforcement procedure. Decisions in enforcement procedure are decisions and conclusions.[56] As may be seen, not only judge but also legal associate may perform actions and issue decisions in enforcement procedure. This might lead to the conclusion that judge may be a little bit relaxed from enforcement cases. However, in practice, this is not a case for following reasons: In legal system of Bosnia and Herzegovina, legal associates are not employed to help to the judge; they are employed according the same procedure as judges are and they have powers to preside civil litigation cases up to 5.000,00 KM value (app 2.500,00 EUR), non-litigation cases and enforcement case. They also have their own quota, plan for salvation of old cases etc. Thus, they are not of any help to the judges and judges still have to deal with their own enforcement cases.

106. Legal remedies in enforcement procedure. It is interesting that in enforcement cases parties still have wide range of the legal remedies at their disposal. Ordinary legal remedies in enforcement procedure in Bosnia and Herzegovina are objection and appeal. It is almost always possible to file an objection against decision in enforcement procedure and appeal when prescribed by the law. Objection is filed to the court, which issued

[54] Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 7 and 8

[55] Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 9

[56] Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 11

decision, and the deadline is eight days from delivery of the decision and such objection shall be decided by the court which issued decision. Conclusion may not be appealed or objected.

107. The deadline to appeal a decision. Furthermore, against decision issued upon objection, an appeal may be filed within eight days from delivery. An appeal is to be decided by second instance court.

Objection and appeal do not always stay enforcement procedure, settlement of the creditor shall be delayed until the decision of first instance court is made about the objection. Very rarely, when the case is about supporting family members or when enforcement is done against bank account of legal entity, settlement shall not be made.[57] Once when the decision on enforcement becomes final, extraordinary legal remedies are not permitted (it is not possible to file a motion for revision to the Supreme court of Federation of Bosnia and Herzegovina). But, *restitutio in integrum* is allowed if deadline for objection and appeal against decision on enforcement was missed.[58] According to the law, article 15, motion for enforcement must be decided within 8 days and objection must be decided upon 15 days whit all conditions to decide on the objection.

108. Expenses of enforcement procedure. Expenses of enforcement procedure are preliminary covered by creditor. In addition, if those costs are not paid within a deadline given by the court, and those expenses are necessary to perform enforcement procedure, enforcement procedure shall be stopped. Expenses are decided by the court and the motion must be filed no longer than 15 days after enforcement procedure was closed.[59]

[57] Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 13

[58] Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 14

[59] Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 16

109. Application of the Law on civil litigation procedure. Law on enforcement does not content all necessary procedural regulations so the Law on civil procedure is applied in such cases.[60]

110. Enforceable titles. The court shall issue decision on enforcement only upon enforceable title or authentic document.[61] Enforceable tiles are: enforceable court decision and court settlement (court decisions are: judgment, decision and other decision issued in court procedure or arbitrage and court settlements are: settlements before the court or arbitrage), enforceable title issued in administrative procedure and settlement in administrative procedure when issued for money claim, enforceable public notary document, and other documents when as enforceable titles prescribed by the law.[62]

111. Authentic document. Enforcement to collect money claim may also be ordered upon authentic document. Authentic documents are bill of exchange checks with protest[63] and receipt, as well as bills and excerpts from books for the price of utilities delivery of the voter supply, heating and garbage collection.[64]

112. Decision on enforcement upon a motion and against person who is not named in enforceable title. The decision on enforcement may also be issued upon a motion and in favor of the person which was not mentioned in enforceable title if this person proves before the court that the claim was transferred to him. The decision on enforcement may

[60] Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 21

[61] Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 22

[62] Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 23 and 24

[63] The protest is specific court procedure prescribed by the Law on bill of exchange in which the debtor is invited to pay amount of money stated in the bill of exchange and if the debtor does not pay the debt, formal decision named protest is issued by the court. These two documents, bill of exchange and the protest, together create authentic document capable to be enforced.

[64] Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 29

also be issued against third person which was not stated as a debtor if the creditor proves before that the debt was transferred to this third person.[65]

113. Formalism of enforcement procedure. Enforcement procedure in Bosnia and Herzegovina, as stated before, is strictly formal. Some formal conditions must be met and the court checks if they were met prior to issuing decision on enforcement. If motion for enforcement is filed to the court that did not issue enforceable title in that case, with a motion, enforceable title must be attached in original or certified copy with certificate of enforcement issued by the court which issued the decision. To the motion for enforcement based on authentic document, authentic document must be attached in original or certified copy.[66] Motion for enforcement based on enforceable title must contain request for enforcement, information on enforceable title or authentic document upon which motion for enforcement was filed. Creditor and debtor must be identified, as well as claim, mean, subject of enforcement and other necessary information.

If the motion for enforcement was filed based on authentic document, this motion has to contain, beside all above mentioned, request to the court to issue an order to the debtor to settle the claim together with expenses[67] within eight days upon delivery of the decision .

114. Access to the information of the debtors' assets. Considering that access to the information on debtor's assets is very limited for enforcement creditors, according to the law, they are allowed to request from the court to collect information on debtors' assets and to provide it to them. This means that the enforcement creditor may, in the motion for enforcement based on enforceable title, file a request that the court, prior to issuing decision on enforcement, requests information on assets from the debtor and other relevant bodies, to provide such information to the court. The creditor needs to make it likely that these bodies might have such information. Such request may be filed after decision on enforcement was issued or in any stage of enforcement procedure. Upon such request, the

[65] Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 30

[66] Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 36

[67] Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 36

court shall issue a conclusion ordering the debtor or the other relevant state body or legal person, to provide information to the court, about movable or immovable assets, money claims and funds and places where those are located. Legal or physical entity which refuses to give such information may be penalized by the court.[68]

115. Withdrawal of the motion of enforcement. The creditor is authorized, during the whole procedure, without prior notification or consent of the debtor, to withdraw his motion for enforcement in total or partially. In such case, the court shall issue the decision on stopping procedure partially or in total. Withdrawal of the motion does not prevent creditor to file new motion for enforcement.[69]

116. Content and structure of the decision on enforcement. When it comes to the decision on enforcement, its content and structure is prescribed by the law. Decision on enforcement has to contain information on enforceable title or authentic document, creditor and debtor, claim, mean and subject of enforcement. If decision on enforcement is issued based on the authentic document than decision has to contain strict order from the court to the debtor that the debtor settle the claim within eight days together with the costs and has to contain decision on enforcement. Decision on enforcement does not have to be reasoned and also it might be issued by putting stamp on motion of enforcement. It has to be noted that, now days, stamping motion of enforcement is not an option, since, there is CMS system which requests to have decision of enforcement electronically in the system. Decision on enforcement has to contain instruction on legal remedy. If motion for enforcement is completely rejected or refused, such decision has to be reasoned.[70]

117. Delivery of the court decision. The decision on enforcement has to be delivered to the creditor and to the debtor, except if motion for enforcement was rejected or denied before the debtor even knew about the motion. In such cases, the decision of refusal or rejection of enforcement does not have to be delivered to the debtor since he at that stage is not aware of the initiated enforcement procedure. If decision on enforcement is issued

[68] Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 37

[69] Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 38

[70] Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 40

against property in co-ownership, such decision shall be also delivered to a co-owner. If decision on enforcement to collect money claim was issued based on enforceable title, decision shall be delivered to a bank or employer, but if decision was issued based on authentic document, it might be delivered to a bank only after it becomes final. If enforcement was ordered against movable assets, then decision on enforcement to a debtor shall be delivered when performing first enforcement action.[71]

118. Hours to perform enforcement actions. Enforcement actions may be performed during working days between 7,00am and 19,00pm. Only upon the conclusion of the court, if justified, enforcement actions may be performed during the non-working day and night.[72]

119. Role of the court bailiff. Court bailiff is authorized to perform enforcement actions. Search and take in possession of the debtors' assets, court bailiff may perform only if necessary for enforcement procedure. Court bailiff, when searching debtors' immobility or clothing that he is wearing or when performing any other enforcement action has to act with respect towards debtor and his family members. When performing enforcement actions in home of the debtor, there has to be present either debtor, his legal representative, attorney or adult member of his family. If one of above mentioned are not present, an adult witness has to be present instead.

If enforcement action is to be performed in locked room and debtor or his representative is not present or is not willing to unlock the room, court bailiff will open the room using the force in the presence of one adult witness and police officer.[73]

120. Powers of the court bailiff. In order to be able to perform more efficiently enforcement actions, court bailiff has certain powers. He is authorized to remove from the site scene any person distracting performing enforcement actions. When performing enforcement actions, court police is obliged to assist court bailiff if it is necessary to

[71] Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 40

[72] Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 42

[73] Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 43

perform enforcement actions. Court bailiff may order usage of force against person distracting enforcement procedure.[74]

121. Correction of irregularities of the bailiff by the judge. Any party or other participant in enforcement procedure is allowed to request from the court to correct irregularities made by court bailiff while performing enforcement actions. In such case court may issue conclusion to cancel unlawful and incorrect actions of court bailiff.[75]

Decision on enforcement may be challenged by objection but if motion for enforcement way rejected or denied, it may be challenged only by appeal.[76]

122. Reasons to object decision. Reasons to object decision on enforcement are the ones that prevent enforcement procedure. For instance, reasons to object decision on enforcement are:

- ✓ decision was made based on a document which is not enforceable title or is not enforceable,
- ✓ enforceable title was cancelled, changed or otherwise put out of force,
- ✓ if parties concluded an agreement that for certain period of time shall not initiate enforcement procedure,
- ✓ if the deadline to request enforcement already passed, if enforcement was ordered against object which was excluded from enforcement procedure,
- ✓ if claim came under statute of limitation.[77]

When objection on decision of enforcement is filed, that objection has to be delivered to the opposite party which may file its response within three days from delivery. After that,

[74] Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 44

[75] Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 45

[76] Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 46

[77] Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 47

the court may issue decision on enforcement or organize court session in order to argue upon objection.[78]

Decision on objection has to be issued by the judge and he may accept, deny or reject objection as late, incomplete or unpermitted. If objection is accepted, judge shall close the case partially or in whole.[79]

123. Objection procedure if decision was made based on the authentic document. If enforcement procedure was initiated based on the authentic document then the procedure when objection is filed is completely different compared to the procedure when enforcement is based on enforceable title. Since that authentic document, as ground for enforcement procedure, is pure bill or excerpt from business book of enforcement creditor, thus, there was no court procedure and amount of debt of enforcement creditor is stated only by creditor. In such situation, due to protection of enforcement debtor, procedure after filed objection, is as follows.

Firstly, in objection itself, enforcement debtor has to clearly state in which part decision on enforcement is objected. Furthermore, objection has to be reasoned.

If enforcement debtor did not specifically say in which part decision on enforcement is objected, that estimation shall be made based on reasoning of the objection. If objection has no reasoning, according to the law, such objection shall be rejected. It is interesting that in practice, such objection shall firstly be returned to the enforcement debtor for clarification and amendment with detailed instruction, and only after that, if objection is still not reasoned, such objection shall be rejected.

124. Specific when enforcement case becomes civil case. If the decision on enforcement is objected completely or in part where existence of claim was confirmed, motion for enforcement shall be considered as civil claim and procedure shall be continued according to the provisions of law on civil litigation procedure. In that case, enforcement procedure

[78] Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 48

[79] Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 49

shall be stopped and shall be continued upon proposal of enforcement creditor, after decision of civil court become final, if enforcement creditor wins the case. Otherwise, if enforcement creditor loses the case before civil court and decision on enforcement is terminated in objected part, civil court shall also order closure of enforcement case.

After such decision of civil court becomes final, enforcement court shall issue a decision stating that enforcement case is closed and all actions performed during the enforcement procedure will be annulled.

125. Deciding upon objection when motion is based on the authentic document.

If decision on enforcement is objected only in part where enforcement was determined, in that case objection shall be decided in same (enforcement) procedure just like objection is resolved when enforcement is based on enforcement procedure. It is interesting that in situations when enforcement procedure is initiated based on an authentic document, part of the decision on enforcement where enforcement creditor was ordered to settle the claim to a creditor, has power of enforceable title and may serve as a ground for initiation of new enforcement procedure.[80]

126. Objection of third person. Third person, claiming to have certain legal right to the object of enforcement, which right may prevent the enforcement procedure, may object decision on enforcement, requesting that enforcement procedure on such object of enforcement to be forbidden and it may not be performed on that object of enforcement in the part covered by the right of that third person.

There is no time limit for third person to file such objection and it may be filed until enforcement procedure is closed. But, objection of the third person shall not prevent enforcement procedure and settlement of enforcement creditors' claim. Copy of objection

[80] Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 50

of third person shall be delivered to an enforcement creditor and enforcement debtor and they have eight days to file their response.

127. Decision on objection of third person. Enforcement court has two possible options when objection of the third person is filed:

- First option is that the court decides on the third persons objection in enforcement procedure

  This option is used when enforcement judge has given all necessary evidence and the right of third person is proving his right by final court decision, other public document or certified private document.
- Second option is that enforcement court issues conclusion where third person would be instructed to exercise his rights in civil litigation procedure.

  This option is used when enforcement judge has not enough elements to issue decision on objection in enforcement procedure and relevant proof was not filed by third person. It has to be noted that instructing third person to exercise his right in civil litigation procedure shall not stay or stop enforcement procedure or prevent enforcement creditor to collect his claim. It has to be noted that the third person has been given possibility to request civil litigation court to issue decision to delay enforcement procedure, and in this procedure civil litigation court shall use provisions of law on civil litigation procedure related to security measures. If decision to delay enforcement procedure is issued by civil litigation court, such decision shall contain period of time in which enforcement procedure shall be delayed by official duty and shall be delivered to enforcement court for implementation. When enforcement court receives decision of civil litigation court, the court shall issue the conclusion and delay further enforcement procedure. Enforcement procedure shall be continued upon proposal of enforcement creditor, after civil litigation court decision to delay enforcement to reject claim of the third person or refuses his claim, becomes final. All enforcement actions performed before delay of enforcement procedure remain valid.

If civil litigation court adopts claim of third person and enforcement procedure is announced forbidden and decision on enforcement is cancelled, the court shall also order termination of enforcement procedure. When such decision of civil litigation court becomes final, enforcement court shall issue decision to pronounce that the enforcement procedure is closed and all performed enforcement actions shall be annulled with that decision.[81]

128. The counter enforcement. There are several situations where enforcement debtor may request that enforcement creditor gives back amount received in enforcement procedure with obligation to pay interests. This legal option is a possibility for enforcement debtor to make request in the same enforcement procedure.

There are several options where this possibility exists:

- If enforceable title was cancelled, changed, annulled, put out of legal power or has no power for any other reason;
- Decision on enforcement is cancelled or changed;
- If claim of enforcement creditor was fulfilled during enforcement procedure so that enforcement creditor was settled twice;

The deadline for enforcement debtor to file such motion is 30 days from the day he got to know about the reason for counter-enforcement (subject deadline) and one year from termination of enforcement procedure (objective deadline).

129. Procedure in the case of counter-enforcement. If motion for counter-enforcement was filled, copy of such motion shall be delivered to an enforcement creditor and he shall be asked to give his response within three days. If enforcement creditor objects to a counter-motion, then the court has to set a trial session and if he does not file his response than it is up to a court to decide whether to set a trial session or to decide upon filed motion without a session.

[81] Law on enforcement procedure in Federation of Bosnia and Herzegovina, articles 48 to 53

If the court accepts a counter-enforcement motion, the decision shall contain order for enforcement creditor to return to a debtor what he received in enforcement procedure. Afterwards, such decision of enforcement court may be a ground to a court to issue decision on counter-enforcement and start new enforcement procedure, only now in opposite direction- against enforcement creditor as a debtor which is to be performed according to a provision of law on enforcement.

This situation shall be applied when it is possible that enforcement creditor returns what he received in enforcement procedure. But, if there is no possibility to return what he has received, in such situation, motion for counter-enforcement shall not be accepted.[82]

130. Institute of delay of enforcement. Delay of enforcement is institute very specific for the enforcement procedure in Bosnia and Herzegovina and it gives possibility to an enforcement creditor to delay enforcement procedure to indefinite period of time.

Enforcement procedure may be delayed completely or partially only upon motion of enforcement creditor and if enforcement procedure has not been started consent of enforcement debtor is not necessary. Question arises what happens if there are more than one enforcement creditors and only one requests for delay on enforcement. The law prescribes possibility that enforcement procedure is delayed in regards of only one of the enforcement creditors and that procedure continues.

If certain enforcement actions were performed, and enforcement debtor objects delay of enforcement procedure, the court shall decide if motion for delay of enforcement procedure is justified.

There is no time limit for which enforcement procedure may be delayed and according to the provisions of law on enforcement, the court shall delay enforcement procedure for period of time requested by enforcement creditor or for period of time which is justified, considering conditions in every specific case. According to a commentaries of enforcement laws, institute of delay of enforcement procedure is introduced in order to

[82] Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 54-57

give opportunity to enforcement creditor and enforcement debtor to make new arrangements in terms of settlement of claim and there is a possibility for a creditor to prolong a deadline for a debtor.

131. Practical abuse of the institute of delaying of enforcement procedure. Nevertheless, in practice, this means enormous abuse of this institute. Motions to delay procedure are filed for many reasons other than mentioned above. For instance, if creditor finds out that debtor has no assets, he would ask for the delay of procedure, hoping that the debtor would, for instance, during this period, find a job.[83] Alternatively, if the debtor changed an address and creditor does not have a new one, the creditor would request for delay of procedure. All these above-mentioned reasons are not the ones, which lawmaker had in mind when they were writing these provisions but they are in wide use.

For the courts, delay of the enforcement procedure is very problematic institute because, ones delayed, enforcement case may not be solved or worked on, for delayed period. In addition, the case is still considered open and pending before the court. It has to be mentioned that delay of procedure may be requested more than ones and for even ten years. There is nothing that courts may do to prevent such abuse by enforcement creditors.

Enforcement procedure shall be continued at any time upon request of enforcement creditor, even before named period of time expired, but if enforcement creditor does not request continuation of enforcement procedure after 30 days of the given period of time, the court shall close the case.[84]

Closure of the case by official duty is possible if enforceable title is cancelled, changed, annulled or set out of validity for any other reason. Enforcement procedure case shall be also closed when third person fulfill claim of enforcement creditor instead of enforcement debtor.

[83] There is possibility according to a law on enforcement to file a new motion for enforcement over and over again until there is statute of limitation for claim determined by judgment as enforceable title (10 years), but this possibility is used very rarely).
[84] Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 60-62

132. Closure of the case if enforcement is not possible. Enforcement procedure case shall also be closed if enforcement procedure is not possible to perform.

Before the court issues decision on closure of enforcement case, enforcement debtor shall be invited to propose new mean and subject of enforcement within the deadline of 15 days. Decision of termination of enforcement procedure shall be issued if such proposal is not filed within given deadline or if proposal is ungrounded.[85]

133. Proportionality of the claim and value of seized items. Enforcement to collect money claim has to be decided and performed only in amount necessary to settle the claim. And order o the right to settle their claim.[86]

When it comes to the enforcement on immobility, to decide on motion for enforcement and to perform enforcement action, the only competent is court where immobility is located. Order of enforcement actions is as follows: firstly, decision on enforcement is delivered to a land registry and enforcement procedure is noted in it, secondly value of the immobility is to be made, afterwards, immobility is to be sold and finally enforcement creditor to be settled.

Subject to the enforcement may be immobility with only one owner but also, immobility in coownership.

134. Enforcement on the immobility in co-ownership. It is interesting to mention that enforcement procedure may be performed on immobility as a whole even if in coownership upon request of enforcement creditor, enforcement debtor or another co-owner. But even without this request, the court may decide that immobility shall be sold as a whole, if value of co-owner part would be more valuable. Of course, in this case, co-owners shall be settled in value of their shares, as priority over enforcement creditor or costs of enforcement procedure.

[85] Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 63

[86] Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 65-66

135. Priority of co-owner as a buyer. For co-owners who are not enforcement debtors, there is a possibility to pay-of the debt of enforcement debtor and request that subject of enforcement is handed over to them.[87]

In order to initiate enforcement procedure on immobility, motion for enforcement has to be followed by the proof of ownership of enforcement debtor over that immobility. This proof has to be excerpt from land registry.[88]

136. Proposal of mean and subject of enforcement by the debtor. In order to enable enforcement debtor to create more favorable environment when paying-off the debt, there is a possibility for enforcement debtor to propose a mean and subject of enforcement other than one mentioned in decision on enforcement. This proposal has to be made within three days after receiving decision on enforcement. Together with this proposal enforcement debtor has to file a proof of his right to that new mean and subject of enforcement.

137. Possibilities of the creditor when enforcement debtor propose subject and mean of the enforcement. Enforcement creditor has to be given an opportunity to consent or to oppose to such proposal with a deadline of three days and the court is to decide on such proposal within eight days. The law on enforcement does not set an obligation for the court to accept proposal of the enforcement debtor and there is no need to have consent of enforcement creditor and according to the relevant provisions it may be accepted even if enforcement creditor does not give his consent, except if there is mortgage in favor of enforcement creditor on that immobility.

138. Acceptance proposal of the debtor by the enforcement judge. The law specifically prescribes situations when the court may accept such proposal of enforcement debtor:

[87]Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 68

[88] Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 70

- If enforcement on proposed immobility would be exceptionally unfavorable for enforcement debtor[89];
- That enforcement debtor was not able, out of justified reasons, to sell subject he is proposing as subject of enforcement in order to settle claim of enforcement creditor;
- That newly proposed subject has enough value to settle claim of enforcement creditor;

Acting court is in obligation to refuse proposal of enforcement debtor when it finds out that this would prolong or aggravate enforcement procedure or if he finds that enforcement creditor may suffer damage due to switch of subject of enforcement.

It has to be noted that another subject and mean of enforcement does not have to be exclusively another immobility but it might also be a salary or some other money claim.

If enforcement debtor proposed that subject of enforcement is salary, pension or other income, the court may accept such proposal only if claim will be settled within one year from issuing decision on enforcement. In such case the court shall issue decision to switch subject (and mean, if necessary) of enforcement.

If proposal of enforcement debtor is refused, such decision of the court may not be appealed.

It is interesting to mention that in the case where mean and subject of enforcement is changed, notification made in land registry regarding previous subject of enforcement – immobility, shall stay into the force, until claim of enforcement creditor is completely settled.[90]

139. Registration of the enforcement procedure in the land registry.

In order to prevent enforcement debtor to sell or to dispose in any other way with

[89] This would be situation for instance if immobility which is subject to enforcement is only home of enforcement debtor and he has salary that may be seized.
[90] Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 71

immobility which is subject to enforcement procedure, as soon as issues decision on enforcement, the court orders to the land registry to register existence of enforcement procedure. It has to be said that ownership of the respected immobility may be changed during enforcement procedure but such change does not prevent that enforcement procedure is continued against new owner of immobility. Liability of new owner is only up to value of the immobility. All performed actions are staying into the force and new owner may take all enforcement actions as enforcement debtor might take.[91]

140. Principle one immobility-single enforcement procedure. Only one enforcement procedure might be open against same immobility. This means that after enforcement procedure was registered in land registry, all claims of that enforcement creditor or claims of other creditors may not be settled in separate enforcement procedure but they have to join the one, which was already opened.

So, new enforcement creditor, who filed motion for enforcement later than the one already opened, will have to step in enforcement procedure, which already started.[92]

During the enforcement procedure, the court shall issue conclusion to determine when a potential buyer will be allowed to inspect immobility. If enforcement debtor or any other person is preventing potential buyers to inspect real estate the court shall order removal of that person from immobility. Civil police may support court bailiff to implement conclusion of the court.[93]

141. Exclusion of immobility of enforcement procedure. Not every immobility can be subject to enforcement. There are certain limitations about what kind of subject of enforcement immobility can and cannot be . For instance, subject of enforcement cannot be agricultural land of farmer up to 5.000 m2 except if such land was subject of mortgage.[94]

[91] Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 72
[92] Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 73
[93] Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 77
[94] Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 79

Immobility owned by the state, Federation, cantons, cities, municipalities and public funds cannot be subject of enforcement procedure.[95]

142. Appraisal of the immobility. After the decision on enforcement has been issued the next step for the court is to issue conclusion about how the immobility should be evaluated. Prior to this decision, the court may set a trial session and invite parties, if necessary.

Evaluation of the immobility should be done by expert who should include market value of the immobility on the day of evaluation. Information of value of the immobility might be requested from the tax office, instead.

When subject of enforcement procedure is immobility in co-ownership, in that case appraisal of the immobility should include value of the immobility as a whole and value of the share of the enforcement debtor. Of, course, there is always a possibility that parties agree on the value of immobility and in that case appraisal of the immobility would not be necessary.[96]

143. Court session for sale of the property. After immobility has been evaluated and the information on value of real estate is published to both parties, and if there are no objections to evaluation of the expert, the next step is to set up a court session to sell the immobility. Sell of immobility is done by the court, in particular a judge. The court issues a conclusion on sale of immobility setting value of the immobility and determining conditions of the sale and time and place of the sale. This conclusion of the court is published on advertising board of the court. Each of the parties may publish conclusion of the court in press or to inform real estate agent about the conclusion, on its own expense. At least 30 days have to pass between issuing conclusion on sale and date of selling session. The court shall deliver conclusion on sale to the parties, persons who possess any right to immobility subject to sale and to the tax office.[97]

[95] Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 79a
[96] Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 80
[97] Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 83

Sell of immobility shall be done by public auction. Sell session shall be set in court building, unless otherwise decided by court. Sell session is presided by the judge or legal officer, appointed by judge.[98]

144. Content of the conclusion on sale of the property. Conclusion on sale has to contain all information regarding immobility and information on public auction and in particular following information:

- description of the immobility,
- any existing rights of third persons over immobility,
- if immobility is in use and by who,
- selling price,
- deadline for buyer to pay the price,
- way of selling,
- What is the amount of security, deadline to pay security and where to pay.

145. Deadline for payment of the buyer. The deadline for a buyer to pay the price may not be longer than 30 days counting from the date of the sale and this deadline includes sale in installments.[99]

According to the law provisions, only person who pay for security my bid as a buyer. Enforcement creditor who initiated enforcement procedure is not obligated to pay for security. Amount of security is 1/10 of value of immobility but not more than EUR 5.000,00 and this security shall be returned to all bidders except for top three on the list of bidders. Security has to be returned to the bidder right after the session for public auction.[100] Public auction shall be held even when only one bidder is present.[101]

146. Who may not be a buyer. In enforcement procedure immobility may not be bought by judge, any other person officially included in sale process, their spouse and other

[98] Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 84

[99] Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 85

[100] Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 86

[101] Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 87

relatives (grandparents, children and grandchildren, brother, sister and their spouses), enforcement debtor and his spouse.[102]

147. Price conditions. There are certain rules regarding selling price and according to that rule, there is no lower limit for selling price. This means that in practice, under certain conditions, in enforcement procedure immobility might be sold for EUR 0,50.

There are three selling sessions to be held before court. On the first session for public auction, immobility may not be sold under ½ of the value. If immobility is not sold on that first session or if the bidder did not pay the price, the court shall set up a second session within 30 days. Selling price of the immobility on the second public auction may not be lower than 1/3 of evaluated amount. And finally, if immobility does not get sold on the second session, the court shall set up a third session within 15 to 30 days, and this is the session where immobility may be sold without any low limit in terms of the price.[103]

After buyer pays a selling price, the court shall issue decision to award a buyer the immobility. In same time, with the same decision, the enforcement debtor is ordered to hand over immobility to the buyer and land registry to change ownership over immobility from debtor to a creditor. Decision to award immobility may not be objected but appealed to the second instance court. The decision is to be published on advertising board of the court and after three days it is considered as delivered to all persons who received conclusion on sale and to the all bidders.[104]

However, if immobility could not be sold on third session, enforcement procedure on this subject of enforcement shall be closed and enforcement creditor may propose another mean and subject of enforcement before final closure of enforcement procedure. It is interesting that it is specifically prescribed that closure of enforcement procedure does not

[102] Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 88
[103] Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 89
[104] Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 93

prevent enforcement creditor to initiate new enforcement procedure over that very same immobility to collect that same claim.[105]

148. Settlement of the claim. Right after issuing decision of award immobility to a buyer, the court settles enforcement creditor(s) claim(s) and issues decision on settlement.[106]

Order of settlement is as follows:

1. Expenses of enforcement procedure,
2. Claim of creditors with mortgage rights
3. Claim of enforcement creditors,
4. Interests.[107]

149. Order of the settlement of the claims. After all creditors and other expenses are settled, leftover amount of money out of the selling price is to be handed over to enforcement debtor. But there is an interesting situation if selling price is not enough to cover all claims. In that case, all claims with same order of settlement are to be settled in certain percentage.[108]

- If there is a creditor, weather he is enforcement creditor or not, contesting other claims, he will be instructed to start civil litigation case. Decision of settlement in terms of that specific contested claim shall be postponed until decision of civil litigation court is issued and final.[109]

- If there are more than one enforcement creditor, court may not simply issue decision on settlement of the claims but it has to set trial session. The court is obligated to send a summons for that court session to the parties and to all subjects with certain right towards immobility and selling price (all creditors).[110]

[105] Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 95
[106] Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 96
[107] Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 98
[108] Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 101
[109] Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 103
[110] Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 108

150. Decision on settlement. After the court session, court shall issue decision on settlement taking into account all facts from case file, facts determined on trial session and all information from land registry. Such decision may not be objected but may be appealed to the second instance court. Unless court session was held, there is no need to deliver decision on settlement to the parties. Instead of delivery via mail, decision shall be published on advertising board of the court and shall be considered delivered to all interesting parties, after three days of advertisement. [111]

When immobility is sold, enforcement creditor has no right to have possession of the immobility and has to hand it over to a buyer. Of course, there is always possibility that enforcement debtor makes different arrangement with a buyer.[112]

151. The court order to the debtor to handover the immobility. In practice, there are more situations where buyer wants to take over a possession of immobility and requests enforcement debtor to move out. Therefore, in the same enforcement procedure, buyer may request form the court to issue conclusion ordering to enforcement debtor to empty immobility and hand it over to a buyer. This conclusion may be a ground for the buyer to file another motion for enforcement where he will have a position of enforcement creditor.[113]

152. Enforcement on movable assets. Enforcement procedure on movable assets as subject of enforcement are prescribed by several provision of Law on enforcement. Competent court to perform enforcement procedure on movable assets is court where movable assets are situated. In practice this means that motion for enforcement is to be filed to the court where movable assets are situated irrespective where enforcement debtor is living. The most common situation is that movable assets are situated in home of the enforcement debtor but it is not always like that. So, the motion for enforcement shall be

[111] Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 109
[112] Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 110
[113] Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 111

filed to the court as mentioned above, and this is the court which shall decide on motion for enforcement and perform enforcement procedure.[114]

But question arises what happens when enforcement creditor is aware that enforcement debtor has movable assets to be seized and sold but has no information where are those movable assets to be found. In that case, motion for enforcement is to be filed to the court on which enforcement debtor lives.[115]

If movable assets of enforcement debtor are situated **in area of two different courts**, after completing enforcement procedure in his area, the court shall deliver decision on enforcement shall be delivered to another court to complete enforcement procedure and completely settle enforcement creditor.[116]

153. Exceptions of movables from enforcement procedure Not all movable assets may be subject to enforcement procedure. In terms of exception of enforcement procedure, all items that are necessary to enforcement debtor and his family members for satisfaction of their everyday needs are excepted from enforcement procedure.

Food and firewood supplies for three months are also excepted from enforcement procedure. Certain amount of cash money that enforcement debtor received as income (salary or pension for instance), medals, wedding ring, personal letters, handwritings, family photographs, personal documents and family portraits are also excluded from enforcement procedure. [117]

154. Order of enforcement actions for enforcement on movable assets.

Enforcement actions in enforcement procedure on movable assets are performed by seizure of the movable asset, appraisal, selling and settlement of enforcement creditor out of selling price. The law also allows that the enforcement creditor may request from the court, in his motion for enforcement, that initially only seizure and appraisal of movable assets are done, without selling of the items. This would be instrument for enforcement

[114] Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 114
[115] Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 115
[116] Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 116
[117] Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 117

creditor to pressure enforcement debtor to pay for his debt before motion for selling of items is filed. In practice, such situations are very rare and mostly, there is always a motion to sell movable assets included in motion for enforcement.
According to the law, if proposal to sell seized movable assets is not included in motion for enforcement, such motion has to be filed within the deadline of three months from seizure and appraisal of movable items. If such motion is not filed within given deadline, enforcement procedure shall be closed.[118]

155. Actions of the court bailiff. As previously said, enforcement actions are performed by court bailiff and prior to seizure of movable items, court bailiff has to deliver decision on enforcement to enforcement debtor and shall ask him to settle the debt. It has to be noted that absence of the debtor does not prevent court bailiff to perform enforcement actions and to seize movable assets of enforcement creditor. In such case, decision on enforcement shall be delivered to the enforcement debtor by regular mail. So, according to the law, decision on enforcement shall be normally delivered to an enforcement debtor when seizure of movable assets is done but in exceptional cases the court may decide that the decision on enforcement shall be delivered to enforcement debtor prior to seizure.

It has to be noted that the judges and the legal officers are keen to perform enforcement actions before the decision on enforcement becomes final since that there is a danger of cancellation of decision by, for instance, second instance court and in such case all actions may be annulled. It is not obligatory to inform enforcement creditor when seizure of items is going to happen but, if he specifically requested to be noted, that court bailiff shall inform enforcement creditor about scheduled time and place of seizure of movable items of enforcement debtor. Absence of enforcement creditor is not preventing court bailiff to perform seizure of movable items. But, if seizure was performed without presence of enforcement creditor, he shall be informed that seizure happened on certain time and in certain place.[119]

[118] Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 118
[119] Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 119

156. Subject to enforcement on movable assets. Subject of the seizure may be all movable assets in possession of enforcement debtor but also in possession of enforcement creditor. It is presumption of the family law that marital and extra-marital spouses are co-owners in ½ of all movable assets found in apartment, house or any other immobility. It is interesting to say that, according to the law, movable assets in possession of third person may be seized only if this third person agrees to seizure. Obviously, this may be subject of abuse since enforcement debtor may deliberately hand over possession of movable asset to third person in order to prevent seizure of respective items.[120]

157. Implementation of the principle of the proportionality.

Proportionality is important principle that has to be recognized when seizing movable and immovable assets of enforcement debtor. Scope of seizure of movable assets needs to be proportional to settle the claim of enforcement creditor and expenses of enforcement procedure. So as a priority, target of seizure needs to be items suitable for sell.[121]

It is interesting that only on specific request of enforcement creditor movable assets shall be taken away, normally, they will be left to enforcement debtor for storage.[122] In practice, it is more often that movable assets are left to enforcement debtor for storage and it is not rare that enforcement debtor abuses this situation and sell movable asset which further complicates and prolongs enforcement procedure.

158. Lack of movable assets. If there are no movable assets to be seized, court bailiff shall inform enforcement creditor, if he was not present. Enforcement creditor has right within three months to make a request to court bailiff for the seizure to be done again. And if it happens that second seizure is unsuccessful again, enforcement procedure shall be closed.[123] [124]

[120] Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 120
[121] Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 121
[122]Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 122
[123] Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 125
[124] In practice, prior to closure of enforcement case, enforcement debtor has to be given opportunity to propose new subject and mean of enforcement within 15 days and only after he does not propose new subject and mean of enforcement, case may be closed.

159. Appraisal of seized movable assets. One more provision to discuss about is provision that court bailiff appraise seized movable assets and appraisal is performed at the same time as seizure. In specific cases, judge may decide that appraisal should be done by expert.

In any case, case party may propose that appraisal is done by expert and if the court except this proposal, expenses shall be advanced by whoever proposed expert appraisal. In any case, each party may object appraisal of court bailiff and on this objection the court shall issue conclusion.[125]

Every seizure and appraisal is recorded in minutes of court bailiff. Each seized item has to be listed together with appraisal. Each seized item has to be marked in such way that it is understandable that item is seized. Enforcement creditor may publish this minute on his own expense.[126]

160. Sale of movable assets. According to provisions of law, it has to pass at least 15 days between seizure and sell of movable assets. Only under specific conditions sell may be performed prior to these 15 days deadline (for instance, if items could rapidly lose their value).[127]

Sell of items is to be performed in public auction or by direct agreement. Manner of the sale is to be determined by the court attempting to reach highest price for the item. Public auction is performed by court bailiff. Sale by direct agreement is performed between buyer and court bailiff.

Public auction shall be organized if there are items of higher value that should be sold or if it is to be assumed that this is the way to achieve higher price for item.

[125] Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 126
[126] Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 127
[127] Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 129

Sale of items shall be published on advertising board of the court and it can be published in any other manner. Court bailiff shall inform enforcement creditor and enforcement debtor of date and time of the sale.[128]

161. Sale of the asset and further procedure. Movable item shall be sold to a bidder offering highest price and is obligated to pay the price right after the session, unless the court decided differently. If bidder with the highest offer does not pay the price right after he was invited by the court to do so, the second bidder from the list shall be announced buyer and shall pay the price he offered et cetera. If no one of the bidders pay the price right after being invited by the court to do so, upon proposal of one of the parties the court shall announce the first sale session unsuccessful. Request to set the second sell session may be filed by the parties within eight days from unsuccessful sell session. It is important to say that on second sell session, item may be sold without lower limit regarding selling price. If any of parties do not propose to court bailiff to set a second sell session within given deadline or if items are not sold on second public auction or direct agreement, the case shall be closed.[129] Lower limit for selling price by direct agreement is 1/3 of value of item.[130]

162. Authorizations of the enforcement creditor in enforcement procedure. Enforcement creditors are given a large scope of disposition in enforcement procedure. Enforcement creditor may completely control course of enforcement procedure by its actions. In light of this, it is interesting to say that movable assets may be handed over to a buyer by court bailiff even before paying the price, if, on his own risk, enforcement creditor agrees to this.[131]

It is quite simple if there is only one enforcement creditor to be settled in enforcement procedure and in that case, the court shall, without setting a session, issue decision ordering the selling price to be settled in this order, enforcement procedure expenses,

[128] Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 130
[129] Again, before closing of the case, the court is obligated to invite court creditor to propose new subject and mean of enforcement within 15 days and only if new mean and subject of enforcement are not proposed, case may be closed.
[130] Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 131
[131] Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 132

expenses determined in enforceable title and interests and main claim. Any leftover amount of money shall be handed over to enforcement debtor.

But, if there is a situation that there are more than one enforcement creditors to be settled from selling price , in that case, order of settlement is an order in which they acquired right of pledge.[132]

If there is no enough money to settle claims of all enforcement creditors of the same order, they shall be settled in proportion of amount of their claims.[133]

163. Territorially competent court when mean of enforcement is money claim of the enforcement debtor. When talking about enforcement on money claim of enforcement creditor, its up to him to decide on motion on enforcement on this subject of enforcement and to perform enforcement actions, competent court is court where enforcement debtor live or where legal entity has its official premises.[134]

Certain claims are not suitable to be subject of enforcement such the claims for legal support (children support etc.). [135]

But all above mentioned money clams which are not seized in enforcement procedure are not excluded automatically but it is up to court to decide in every concrete case if these conditions are met and if certain money claim is excluded from enforcement procedure.[136] When it comes to enforcement procedure on salary, compensations instead salary, scholarship etc. such money claims may be subject to enforcement in amount of ½ of the claim if such money claim of enforcement debtor amounts under EUR 500,00 (1.000,00 KM). If money claim of enforcement debtor amounts more than EUR 500,00 such claim may be subject to enforcement up to 2/3 of the claim. One of the major debtors in Bosnia and Herzegovina is state Bosnia and Herzegovina. There are different claims against the state and state bodies (state employees, different claims confirmed by court etc.). This is

[132] Firs in seizure is first in pledge right

[133] Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 134
[134] Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 136
[135] Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 137
[136] Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 137b

a result of a very restricted possibility to enforce claim against state budget (budget of Federation of Bosnia and Herzegovina). Enforcement against state (at any level) is limited to amount predicted for those purposes by Decision on budget implementation. State entities in Federation of Bosnia and Herzegovina at all levels are obligated by law to predict in their budget money for settlement enforceable judicial decisions in amount of o,3% of total amount of the budget.[137] This amount is not enough even closely to settle all existing claims against budget of Bosnia and Herzegovina at all levels and on different grounds.

164. Process of the enforcement when money claim is subject to enforcement procedure. Enforcement on money clam is performed by seizure and transfer of the money.[138] Again, basic principle of proportionality has to be respected and the debtors' money claim may be seized only in amount necessary to cover claim of enforcement creditor.[139] Seizure is performed in such way that decision on enforcement is delivered to enforcement debtors debtor and by this, enforcement debtors debtor is forbidden to fulfill money claim to a debtor and debtor is forbidden to collect this money claim. Seizure is considered done when decision on enforcement is delivered to enforcement debtors' debtor.[140]

165. Enforcement on the salary of the debtor. When it comes to the enforcement on the salary, same provisions as provisions related to the money claim are applied. When the enforcement procedure is to be performed on salary of the enforcement debtor, in the decision on enforcement it is decided that certain amount of salary is to be seized and is ordered to the employer of enforcement debtor that this amount of salary is paid to enforcement creditor, after the decision on enforcement becomes enforceable. The decision on enforcement relates to potential increase of salary and on all other claims of enforcement debtor related to his employee status.[141]

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[137] Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 138

[138] Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 139

[139] Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 140

140 Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 141

141 Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 158-159

Logical question that appears is what happens when enforcement debtor loses his employee position and starts working in another company? Decision on enforcement is applicable to a new employer of enforcement debtor as from day when decision on enforcement is delivered to this new employer. Old employer has obligation to deliver the decision on enforcement to a new employer of enforcement debtor and to inform the court about this. But, if previous employer of enforcement debtor does not have information about new employer of enforcement debtor, he will provide the court with information that enforcement debtor does not work there anymore. The next step is that the court shall provide this information to an enforcement creditor and shall give a deadline to an enforcement creditor to collect information on new employer of enforcement debtor. If this deadline is not respected by enforcement creditor, court shall close the case.[142] [143]

166. Consequences for employers who disobey order of the court. There are significant sanctions prescribed by law for employers who do not respect order of the court to seize salary of the enforcement debtor. If employer missed to seize salary of employee, enforcement creditor proposes that the court in enforcement procedure issue decision ordering employer to pay all installments he did not seize from salary of enforcement debtor. This proposal may be filed to the court as long as enforcement case is opened before court. Decision by which this motion of enforcement creditor was accepted has power of decision on enforcement. In any case, employer who did not act within decision on enforcement is liable for the damage to enforcement creditor.[144]

167. Enforcement on the bank account. When talking about the enforcement on bank account of enforcement debtor, it is interesting that there is no limit up to which amount may be enforced on bank account. The decision on enforcement on bank account contains order to the bank to transfer money from one bank account of enforcement debtor to another bank account of enforcement creditor. This transfer may be performed in cash, as well. It has to be noted that decision on enforcement must to contain all necessary

142 Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 162
143 Again, before actual closure of the case, the court is obligated to give possibility to the enforcement creditor to propose new subject and mean of enforcement and only if this new deadline is missed by enforcement creditor, the court shall actually close the case.
144 Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 163

information on bank accounts of enforcement creditor and enforcement debtor. If there are no funds on the bank account of enforcement debtor, bank shall be obligated to inform court of any transaction on bank account of enforcement debtor. If there are more than one decision on enforcement delivered to the bank for enforcement, the bank shall enforce decisions on enforcement according to the order of delivery. The bank is obligated to keep track of order of delivery decision to the bank. But, if there is no money on bank account of enforcement debtor, and debtor has other accounts in that same bank, the bank is obligated to transfer money of enforcement debtor from other accounts in order to obey decision of enforcement. But, if there is no enough money to collect entire claim of enforcement creditor, bank shall keep a record of decisions of enforcement and perform money transfer when there is money on account. But, if there is no funds on bank account, bank shall inform the court about this fact.[145]

In any case, the bank is liable for damage to enforcement creditor if itdoes not obey decision on enforcement and other orders of enforcement court.[146]

168. Non-monetary claim as subject to the enforcement. Real question that arises is when subject to enforcement procedure is not money claim but some other non-money claim of the enforcement creditor. When enforcement debtor does not comply with the enforceable title in terms of non-money claim, the court shall, upon proposal of enforcement creditor, issue decision and give a debtor a deadline to comply with decision and to fulfill his obligation. This decision shall contain information for enforcement debtor that, if he does not fulfill his obligation again, he shall be in obligation to pay to the creditor certain amount of money for every further day of being late (court penalties). This decision may be appealed by enforcement debtor to second instance court within deadline of 8 days. Deadline to comply with an order of the court begins with first day from delivery of decision, irrelevant if decision was appealed or not. But, if enforcement debtor does comply with decision of the court within 15 days after decision became final, penalties may be reduced.

[145] Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 166-169
[146] Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 175

169. Competency for the enforcement to hand over movable asset. It is also the court who is competent for enforcement to hand over movable assets located with enforcement debtor or the third person. The enforcement procedure in that case is that court bailiff takes away movable assets from enforcement debtor and hand them over to enforcement creditor issuing certificate of handover. In the same way enforcement against third person in possession of movable assets is performed.[147]

But in the situation when movable assets were not found with enforcement debtor or third person, in the same enforcement procedure, upon motion of enforcement creditor, court issues appraisal of those items and decision by which it orders enforcement creditor to pay the equivalent amount of money to enforcement creditor. If such motion of enforcement creditor was not filed, the court shall close the case.[148]

Further competence of first instance courts in Bosnia and Herzegovina is to perform enforcement procedure and enforcement actions to empty and hand over immobility. Competent court is the one where immobility is located until decision on motion for enforcement to empty and hand over immobility is made.

170. Enforcement to empty and handover immobility. Enforcement actions for procedure to empty and hand over immobility is that court bailiff hands over immobility to enforcement creditor, after removing all persons and movable assets. The civil police and the social security service have obligation to provide assistance to the court bailiff in performing these enforcement actions. It is enforcement creditor who is obligated to ensure men power and transportation, if necessary. All movable assets removed from the immobility are to be handed over to the enforcement debtor, his family member or his attorney. If none of these persons are present, movable assets shall be handed over to a third person for storage and their expenses are to be covered by enforcement debtor but may also be handed over to the enforcement creditor for storage. These actions are performed by court bailiff but have to be confirmed by judge by issuing conclusion. The enforcement debtor shall be informed about all performed actions and warned about his

[147] Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 197

[148] Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 198

right to claim his movable assets back and that, if he does not claim his movable items back, they shall be sold and the selling price shall be used to cover expenses.[149]

171. Enforcement to return employee to the work. competent court is the one where contract between employee and employer was concluded, its up to them to decide motion for enforcement to return employee to his job. Deadline to file motion for enforcement is 30 days from date when enforceable title became enforceable.[150]

Section II. Social environment

172. Introduction. The social environment in which the enforcement procedure is carried out is an important factor that is of decisive importance for its success and effectiveness. The enforcement procedure must recognize the social environment, in which it is carried out so that it could achieve its purpose,

It is necessary to identify the category of the population that is in need, and that objectively is not able to carry out their obligations. In this case, it is certain that the process of enforcement would be carried out much more effectively if the same is carried out against the people who have assets that can be subject to enforcement.

173. Social policy in Bosnia and Herzegovina. In Bosnia and Herzegovina, social policy is the responsibility of the federal units, Federation of Bosnia and Herzegovina, Republic of Srpska and Brčko District and the same is carried out quite inefficient and unplanned. The amount of budgetary money regularly planned for this purpose is insufficient; the competent authorities do not recognize the vulnerable groups and the fact that they cannot meet their obligations. This lack of meeting obligation is not affecting only the company , the country is generally in a poor financial condition, there is a huge

[149] Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 201-205
[150] Law on enforcement procedure in Federation of Bosnia and Herzegovina, article 214-215

number of unemployed citizens and, as statistics show, even the working-age population is in a situation where it barely survives.

174. Young population outflow. Latest trends show that young people are leaving country in huge numbers due to lack of employment and very low salaries which are not sufficient even to satisfy basic human needs. According to the Agency for Statistics of Bosnia and Herzegovina unemployment rate for 2019 amounts 15,7 %. Statistic shows that in Bosnia and Herzegovina around 15% of GDP is spent on social protection while France for example spends around 25 % of GDP.

Official statistics shows that average monthly salary in June 2019 in Republic of Srpska amounted 828,00 BAM (cca 415,00 EUR) and that basket of food for four member family cost 1860,00 BAM (cca 930,00 EUR).[151] These numbers give the best picture of how difficult situation in the state is. Problem is that political situations remains the same for years and there is no hope that it will get any better in the future unless efficient judicial and enforcement system guarantie to the investors that Bosnia and Herzegovina is safe environment for their investments.

175. Impact of the banks and microcredit organizations. Furthermore, related to all above mentioned and again, due to unemployment and the difficult situation in the country, business is booming for banks and microcredit organizations. In fact, microcredit organizations place loans for residents who are unemployed and without any income and it is certain that the loan will not be returned and that the case will inevitably end up in court. Also, the banks made their standards very low and they are aiming to place their funds as much as possible.

Therefore, banks and microcredit organizations without particularly strict criteria provide loans and the collection in most cases is done through the courts. In this context, it would

[151] http://www.capital.ba/potrosacka-korpa-u-junu-kostala-1-860-km/ page visited on 13th of July 2018

be reasonable to introduce the institution of personal bankruptcy, as one of the most important moments in this context.

176. Possibility to have efficient enforcement procedure. In this manner, the enforcement procedure would be carried out mainly in cases where objectively it should be, against debtors who have created an obligation that they do not want to meet, although they are able. The ultimate goal is to collect unpaid claims effectively where possible.

The matter of social policy is one of the key questions that must be addressed when it comes to the collection of payment claims and in particular claims related to unpaid utility services and new debts created after one is already overdue. Report on financial stability prepared by Central Bank of Bosnia and Herzegovina for 2018 shows that according to available data from Central register of loans, debts of households at the end of 2018 amounted 10,21 billion BAM and compared to the end of 2017 marked growth of 1,1%. Counted in percent of GDP, at the end of 2018 amounted 31,1 %.

Growth of households' debts mostly comes from growth of citizens loans from banks. These debts are in continuous growth for seven years in row. Also, in 2018 numbers of loans from microcredit organizations were 13,8 %.

For three years in row, loans from commercial banks are in growth and at the end of 2018 they amounted 7,5 %.152

177. UNICEF report in terms of the social protection policy. Gap analysis in the area of social protection and inclusion policies in Bosnia and Herzegovina done by UNICEF[153] reported: "This report has identified and documented the serious and growing extent of poverty and social exclusion in Bosnia and Herzegovina. It has shown that more than half a million people in Bosnia and Herzegovina are living in relative poverty, and perhaps as many as one and a half million. More than a further million people are living

[152] Report on financial stability for 2018, Central Bank of Bosnia and Herzegovina

[153] Gap analysis in the area of social protection and inclusion policies in Bosnia and Herzegovina, UNICEF, Sarajevo 2013, further in text: UNICEF report 2013

in a situation of severe material deprivation or in a situation of social exclusion defined as living in families with very low work intensity.154

This report also says that: "Major gaps in the policy framework to deal with the high levels of poverty and social exclusion include :

- the very low level of public expenditure on traditional social assistance to meet the needs of those in poverty or social exclusion and provide them a minimum level of income needed to support a normal life,
- the need for further training of social workers in Centers for Social Work and the reduction in their caseload so that they can deal more effectively with clients,
- the disastrously high level of unemployment and especially youth unemployment which affects two thirds of young people between the age of 15 and 24, and
- the associated low levels of employment, are well below the employment rates found in most European countries,
- the low coverage of the unemployed by unemployment benefits
- the low coverage of population by formal health insurance,
- the low priority given to preventative health measures,
- the need to shift the cost of providing social health insurance from the CSWs and the Employment Agencies so that they my focus more effectively on their core missions and tasks, (ix) the low coverage of pre-school education,
- the high rate of early school leaving in the Federation, (xi) the existence of inappropriate and outdated curricula in secondary vocational schools, and
- the underrepresentation of girls in such schools.[155]

Bearing in mind above mentioned statistic, it is obvious that citizens are not in a position to meet their obligation not even to pay for current obligations for household needs. Very often, citizens are obligated to loan money in order to get another loan so this is never-ending process. A lot of such cases end up before courts with very long lasting and

[154] UNICEF report 2013, pg. 8

[155] UNICEF report 2013, pg. 9

expensive civil procedure case and following enforcement case without hope for money collection for creditors.

178. Utility cases before the courts. Large percent of unsolved cases before the courts in Bosnia and Herzegovina consists of the utility cases. These cases are related to the unpaid utility bills (heating, garbage, water etc.). There are several reasons for such situation:

- Certain number of citizens live on the edge of poorness and they are not able to meet their financial obligations and actually cannot pay the bills;

- Certain number of citizens are in position to pay their bills but they really don't want to so it could be easily said that there are citizens who have tradition of nonpaying of utility bills;

- Certain percent of citizens are aware of the fact that for the case, pending before the courts, will take long period of time until it comes to the paying so they are waiting until last moment and then they pay their obligation.

179. Possible solutions. In the context of everything mentioned above, there are several possible solutions:

- As a part of a new system to introduce personal bankruptcy in order to prevent citizens to over debt themselves
- To improve social protection in order to identify citizens in need for civil protection and to prevent such citizens to end up before courts without hope to collect money
- To expedite solving cases before courts in Bosnia and Herzegovina so that creditors don't wait for years in order to exercise their rights before the courts.

180. Free legal aid as an option. Legal aid available in Bosnia and Herzegovina nowadays is in Federation of Bosnia and Herzegovina regulated on cantonal level and of course there is one in Republic of Srpska and Brčko District.

All of these institutions are formed by a state and are free to the certain categories of the citizens. So, basically, all citizens of Bosnia and Herzegovina are entitled to legal aid under conditions that they prove that they have no assets to pay for attorney at law.

Legal aid is given to the users in following areas:

- Administrative procedure
- Administrative litigation
- Minor offence cases
- Litigation procedure
- Non-litigation procedure
- Enforcement procedure
- Criminal procedure.

Legal aid shall not be given to the citizens in following areas:

- Processes before commercial courts,
- Registration of companies as a legal entity,
- Registration of self-employed activity
- Registration of associations and foundations
- Tax administration procedures and
- Drafting private documents or contracts.

All above named confirms that Bosnia and Herzegovina has effective legal aid covering all needs of citizens being in position to interact with legal entities and needing expert help in order to protect their rights.

181. Necessity to promote existing possibility to use legal aid. Out of a huge importance is that legal aid is presented to the regular citizens in such way that they are aware of its existence. The interesting fact, coming out from the practice is that the citizens, which are able to protect their rights, are aware of possibility to get legal help. At the same time the ones who need it the most do not know that it exists and that they

may use it when interacting with state bodies especially with the courts and in future with the private agent.

In order to exercise their right for legal aid and in order to make available legal aid accessible, this possibility has to be advertised, accessible, simple to get and chained with no administrative obstacles. All information necessary to make conclusion if one has right to a free legal aid has to be available to employees of legal aid office. It should be enough that one comes to the office, identify themselves and provides with ID. Employee should have access to all relevant databases: land registry, car registry, tax administration etc. so that one does not have to provide office with numerous documents which will last for the days for person to collect and for which the one shall need certain amount of money to collect.

If all these obstacles are still present, legal aid should not be accessible to the ones who need their help for exercising other rights.

Such existence of legal aid is purely theoretical and not really of use for its alleged users. Another option, which needs to be used, is that offices of attorneys of law are introduced with obligation to have pro bono cases and legal advises so they also give their contribution to all social system and persons in need for legal help.

Chapter 2 Actors in legal proceedings

182. Introduction. It is an old-fashion point of view that a judge has to be involved in every step of the legal procedure since every legal procedure is tackling people's lives and goods. It is not far from the truth. But it is also not completely correct. The correct expression would be that the fully educated and experienced legal professional should be involved in legal procedures. A person who is professional enough in order to protect every right of every person involved in the procedure. Or at least to protect the stronger right. In Bosnia and Herzegovina in its current legal enforcement system, crucial figures are the judge and the court bailiff.

Section I. Court in the enforcement procedure and the executive judge

183. Role of the enforcement judge in enforcement procedure. The judge in the enforcement procedure in Bosnia and Herzegovina has a key role. It is the judge who fully manages (monitors) the process of enforcement. Although the process of enforcement is a set of actions whose purpose is to collect the claim that is not voluntarily fulfilled and that has been identified, most commonly, by a court decision, so the judge almost does not have to be included in the same, in Bosnia-Herzegovina the judge is still a key figure during the entire procedure.

The judges play a key role in the implementation of enforcement in all the cases with all subjects and means of enforcement of property charges except in the enforcement of movable assets when carrying out actions implemented by a court bailiff. In the last case, all the bailiff's actions are carried out upon the order of a judge, under his supervision and

with the active judicial involvement and active participation of creditors. It is the judge who is supervising all actions performed by court bailiff and party, who is not satisfied with actions or behavior of court bailiff is writing to the judge asking him to take certain actions in terms of mentioned above.

184. Process of issuing decision on enforcement. When motion for enforcement is filed to the court, no matter if the motion is based on authentic document or on executive title (judgment etc.), judge has to issue decision on enforcement which is the first step in enforcement procedure and the moment enforcement procedure starts. There are several possibilities. The first one, and the easiest one is that only stamp is put on motion on enforcement certifying that motion of enforcement is approved. But, since CMS (Case Management System) is introduced in judicial system of Bosnia and Herzegovina, it is impossible to use this possibility prescribed by the law. There has to be evidence of a document (decision on enforcement) in the system and this possibility, which normally saves a lot of time to the enforcement judge, is almost abandoned and now days, normally, there is separate decision on enforcement issued by the judge.

Enforcement is performed on mean of enforcement listed in motion for enforcement. This mean of enforcement might be a movable assets, salary, bank account, immovable asset et cetera.

185. Possibility to change mean of the enforcement procedure. The court has no power to switch the mean of enforcement even if during the process in the court file is filed with information about more effective mean of enforcement (salary for example). In order to switch the mean of enforcement, this has to be proposed by the creditor. Even this does not go smoothly since some judges will not approve a proposal to switch mean of enforcement if the process on existing mean of enforcement is still ongoing. One would have to wait until the court issues official decision on closing process on certain mean of enforcement.

186. Changing a mean of the enforcement before closing case on firstly proposed mean of enforcement. Furthermore, there are numerous second instance court decisions where courts rejected to switch mean of enforcement before case is closed on firstly

proposed mean, even if secondly proposed mean is more efficient (salary or pension). It is specifically prescribed by the law that court acts upon the requests and motions of the creditor/creditor.[156]

There are very few things that are up to judge to decide and one of those for example is to limit enforcement to one of proposed mean of enforcement if it is enough to collect creditors money due to respect principle of proportionality between claim and subject of enforcement.

187. Impact of the legal remedies on the enforcement procedure. One of the weaknesses of the system is that there are several legal remedies in enforcement procedure. Regular legal remedies in enforcement procedure in Bosnia and Herzegovina prescribed by laws are objection and appeal. Objection is legal remedy which can be used against first instance decision when prescribed by the law and ruling judge is the one who will decide on this legal remedy. After ruling judge issues decision on objection, this decision again can be appealed to the second instance court.

188. Reason to object the decision on enforcement. Decision on enforcement can be objected for following reasons:

- If decision on enforcement has been issued based on document which is not executive title not authentic document;
- If the executive/authentic document has been terminated and has no power anymore;
- If parties in procedure made an agreement that motion for enforcement will not be filed for certain period of time;
- If deadline for filing motion for enforcement has passed;
- If mean of enforcement was excluded of enforcement (medal for example);
- If creditor or debtor in motion are not same persons as in enforceable title;
- If given condition was not fulfilled;

[156] Law on enforcement FB&H article 9

- If claim for any reason does not exist anymore;
- If motion for enforcement cannot be filed for any reason and
- If statute of limitation came into force.[157]

The only situation when objection or appeal is not allowed, is when the court issues procedural decision and such decision of the court may not be questioned by separate legal remedy but still it may be a subject of revision of second instance court when objecting some other matter. And, this case may be returned for renewal of the procedure for procedural reasons from previous course of procedure.

189. Extraordinary legal remedy in enforcement procedure. In enforcement procedure there is also a possibility of extraordinary legal remedy: *restitutio in integrum* (return to the status quo ante). This legal remedy can be filed in case when the deadline to file objection and appeal to the executive decision on enforcement is missed. This is one of the possible ways to prolong enforcement procedure. In order to decide on such motion, judge has to take several steps. Firstly, such motion has to be returned for correction or amendment, if not properly written and it does not contain all elements prescribed by law. Furthermore, judge has to set up a court session in order to hear both parties and finally, he has to decide on motion,

After judge decided on a motion and rejected it, this decision may be appealed to the second instance court, which also is prolonging enforcement procedure and increasing enforcement costs.

Very often, this motion shall be filed with one and only aim: to prolong enforcement procedure.

190. Impact of the legal remedies to the length of the proceedings. Although enforcement procedure is considered as urgent procedure, above mentioned regular and

[157] Law on enforcement FB/H, article 57

extraordinary legal remedies can protract enforcement procedure to last for a very long period of time and very often for years[158].

Therefore, long enforcement procedure gives more than enough time to the debtor to dispose (sell, give away) his assets and to leave a creditor without possibility to collect his money. It is truth that this act would, according to the criminal law, represent criminal offence, but still, this would not collect the creditors claim.

191. Expenses related to the enforcement procedure. Normally, there are some expenses that are attached to the enforcement procedure which are advanced by enforcement creditor and at the end of the enforcement procedure, paid by enforcement debtor (expenses for locksmith, transportation of court bailiff to the site scene, expenses for storehouse etc.).

As said previously, before certain enforcement action is performed, all these expenses have to be paid in advance by creditor. There is no unique price list for enforcement procedure costs and the amount of costs that are to be advanced by enforcement creditor varies from court to court. If creditor does not pay expenses requested by the court, enforcement action will not be performed and very possible, the case will be closed.[159] Normally, the amount of money which has been paid by creditor will be afterwards collected from the debtor but if he has no assets, beside his claim that needs to be collected, this is an extra expense for the creditor and there is no guarantee that all these expenses together with the claim will ever be collected.

192. Exploration the debtors' assets by the court. Very important issue, which makes enforcement procedure in Bosnia and Herzegovina extremely long, is the possibility for creditor to request from the court to investigate if the debtor has assets to be seized. It is truth that such request can be made to the court only if motion for enforcement is filed based on executive title, but still, this creates burden of work to the court. The creditors

[158] There are several second instance courts in Bosnia and Herzegovina where deciding on appeals lasts up to several years, for instance Cantonal court in Sarajevo.
[159] But still enforcement creditor shall have opportunity to propose another mean and subject of enforcement.

are profusely using this possibility. Sometimes, it has been justified, since there is a obstacle for creditors to access such information due to personal data protection issues, but there are public registers available to any person, that are not used by creditors.

193. The deadline to file a motion under article 37. of the Law on enforcement. Motion to investigate debtors' assets can be filed to the court at any stage of the enforcement procedure.

If such motion is filed, the court would send out the letters to the debtor, banks, police registry, Central bank, land registry, Tax registration office etc., in order to collect relevant information. Then, all collected information are forwarded to the creditor, and after information are received, based on the results, the creditor will decide how to proceed with a case. Of course, again, he has to inform the court about his decision (in written), and enforcement procedure will move forward.

194. Asking the debtor to provide information on his own assets. It has to be noticed that request to provide information to the court can be sent to the debtor himself. This is a very interesting situation, since that it is likely that no debtor will provide complete information about his account numbers, income and movable and immovable asset which has market value and may be sold in enforcement procedure. Also, it happens very often that deadline given by the court to provide information is past due and information has not been provided at all. The court has possibility to fine a debtor, but in most cases, this fine money most likely will never be collected. Also, when it comes to the information collection from banks and other institution, there are deadline breaks as well. This is something that also burdens the court since, if the debtor does not return the form with the information on his personal assets, the letter shall be sent again and again and this will significantly increase the length of enforcement procedure.

As it can be seen, all this is extremely time-consuming process and all together with prescribed legal remedies by the law it makes enforcement procedure in Bosnia and Herzegovina extremely long and ineffective.

195. Delay of the enforcement procedure. Significant obstacle in effectiveness of enforcement procedure in Bosnia and Herzegovina is the possibility that creditor requests delay of the enforcement procedure. This means that creditor may request that the court stays with enforcement procedure actions, leave a case file aside and do nothing regarding the case as long as the delay of enforcement case is in force.

The law does not set time limit and this means that this stay of the procedure may last for indefinite time. This possibility is very often used by creditors. In such situations enforcement creditor files a motion for enforcement, concludes an agreement with the debtor on payment in installments, and then the creditor files a motion to the court to delay enforcement procedure for period of two years, for example. During this period, the court is not allowed to perform any enforcement action related to the case nor will any deadlines take the place. This is how case sitting at the court for very long period of time, becomes part of statistic without actually being "live case".

Even if we take this possibility as an extra-opportunity for enforcement debtor to "buy" some time and try to meet his obligations without any force actions of the court, there are still numerous abuse of this institute not only from enforcement debtor but also from enforcement creditor. What happens in practice is that enforcement creditors are using institute of delay of enforcement procedure, as instrument of force against enforcement debtor, in any situation when he needs to buy some time and prevent judge in enforcement procedure to close the case.

What happens is that enforcement creditor is asking for delay of procedure when, for example, the court orders to him to provide new address of enforcement creditor to the court or to propose new subject and mean of enforcement. Normally, the court should reject such motion of enforcement creditor but not rarely, court accepts such motion.

196. Enforcement on immobility – in practice. When it comes to the enforcement on immovable assets, this procedure is also time consuming and only judge is authorized to work on such cases. This is not specifically prescribed by the law, but in practice, only judges are the one working on these cases. Reason for this is the fact that legal associates

are authorized to work only on a minor offence case and therefore there is no reasoning to authorize them to sell immobility with value of a EUR million.

So, in practice, the judge is the one who has to issue decision on enforcement and to issue any other decision during the procedure, the judge orders and organizes appraisal of the immovable and actually perform a sale of the immovable asset.

197. Competence of the court for enforcement on immobility. The court will have the competence over the enforcement on immobility where immobility is sitting. Related to this subject, there are also several issues that need to be tackled. If immobility that is a subject of enforcement procedure that is in coownership, that immobility can be sold as a whole no matter if that co-owner is not debtor in the enforcement process.[160]

[160] Constitutional court of Bosnia and Herzegovina on 06th of February 2020 issued decision number U 10/19, deciding upon request of Municipal court in Cazin (judge Erol Husić) to decide on compatibility of articles 69. (3) and (4) of Law on enforcement procedure of Federation on Bosnia and Herzegovina, the court found that above mentioned article 69. (3) and (4) of Law on enforcement of B&H are not compatible with article II/3.k of Constitution of Bosnia and Herzegovina and article 1. Of Protocol number 1 of European convention for protection of human rights and fundamental freedoms. Describing his appellation, judge wrote that in enforcement procedure there was ongoing case between enforcement creditor – legal person and enforcement debtor – physical person, for collection of claim of cca EUR 240,00. Initially, it was proposed that enforcement is performed on movable asset of enforcement debtor. First seizure of movable assets of enforcement debtor was not successful and enforcement creditor was informed about this by the court and at the same time, he was invited to propose another seizure of movable assets. Instead, enforcement creditor proposed that enforcement procedure is performed on coownership on immobility of enforcement debtor. The court than issued decision asking enforcement creditor to propose new mean and subject of enforcement, since that the court found enforcement on immobility of enforcement debtor is disproportional to height of claim of approximately EUR 275,00. Enforcement creditor, again, proposed enforcement procedure to be performed on movable assets of enforcement debtor. Afterwards, appellant issued decision closing the enforcement case. Deciding on appeal of enforcement creditor, second instance court cancelled decision of case closure of first instance court reasoning such decision that enforcement creditor has right to ask for collection of his claim. Reasoning of Constitutional court may be summarized like this: Possibility to sell immobility as a whole, including coownership parts of other co-owners which are not enforcement debtors, in order to settle the debt of one of the co-owners in enforcement procedure, does not comply with standard of proportionality and is too much of burden for other co-owners compared to co-owner-debtor, considering that his debt might be the reason to sell real estate in co-ownership as a whole (in Republic of Srpska Law on enforcement this part of law was amended and there is no such possibility any more), which means that enforcement creditors claim is settled not only out of co-owners part of enforcement debtor but others co-owners who are not debtors in this enforcement procedure.

198. Session to sell the immobility. If all conditions prescribed by the law are fulfilled (to the motion for enforcement has to be attached a document proving that the debtor is owner/co-owner of the real estate, decision on enforcement issued, value estimation by expert done), the judge will move on and schedule a court session to sell immobility. There are three court sessions that have to be held in order to sell immobility. On the third court session immobility can be sold without any limitation of the price, even for 1 BAM (0,50 EUR) for example no matter what the value of the immobility is and what is the amount of the claim. In practice, it very often happens that immobility of the debtor is sold and the amount of money is not enough to cover the expenses of enforcement procedure, interests and the claim.

If immobility could not be sold on third court session, the procedure will be terminated on that mean of enforcement and the creditor shall be invited to propose another mean of enforcement.

199. Skills of the judge to perform sales. It has to be said that the judges are not trained to deal with real estate issues especially when it comes to the sale. Of course, help of the expert will be necessary and it is obligatory as a part of enforcement procedure to appraise immobility, but still, one needs special knowledge and involvement in order to get the best price for immobility to be sold.

200. Advertisement of the sale. Court sales of the real estates are only published on court advertising board. No publishing is done in newspapers or any other media (printed or electronic). The enforcement creditor is authorized by law to do so upon approval by the court, but in practice it is very rare that such advertisement will take a place.

The judge has no time, knowledge or power to perform successful real estate sale which means that the sale shall depend on his own knowledge and capability. Therefore, system of private bailiff who will have power to engage special real estate agency to appraise market value of the real estate and to perform real sale with numerous bidders will for sure improve this way of sale.

201. Problematic areas in terms of sell of the movable assets. Enforcement on movable assets is the most numerous and the most problematic subject of enforcement. Although most of the debtors do not have any valuable movable assets to be seized, in most of the cases, creditors are asking court to perform enforcement by seizure of movable assets. Related to this issue there are several problems. Order in which those problematic areas are listed here, is not necessary order of their importance.

Firstly, in order to seize movable asset, court bailiff has to go out to the debtors' home. This is funds and time consuming for the bailiffs. Very often, enforcement debtors are living in far villages and until recent times court bailiffs did not even have car to use for transportation but they had to use available public transportation, mostly bus.

This is mostly the reason why, even for those items, that might be interesting to potential buyers, there are no interested ones and items are mostly not sold on public auction.

Appraisal of seized items is mostly done by court bailiff who is also not trained well enough to appraise them and to calculate for example their amortization over the years. There is a possibility for enforcement creditor to make request for appraisal to be made by expert, but this is increasing expenses of enforcement procedure and this possibility is very rarely used in practice.

202. Issue of non-seizure of the listed items. Furthermore, seized items are left in the debtors' apartment and it is not forbidden to him to use those items.

Exception of leaving seized items in debtors' home is when creditors pays for workers, transportation and storehouse in order to remove items from the debtors home.

203. Issue of "do not get rich on someone else's unhappiness". It is necessary to mention mentality of the people which may be applied to both, sell of movable and immovable assets. Mentality of the people is such, that huge percent of citizens do not want to buy items on public sale considering it immoral and as building happy on someone else's unhappiness. Therefore, only lately, there are few buyers on public auctions attending and mostly in big cities. In small areas, there is still the same spirit and almost

no one will buy item selling on public auctions in enforcement procedure. Practically this means that many debtors have no assets of any value in order to be seized and sold. For example in most cases seized items are living room sofas, table, cabinets for clothes etc. None of these items are suitable for sale and very few buyers will by such items. Sometimes, subject to seizure might be flat screen TV which might be interesting for buyers to buy. But, it has to be taken into consideration psychological moment of people living in Bosnia and Herzegovina. There is a special attitude towards items sold on public auction-court sale in enforcement procedure. The attitude is that all these items are about to be sold and that it is based on hard time in someone's life and therefore those items should not be bought.

204. Two court session for sale of the movable assets. When it comes to the sale of the movable items, there are two court sessions to be held. It is interesting to say that, if one sale is unsuccessful, meaning, there were no buyers or there were no offers which meet legal conditions, it is the creditor who has to propose second sale to the judge. Second sale does not happen automatically nor does the judge have powers to organize it without proposal of enforcement creditor. On the second session, item can be sold without limitation on price (also for one BAM). If item is sold for one BAM, the creditor can propose a new subject of enforcement and case will continue until the creditor completely collects his claim.

205. Role of the judge in the cases of the eviction and abduction of the child. A role of judge in enforcement procedure for the eviction and abduction of the child is very important. Both of these procedures have to be performed by enforcement judge. It has to be noted that enforcement judges has no special education to perform such demanding task due to the lack of training and additional education.

206. "Small courts" judges working on the different types of the cases. An interesting situation regarding enforcement judges is that enforcement judges are not specialized and in majority of courts they are working on other types of cases as well due to small courts and low number of judges in the courts. It has to be noted that, although enforcement cases

are most numerous types of cases before courts in Bosnia and Herzegovina, there are also large number of other cases sitting in the court and waiting to be solved.

In the courts with large number of cases and higher number of judges, there are enforcement departments formed and, in that case, judges are only working on enforcement cases that they are specialized to work on.

Bearing all that was said above, the judges would have much more time for other, essential cases, if enforcement wouldn't be in their competence and if enforcement would be entrusted to person with more power to access information on debtor's assets, who are more motivated to perform good job related to final result of enforcement procedure and with more different connections and resources to complete enforcement procedure with collection of claim as final result. Also, such person could advice creditor if his claim has positive prognosis to be collected.

207. Importance of the position of the enforcement agent. The other very important issue that needs to be tackled here is the power and authorization of enforcement agent to act independently of enforcement creditor, meaning without the need to ask for initiation or instruction or any other input from enforcement debtor. The task of enforcement agent is to promptly and without any delay collect claim of enforcement creditor in the most effective way.

Definitely, that person is not sitting in the court.

208. Attitude towards enforcement procedure needs to be changed. What also has to be changed is the way judges think about enforcement procedure - their attitude. When talking to the enforcement judges, they mostly have joint opinion that court (judge) has to be impartial, so is the same in enforcement procedure. This is not quite truth when it comes to the enforcement procedure.

It has to be notified that it is obvious that the debtor did not pay his debt and that a creditor could not collect his claim by himself so he asked the court for help. So, in the start, there is a position that in enforcement cases court should not be impartial but it should use its

authority to help creditor to collect his claim. Therefore, the court should use all powers it has to lead enforcement case and to end it up by collecting creditors claim and not only pro forma to go through enforcement procedure without any real will to collect the money.

Also, bearing all above mentioned in mind, the court should use all powers that it has to prevent the debtor to fraud creditor and to unnecessary delay enforcement procedure.

Not many judges hold this position and share this opinion. If enforcement procedure would be in hands of private bailiff all these obstacles to the efficient enforcement procedure will no longer be actual.

Section II. Court bailiffs

209. Introduction. Court bailiffs in Bosnia and Herzegovina are employees of the state / court (employees) whose role is to carry out enforcement actions when the collection of unpaid claims for property charges, is done on movable assets.

In relevant articles the laws on enforcement define court bailiff as the court employee who upon request of the judge performs individual enforcement actions within enforcement procedure. 161 Bailiffs are employees of the court, with, most often, secondary school education, without prior legal experience and even without the additional education in the scope of their employment.

210. Limited powers of the court bailiff and role of the Agency for data protection to enforcement procedure in Bosnia and Herzegovina. As the central active role in the enforcement procedure is given to the creditor, powers of the bailiff are very limited and he does not have the ability to act ex officio even when the action is more than justified. For example, if a bailiff during the procedure on the field came to the conclusion

[161] FBH and RS Laws on enforcement

or has information that debtor lives at a different address or that the debtor has a property which would make the collection of unpaid claims more efficient, he has no authority nor power to carry out the enforcement on that object or asset of enforcement nor can he give that data to the creditors nor can he ex officio continue the collection of unpaid claims on that object. Bailiff has no access to databases of the debtors' assets so the data has to be required from the competent authority by the enforcement judge and in all that a significant role plays the Agency for protection of personal data that interprets the notion of personal data very restrictively, which makes the collection of data on assets more complicated. Data protection agency of Bosnia and Herzegovina has very strict regulation and strict position when it comes to the protection of personal data of citizens of Bosnia and Herzegovina. According to the Law on data protection.[162], personal information is considered any information which is related to the physical person who is either identified or whose identity may be discovered.[163] According to this law, every person has the right to be informed that his data is collected and that the source of his data is identified. Furthermore, the person has right to access his personal information and to file an objection. His objection may contain request to the holder of information to stop data collection, that collected data is corrected and finally that collected personal information is blocked or deleted. It is interesting that the law prescribes that holder of the personal information has obligation to collect data only in scope enough for fulfillment of the purpose. For instance, in its opinion dated 20.05.2020. in relation to the removal of garbage company named "Opinion on the processing of personal data of consumers for the purpose of concluding a contract for the removal of municipal waste" it was stated that data on name and surname, date and place of birth, address of residence and ID card number are data whose processing is not subject to a special legal restriction. Personal identification number, jet, is protected information. It was stated that sufficient identification of the service user is based on the name, last name and address of the user. But, if full identification is not possible on the basis of this data, service providers process additional data such as father's name, identification document number or date of birth.

[162] Official gazette of Bosnia and Herzegovina number 49/06, 76/11 and 89/11
[163] Law on personal data protection in Bosnia and Herzegovina, article 3

Requesting additional information is justified in the case when it is not possible to collect claims for services provided out of court and the user changes the address of residence during the contract. Still, the Agency stays on the position that recording the name and surname, address of residence and number of the identification document, represents a sufficient amount of data on the basis of which, if necessary, other necessary data can be determined by the competent authorities. Analyzing this opinion, it can easily be concluded that personal identification number may not be collected by utility company and data on parent name and date of birth may be further used when collecting the claim through court procedure. In practice, this means that utility company should during the enforcement procedure file the request to the court to collect information on the income of the user, using additional information as stated above. But it has to be underlined, that Tax registry company is able to search through database only based on the personal identification number of the persons. This means that, provided information related to the date of birth and name of the parent is not enough. All this leads to the conclusion that this law has to be changed or that databases need to be coordinated so that it is possible to obtain necessary information based on data which may be legally possessed.

211. Position of impartiality of the court in the enforcement procedure. Considering that in Bosnia and Herzegovina the enforcement procedure is a court procedure, as said above, there is still a traditional point of view that the court should be impartial and that is also the way to handle enforcement proceedings even though in fact creditors approached the court for help in the collection of their claim that the debtor did not want to pay voluntarily. The aforementioned fact precisely supports the fact that the court in the enforcement procedure should not and cannot be impartial but rather it should use the power and authority to force the debtor to pay its debt.

212. Competences of the court bailiff. Court bailiffs get appointed in such way that competition for the position is open to all interested candidates. Since there is no special education for court bailiffs, normally, to apply for the position it is necessary that the candidate has completed second education and to have minimum one year of working experience. No prior experience as a court bailiff is required.

Also, there is no rule to prescribe neither how future court bailiffs should be tested, how to perform an interview nor how to prepare them for their job once they are selected for the position through selection process. Everything depends on the court and the court president who prescribes procedure and usually is the one in charge of the process.

213. Practical training of newly hired court bailiff. After they are hired, in some courts they have in house initial training with one of the (usually senior) colleagues with more experience, but this practice varies from court to court and very often they receive no training and are just sent out to the field to perform the job.

Normally, in the practice, they would appoint one more experienced court bailiff to take them out in the field and to show them practical part of the job but with no prior plan, manual or something that might help to overcome a difficulty that they get on to.

214. Supervision of the judge over the work of the court bailiff. Once they get appointed, they start their very important role in the process of enforcement. According to the enforcement law, court bailiffs have key role in whole enforcement process regarding enforcement procedure. The bailiff is performing all enforcement actions and moving whole process forward. But everything that court bailiff does, he does under the supervision of the enforcement judge. Judge has the power to annul all actions performed by court bailiff.

Court bailiff is, according to the law, authorized to do the search of the debtor's assets/home under the obligation to perform the search carefully respecting the debtor and members of his household.164 If enforcement actions are performed in the house of the debtor, adult witness has to be present. If enforcement action has to be performed in room which is locked, court bailiff is authorized to use appropriate mean to unlock the room in presence of one adult witness and the police.

All actions that court bailiff do have to be followed by corresponding record (minutes).

[164] Law on enforcement of Federation of Bosnia and Herzegovina, article 43

If work of court bailiff is obstructed by any person, court bailiff has power to remove that person from the site and use appropriate force.

215. Powers of the court bailiff to assistance of the police. Court bailiffs in Bosnia and Herzegovina are entitled to police assistance if necessary. Since in Bosnia and Herzegovina court is competent for all types of enforcement: immovable assets, movable assets, eviction, abduction of the child etc. very often assistance of the police is necessary so the court bailiff can do his job. According to the law, court bailiffs are entitled to send to the police a letter that consist of all necessary information: when the enforcement action is planned to be done, what is case about, what is the possible risk and all other relevant information. Police is obligated to do the risk assessment and make sure that enforcement procedure goes smoothly and that all possible risks for court bailiff are eliminated.

216. Protection of the parties by the judge. Court bailiff has obligation to perform his duties as prescribed by the law. If it is not such case, party and any other participant in the case can request court (judge) protection and in such case, judge is authorized to eliminate, illegal and irregular actions of the court bailiff.

217. Division of the cases between court bailiffs. Distribution of cases to the court bailiffs varies from the court to the court. In some courts, distribution of the cases is performed randomly meaning that if court has three employed court bailiffs, the cases are distributed in such way that one case is given to the one bailiff, second case to the second bailiff and the third case to the third bailiff. After that, the process starts again. As one can imagine, such process is not cost effective since that for example, at one day, two court bailiffs can be at the same street (village) working on different cases instead that all cases at one street are performed by same bailiff.

The other way of distribution of cases is that each court bailiff is in charge for certain area and that all cases from that area are distributed to that bailiff. This is much more costly effective way of case distribution and enables bailiff to spend his time working on the more cases than he could if he has to run from street to street and from village to village.

Moreover, common problem for all courts is the lack of necessary means, especially vehicles, so court bailiffs are very often sharing one car among three and more court bailiffs. It is not rare that court bailiffs are using public transportation.

218. Access to the information of the court bailiff. Court bailiff as individual employee has no power and has no right to access information on debtors' assets. Even if he has knowledge from prior cases that the debtor has no movable assets, he cannot use that information and has to go out to the field again.

Also, all other information that court bailiff collects out in the field he has no right to use and the same information have to be requested from the creditors which is time and funds consuming.

219. Motivation of the court bailiff to collect the claim. Court bailiffs do not have any special interest to terminate court case by collecting money. They are paid monthly fixed amount of money (salary) and that amount is same no matter how they terminated case: collecting money or concluding that there is no money to be collected. Therefore, unfortunately, there are some situations that were noted that court bailiff wouldn't even perform any action nor go to the debtor's home and that the record is put together in the bailiff's office informing that debtor has no assets to be seized.

220. Importance of the introducing private bailiff. Of essential importance for enforcement system in Bosnia and Herzegovina is that this system gets independent body (private bailiff) who will have personal interest to collect creditors claim and whose income will depend on how successfully he performs his duties. Also, it is very important that on enforcement cases works a person who has no other duties and is dedicated only to this job. Such situation will lead to full professionalism and to maximal efficiency in work. This would be results and not statistic-oriented profession.

Result could be that enforcement procedure will become more expensive and that creditors at the beginning would have to have certain funds in order to start enforcement procedure but in any case, this will ensure that enforcement body will not be used as

system to force debtor to start paying his debt but as system to actually try to collect collectable claim.

TITLE 2 THE ENFORCEMENT SYSTEM IN FRANCE

Introduction

221. Introduction. Enforcement system in France is laying on principle set numerous years back acknowledging social environment and rules of the European Union. Main actors of the enforcement procedure are enforcement agent and judicial officers**.**

222. Capacity of the French system to become row model system. Since the French system has such a long tradition, it is likely that it can serve as a row model system for Bosnia and Herzegovina. In this part of the paper the aim is to present the French system of the enforcement and its features. In France, the enforcement procedure is run by private enforcement agents that statistically perform their tasks effectively with a large percentage of successfully completed cases. The term successfully completed procedure in this context means a procedure that ended in collection of claims for which the trial was conducted.

223. Role of the judges in enforcement procedure in France. In France the role of the court in the enforcement is still present, the aim is to explore this segment of great importance for certain types of procedures. It is a known fact, referring to the practices of countries which apply the system of private bailiffs, for certain types of procedures it is necessary for the court to be actively involved and to carry out certain actions. These are the mostly extremely sensitive procedures such as, handing over a child, eviction and so on. In this sense, research will be carried out to see which actions remain within the jurisdiction of the court in the French system of enforcement.

224. Importance of the acknowledgement of the social environment. In addition, in this part of the paper the social environment in which the enforcement procedure is carried out in France will be presented, particularly with regard to (socially disadvantaged) debtors, including the Institute of personal bankruptcy. The social environment of a

particular legal system is inevitably an important factor in the context of enforcement, and forced debt collection. In this sense, it is necessary to distinguish between legal entities and individuals and then within the debt which a private owner has to the state and debts that are due to meeting the basic needs (egg. utilities) and other debts.

Every figure involved in the enforcement procedure has its own part, role and importance. Furthermore, enforcement procedure is inseparable from the social environment in which the procedure is performed. Therefore, enforcement procedure shall not and must not be the same in poor country of Africa and developed European country. All these are the factors that need to be taken into consideration.

Chapter 1 The guiding principles

225. Introduction. Every human activity must be preceded by thorough analysis of the environment in which that activity is performed. No exception should be made, when it comes to introducing radical changes or introducing new enforcement procedure. Section I is to introduce the importance of recognizing social and economical environment and section II is to introduce main characteristic of enforcement procedure in France.

Section I. Social and economic environment

§ 1. General considerations

226. Introduction. The social environment in which the enforcement procedure is carried out is an important factor that is of decisive importance for its success and effectiveness. The enforcement procedure must recognize the social environment in which it is carried out so that it can achieve its purpose, it is necessary to identify the category of the population that is in need, and that objectively is not able to carry out their obligations. In this case, it is certain that the process of enforcement would be carried out much more effectively if the same is carried out against the people who have assets that can be subject to enforcement.

227. Competencies for the social policy in Bosnia and Herzegovina.
In Bosnia-Herzegovina, social policy is the responsibility of the federal units, Federation of Bosnia and Herzegovina and Republic of Srpska and the same is carried out quite inefficient and unplanned. The amount of funds planned for this purpose is insufficient, the competent authorities do not recognize the vulnerable groups and the fact that they cannot meet their obligations. The country is generally in a poor financial condition, there

is a huge number of unemployed population and, as statistics show, even the working-age population is in a situation where it barely survives.

228. Reasons to introduce personal bankruptcy in Bosnia and Herzegovina. Furthermore, again due to unemployment and the difficult situation in the country, business is booming for microcredit organizations. In fact, such organizations place loans for residents who are unemployed and without any income and it is certain that the loan will not be returned and that the case will inevitably end up in court. Therefore, these organizations without particularly strict criteria provide loans and the collection in most cases is done through the courts. In this context, it would be reasonable to consider the possibility of introducing the institution of personal bankruptcy, that in Bosnian system is currently not known, as one of the most important moments in this context. In this manner, the enforcement procedure should be carried out only in cases where objectively it should be, against debtors who have created an obligation that they do not want to meet, although they are able. The ultimate goal is to collect unpaid claims effectively where possible.

229. Social policy as a key issue in the context of the enforcement procedure.
The matter of social policy is one of the key questions that must be addressed when it comes to the collection of payment claims and in particular claims related to unpaid utility services, this issue is very important also in the context of enforcement in France.

230. Social policy in France. In France, there are several options when it comes to situation when individual needs financial help from French state.

First of them is financial help for families and amount of the help depends on how many depending children under year of 20 are in the family. There is also help for parents which may vary from help in medical assistance to money remuneration for parent leave due to birth of child.

Regarding, health care, in France, one is entitled to health care as a French resident, irrespective if he or she is employed. Furthermore, there is a possibility, under certain conditions to benefit from pension for disabled persons.

231. Institute of RSA in France. The interesting institute in this contest is RSA (income support) in France. This might be considered as the most important support aiming to support all unemployed persons residing in France. This help that every unemployed person needs in order to avoid debts and loans are to be future court cases. Amount of help depends on if person is single, in couple, whether he or she has a child (one or more). Everything is taken into consideration in order to determine how much money this person needs for her or his basic needs.

There is also a special support for persons who lose their jobs and amount of help will depend on how much salary of that person amounted in months prior to their lose of job.

All these are the ways in which France overcame the above listed problems and removed all potential cases from the courts, in advance.

§ 2. Personal bankruptcy

232. Institute of personal bankruptcy in France. Personal bankruptcy as an institute is known in France165 but unknown in Bosnia and Herzegovina. It is of crucial

[165] France, like other European countries, faces a recent and substantial increase of personal bankruptcy filings. The annual number of filing records increased from 188,485 in 2008 to 226,582 in 2009 (BANQUE DE FRANCE [2008]). Several factors are thought to be responsible for this steady rise: the development of credit debt and revolving debt with high interest; an increase in major expenses, such as domestic rental and personal costs (especially following divorce or separation); and significant job losses. When such an adverse event occurs, some people are unable to repay the debts (which are often revolving debts) they have accumulated with their creditors. In this kind of financial context, it is necessary to understand (and test) whether personal bankruptcy law may have an impact on debtors' and creditors' incentives before the events that provoke financial distress. For instance, let's assume that the prime objective of bankruptcy law is to protect creditors' interests against debtors': the rules stress that debtors must repay their debts with their future incomes and assets. This would be a means of reducing the risk of over-indebtedness, as it may discourage consumers from over-borrowing, with loans issued against borrowers' rational anticipation of the future evolution of their income. Alternatively, we might assume that a stronger level of creditor protection against bankruptcy filing might give them an incentive to offer more credit, as credit becomes more profitable. So, a solution to the problem of growing personal debt might be to penalize lenders who take advantage of consumers' tendency

importance that personal bankruptcy is introduced so individuals would be prevented to take more debts than they are able to pay and therefore they would be prevented from becoming one of the cases that ended up before courts/private bailiff. For the purposes of this work Law on personal bankruptcy shall not be presented in specific articles but there will be guidelines given on how this law should basically look like.

Personal bankruptcy should be an opportunity for the debtor to have fresh start and to, after certain period of time, be able to start from scratch and to start over again without debts. It has to be noted that there is a possibility of abuse of this institute so that one declares personal bankruptcy to damage creditors and to avoid payment of his debts.

233. Basic characteristics of the personal bankruptcy institute.

Personal bankruptcy procedure has to be effective and result oriented. It has to be voluntarily based and debtor should not be forced. It should be possible to start personal bankruptcy procedure only if creditor is not able to pay for his debts for period longer than 90 days. Some mediation procedure should be possible prior to the opening of the formal procedure so that creditors and debtor have opportunity to negotiate and settle their legal relations prior to coming to the court or private bailiff. It is out of crucial importance that mediator has powers to check all records and databases regarding debtors' assets and properties so that arrangement before mediator has ground and real possibility of fulfillment.

This law should be applied only to a psychical person dealing as a psychical or natural person out of any business relations.

In personal bankruptcy procedure court and bankruptcy administrator should be involved. The court should name bankruptcy administrator to supervise a procedure and bankruptcy administrator to lead a procedure.

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to over-borrow and their ignorance of credit conditions and prices. For more on this subject see: https://pdfs.semanticscholar.org/4030/3b01189456b7a7411e8cc6556e30ae4af462.pdf , page visited on 30th of October 2019

234. Bankruptcy only if mediation does not succeed. If mediation procedure does not succeed, debtor may start procedure of personal bankruptcy. The court shall issue decision on opening of bankruptcy procedure and when decision is publicly released then legal consequences of bankruptcy opening shall be placed.

235. Legal consequences of bankruptcy. Main legal consequence of opening of bankruptcy procedure is that this fact should be marked in Central registry of loans as well as in Central bank of Bosnia and Herzegovina so that all creditors have this information available while for instance, considering motion for a new loan to a certain person. It is widely known that a lot of persons who are in deep debts are taking new loans to cover old ones and, in such way, just going deeper and deeper into loans and as time goes by, there are less and less chances that loans will be returned or serviced timely and chances that such case ends up before court are getting progressively higher.

In order to prevent such situations, it is essential to make available register of opened personal bankruptcies.

236. Help of the state as a must and a main windshield for poor people.
As said above, such persons must be provided with help by the state. State should take over some of the regular expenses such as electricity bills, telephone bills, heating and food supplies until certain amount so such persons have no reason to create new debts. This solution, together with a the new law on enforcement and new system of enforcement as a whole, should keep certain amount of standard cases out of the court and ensure that before courts are brought only cases worth the time of the legal professional and the cases that have predictable ending by collecting money from enforcement debtor.

Section II. Enforcement procedure in France

237. Regulation of the enforcement procedure in France. Enforcement procedure in France is regulated by The Code of civil enforcement procedures (Hereinafter: The French CCEP). The French CCEP consists of legislative and regulative parts.

Legislative part consists of following books:

- Book I: General provisions
- Book II: Security procedures
- Book III: The real estate seizure
- Book IV: The expulsion
- Book V: Conservatory measures
- Book VI: Provisions relating to the overseas

Regulatory part consists of following books:

- Book I: general provisions
- Book II: Security procedures
- Book III: The real estate seizure
- Book VI: Provisions relating to the overseas

✓ According to the article L-111-3 enforcement procedure can be initiated by the creditor who has one of the following enforceable titles:
  - The decisions of the courts or the decision issued in administrative procedure when it is enforceable, as well as the agreements to which these jurisdictions have conferred enforceable;
  - Foreign acts and judgments as well as arbitral awards declared enforceable by a decision not subject to a suspense enforcement remedy, without prejudice to applicable European Union law;
  - Decisions rendered by the Unified Patent Court;
  - Extracts from the minutes of conciliation signed by the judge and the parties;
  - Executive notarial acts;

- The agreements by which the spouses consent mutually to their divorce by act under private signature countersigned by lawyers, filed at the rank of the minutes of a notary according to the terms provided for in Article 229-1 of the Civil Code;
- The title issued by the bailiff in the case of non-payment of a check or in the case of agreement between the creditor and the debtor under the conditions provided for in Article L. 125-1 ;[166]
- The enforceable titles issued by public legal entities qualified as such by law, or the decisions to which the law attaches the effects of a judgment.

In certain areas such as departments of Moselle, Bas-Rhin and Haut-Rhin there are some other enforceable titles that could be a base for the enforcement procedure[167].

The costs of the enforcement procedures are advanced by the creditor and generally charged from the debtor except if they were not necessary for the enforcement procedure.[168]

[166] Article L.125-1 reeds following: A simplified procedure for the recovery of small claims may be implemented by a bailiff at the request of the creditor for the payment of a claim for a contractual cause or resulting from an obligation of a statutory nature and lower than an amount defined by decree in Council of State. This procedure takes place within one month after the bailiff sends a registered letter with acknowledgment of receipt asking the debtor to participate in this procedure. The agreement of the debtor, noted by the bailiff, suspends the prescription. The bailiff who has received the agreement of the creditor and the debtor on the amount and the terms of the payment delivers, without further formality, an enforceable title. Costs of any kind incurred by the procedure are the sole responsibility of the creditor. A decree issued by the Conseil d'Etat lays down the procedures for the application of this article, in particular the rules for preventing conflicts of interest when the bailiff issues an enforceable title.

[167] See: article L111-5 of the French CCEP which reads: By virtue of the provisions applicable in the departments of Moselle, Bas-Rhin and Haut-Rhin, also constitute executory titles: 1 Acts drawn up by a notary of these three departments when they are drawn up concerning a claim for the payment of a specified sum of money or the provision of a specified quantity of other fungible things or securities, and the debtor consents in the act to immediate execution; 2 Expense tax orders. An order of tax of costs, affixed on the judgment in accordance with article 105 of the local code of civil procedure is executable by virtue of the executory shipment of this judgment. A special binding expedition for the collocating slips enforceable; 4. The partition acts established under Title VI of the Act of 1 June 1924 implementing the French civil legislation in the departments of Bas-Rhin, Haut-Rhin and Moselle; 5 The constraints issued by agricultural accident insurance funds for the recovery of late contributions.

[168] See: article L111-8 of the French CCEP

It is interesting to see that appeal or other legal remedy will not stop or delay enforcement procedure.[169]

§ 1. Subject of enforcement and exclusions of enforcement

238. Subject to enforcement in France. According to the law, subject of enforcement procedure can be any good which belongs to the debtor. It makes no change if certain good is in possession of the third party.[170]

239. Exclusions from enforcement. There are certain goods that are excluded and cannot be subject of enforcement even if they are the property of the debtor. According to the article L111-1-3 of the French CCEP enforcement cannot be applied against property, including bank accounts that are used or are intended to be used in the performance of the functions of the diplomatic mission of foreign states or their consular posts, their special missions or their missions to international organizations in the event of express and special waiver by the States concerned.

Assets of the debtor which cannot be seized are prescribed by the Law and include:

- The property which the law declares not to be sizable ;
- The property which the law renders inaccessible unless otherwise provided;
- Provisions, sums and pensions of a food-related nature, except for the payment of the food already supplied by the seizure to the party seized;
- Available property declared exempt from seizure by the testator or the donor, unless authorized by the judge;
- Movable property necessary for the life and work of the debtor and his family;
- Movable property mentioned under 5, even for payment of their price, when it is the property of the recipients of social assistance benefits under Articles L. 222-1 to L. 222-7 of the Code of Social Action and Families;

[169] See: Article L111-1-1 of the French CCEP
[170] See: Article L112-1 of the French CCEP

7. Articles indispensable for the disabled or for the care of the sick.[171]

[171] See: Article L112-2 and 121-3 of the French CCEP

Chapter 2 Actors in legal proceedings

240. Introduction. Even though the bailiffs are the key figures in enforcement procedure, there are certain legal situations where the judges must be involved. Furthermore not all assets of the debtor may be subject to enforcement**.**

Section I. Court in the enforcement procedure and the executive judge

241. Powers of the judge in enforcement procedure in France.

Even though that bailiff has key role in enforcement procedure, there are certain points where judges have to be involved prior to enforcement procedure starts meaning that judge has to give his permission to perform enforcement procedure.

According to the French CCEP enforcement or provisional measures procedure against property of foreign state can be conducted only after enforcement judge gives his authorization.[172] Only after this authorization is obtained the enforcement procedure is allowed to be performed. But, in order to obtain authorization of the judge, several measures must be fulfilled. Those conditions are prescribed by article L-111-1-2 of the French CCEP and are as follows:

242. Enforcement against assets in ownership of the foreign state. Provisional measures or enforcement measures against property owned by a foreign state may be authorized by the judge only if the following conditions are met: The State whose property is to be seized has expressly consented to the application of such measure/enforcement. The State has reserved or assigned this property to the satisfaction of the request which is the subject of the procedure. If a judgment or an arbitration award has been made against such state and the property in question is specifically used or intended to be used by that

[172] See: Article L111-11 of the French CCEP

state other than for non-commercial public service purposes and has a link with the entity against which the proceeding was brought.

First of all it is when enforcement procedure is performed on salary on other income of the debtor and when immobility is to be seized in order to collect money.

243. Enforcement judge as a tool to prevent misuse of the enforcement rights. Executive judge has to give his authorization and consent in certain stages of the enforcement procedure but in general, enforcement judge has power to prevent misuse of the rights in enforcement procedure and even order the creditor to pay damage if that damage is a result of a misuse or unnecessary prolongation of the procedure .[173]

Section II. "Huissier de justice", enforcement agents

§ 1. Statutory regulation

244. Power of private enforcement agents in France. It is a general provision that a private enforcement agent in France is entitled to perform enforcement actions on.[174] The bailiff is the only one who can perform enforcement procedure actions. As prescribed by the General code of enforcement, bailiffs in France are completely independent. Ministry of justice appoints holders of this position and under the law, besides carrying out an enforcement procedure, they are also authorized to deliver documents and to perform the sales of seized gods.

245. Education and professional experience of the private bailiffs in France.
When it comes to the education and professional experience, bailiff must have law degree as well as two years of experience in law profession, concrete in office of the bailiff. During a whole period of their work as a bailiff the person has to attend trainings and

[173] See: Article L121-2 of the French CCEP
[174] See: Article L122-2 of the French CCEP

educations. Bailiffs are completely responsible for enforcement actions. They choose means of enforcement and are in charge of enforcement process. Bailiffs are competent for certain area and can carry out enforcement actions only on the area of their competence.

246. Bailiffs have right to access to information of the debtor. Private bailiffs in France have power to request information of debtors' assets from respective bodies and those have obligation to provide him requested information. These information are: bank account, salary, address and immobility.

In France, beside all of the mentioned above, bailiffs also have some other powers such as to represent parties before courts in certain cases they may give a legal advice and to do appraisal of movable assets etc.[175]

247. Basic regulations. The basic regulations Ordinance on status of bailiffs was issued in 2nd November of 1945, N° 45-2592 (modified by Order No 2016-727 of June 2nd 2016-article 20 and repealed by Ordinance N° 2016-728 of June 2nd 2016-article 24) then Decree N° 56-222 of 29th of February 1956 on the status of bailiffs.

According to the Ordinance N° 45-2592 (consolidated version)[176]: "The bailiffs are the ministerial officers who alone have the power to serve the acts and the exploits, to make the notifications prescribed by the laws and regulations when the mode of notification has not been specified and to bring back to the execution of the decisions of justice, as well as acts or titles in enforceable form".

248. Other powers of the private bailiff. In places where there is no established judicial auctioneers, private bailiffs may also proceed to the amicable or judicial recovery

[175] Taken from web site: http://www.acta.sapientia.ro/acta-legal/C4-1/legal41-07.pdf , on 28th of Nov 2018

[176] Taken from website: https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006069177, 28th of Nov 2018

of all claims, public and judicial valuations and public sales of furniture and personal effects. They may, by law or at the request of individuals, make purely material findings, exclusive of any opinion on the consequences of fact or law that may result. Exception is in criminal cases where they are mere information, these findings are valid until proven otherwise. Bailiffs may also perform precautionary measures after the opening of a succession, under the conditions provided by the Code of Civil Procedure. Court bailiffs provide personal service to courts and tribunals. They may also perform certain activities or functions on an ancillary basis. The list of these activities and functions as well as the conditions under which the concerned persons are authorized to exercise them are subject to the special laws fixed by decree in Council of State."

249. Tariff of the private bailiff. Above mentioned regulations in detailed prescribe bailiffs profession: competences, appointment, organization, bodies of the association, serve of documents, dispute between bailiffs, complaints against bailiffs, disciplinary proceedings and all other issues related to the profession of private bailiff.

Tariff of the bailiffs are prescribed by special orders and make expenses of the bailiff fully predictable. The relevant Orders are Order of February 26, regulating tariffs of bailiffs and Oder of February 27, 2018 also regulating tariffs of bailiffs. [177]

§ 2 Small claims enforcement procedure

250. Introduction. There are specific provisions that are regulating small claims enforcement procedure in simplified steps. Those provisions prescribe small claims procedure as follows:

[177] Taken from website: https://www.service-public.fr/particuliers/vosdroits/F2158, on 28th of Nov 2018

A simplified procedure for the recovery of small claims may be implemented by a bailiff at the request of the creditor for the payment of a claim for a contractual cause or resulting from an obligation of a statutory nature and lower than an amount defined by decree in Council of State. This procedure takes place within one month after the bailiff sends a registered letter with acknowledgment of receipt asking the debtor to participate in this procedure. The agreement of the debtor, noted by the bailiff, suspends the prescription. The bailiff who has received the agreement of the creditor and the debtor on the amount and the terms of the payment delivery, without further formality gets an enforceable title. Costs of any kind incurred by the procedure are the sole responsibility of the creditor. A decree issued by the Conseil d'Etat lays down the procedures for the application of this article, in particular the rules for preventing conflicts of interest when the bailiff issues an enforceable title. [178]

[178] See: Article L125-1 of the French CCEP

TITLE 3: THE ENFORCEMENT PROCEDURE IN ACCORDANCE WITH THE INTERNATIONAL STANDARDS

251. Introduction. The International standards and the documents are an essential element when it comes to the introduction of any novelty in any modern legal system. Every modern system, as such, especially when it comes to the countries that tend to enter the European Union, must be fully adapted to the requirements of the Union and must be adapted to the set requirements and international standards reached in terms of respect for basic human rights.

In order to make the proposal of the new enforcement system in Bosnia and Herzegovina also practically applicable, it is necessary to take into account the general principles established at the European level-the Global code of the enforcement (chapter 1). The Global Code on enforcement[179], which provides the basic principles and rules that must be respected when conducting enforcement proceedings. Relevant practice and the decisions of the European Court of Human Rights also have to be taken into consideration as well as the general tendencies of European countries in the area of enforcement (chapter 2). In addition to the European Convention on Human Rights, which was among the first to be taken into account, are some other relevant international standards that can be presented (chap. 3).

[179] The International Union of Judicial Officers has officially presented the Global Code of Enforcement on 5 June 2015 during the 22nd International Congress of Judicial Officers in Madrid.

Chapter 1 The global code of enforcement: an example of soft law

252. Introduction. The global code of enforcement is the fundamental document which, together with a European rules and regulations contains basic principles which need to be respected when it comes to the enforcement procedure. The global code of enforcement gives necessary shape to and guideline to the systems facing changes, such is the system in Bosnia and Herzegovina. It was written by the International Union of Huissiers de justice and enforcement agents[180]

253. Effective enforcement as a leading principle. Main principle stated in article 1 of the Code is that every creditor, irrespective whether it is a legal or a physical person, if he has an enforceable title, has right to the enforcement which has to be effective.

If enforcement is not effective, which is a major problem for many states, then the enforcement procedure has no real sense. Enforcement has to be effective and result oriented. This means that final result of the enforcement procedure has to be the collection of the claim. Also, the law has to be applicable and implicated to everyone who has debt including the stat in the situation when the state is the debtor. In Bosnia and Herzegovina, The Law on enforcement procedure, which is currently in force, allows the state to limit possibility of debt collection on state property. Article 138. of the Law on Enforcement in Federation of Bosnia and Herzegovina states following: (3) Enforcement over Budget funding of Federation of Bosnia and Herzegovina and Cantons shall be executed in amount predicted on the specific Budget position and in accordance with The Law on implementation of the Budget. (4) Enforcement over Budget funding of city and municipality will be executed in amount predicted on the specific Budget position and in accordance with the decision on implementation of the Budget. (5) If there are more than

[180] Global code of enforcement, Code mondial de l'exécution, site internet de l'UIHJ, https://uihj.com ; published UIHJ Publication, mai 2015

one creditor which are to collect their claims from the Budget, the order of the settlement is the order in which they have acquired the right to settle from the budget, but statute of limitation is not run until the final settlement of the claim. And finally, the Law prescribes that (6) All levels of government in Bosnia and Herzegovina (Federation, canton, city and municipality), that have enforceable court decisions, are obligated to foresee funds for payment of court decisions in amount of at least 5% of total Budget.

In the practice, this means that some creditors are waiting for the years to collect the claim from the state. The creditors are mainly employees in different state bodies, policeman, teachers, even judges) which sued the state for, for instance, salary, money for pension funds etc. A large number of them are waiting for years to collect their claim. Some of them were provided with the information that, with this tempo, their claim shall be settled in more than 20 years from now and some of them probably will not be even alive at that time. All this led to the conclusion that, Bosnia and Herzegovina, with the current law, is not obeying even basic principle of the enforcement and that the regulation in this term has to be drastically changed. Also, The Code prescribes that approach to the enforcement of all types of claims has to be the same no matter what amount of the claim is. In article 2 the Code prescribes that the debtor is answerable for his debts on all his goods and irrespective where those goods are. The Code leaves option for the states to prescribe sanctions if the debtor hides his estate and purposely organizes his insolvency.

254. Types of the enforceable titles according to the Code. As enforceable titles, article 3 prescribes that those are court decisions and also all other documents which are prescribed by the lay as enforceable documents (authentic instruments, arbitral decisions, judicial transactions etc.)

255. Right to an efficient enforcement procedure. The extremely important part of the creditor's right to efficient enforcement is prescribed by article 4 of the Code which states that the beneficiary of an enforceable judgment shall not be required to have recourse to other legal procedures to obtain enforcement. This means that the holder of the enforceable title will not be forced to go through procedure of for example, issuing decision on enforcement, as is current situation in Bosnia and Herzegovina where the

creditor has to file a motion for enforcement to the enforcement court. Enforcement court issues decision on enforcement which might be subject to legal remedies: first objection, settled by the first instance court (same one which issued decision on enforcement), then appeal, which will be settled by the second instance court. This represents huge obstacle to the creditor even initiating enforcement procedure.

256. Costs of the enforcement procedure according to the Code. When it comes to the costs of the enforcement, article 5 of the Code prescribes that states must ensure that enforcement costs are fixed, predictable, transparent and reasonable. According to the article 6, all creditors must have equal access to enforcement measures by providing judicial assistance and enforcement should not take place outside the hours determined in accordance with the national law of the State of enforcement (article 7).

257. Access to the information of the debtor. Access to the information, prescribed by article 9 of the Code, is out of crucial importance for enforcement procedure. It has to be noted that access to information in enforcement procedure cannot represent violation of the right to the privacy, and cannot be observed as violation of personal data protection regulations. It is true that access to the information has to be strictly monitored and controlled but it has to be noted that right of the creditor to collect his claim is stronger than personal data protection regulations. Therefore, as the Code prescribes, states must make provision that all relevant bodies, both public and private, shall disclose as quickly as possible to the professionals instructed with enforcement all information that they hold about the domicile, registered office or principal place of business of the debtor, as well as about the elements constituting its assets. These bodies may not withhold information by invoking professional confidentiality.

258. Support of the public bodies when accessing goods of the debtor. One of the important issues is what if the debtor is objecting and physically not allowing to the enforcement body to access his goods. Article 13 of the Code is stating that the state must upon its responsibility guarantee the assistance within a reasonable period of time the assistance of the forces of public order to the professional persons instructed with the enforcement of enforceable titles who request same and even if the debtor will not give

his consent or in his absence. But, since that in certain moment right to the protection of the private property could be endangered so, when the goods of debtor are to be found with a third party, the authorization of a court to enter the premises is required.

259. Importance of usage of the new technologies. The usage of new technologies is recognized as highly important in the Code. Article 14 states that states must ensure that the public is informed about the measures of enforcement and states must use the new technologies to allow cooperation between enforcement professionals. Also, the creditor must be able to keep himself informed of the enforcement measure by using the new technologies where applicable.

260. State authorization to perform enforcement procedure. In order to make it as unified as possible, The Code is also tackling judicial officers and enforcement agent subject. Article 16 prescribes that only a judicial officer or an enforcement agent authorized by the State may conduct an enforcement procedure in accordance with national law. The authorized agent or judicial officer is required to proceed with the required enforcement measures on every occasion and this is lawfully required of him, except in the event of those impediments provided by the law or any other cause justified by those reasons which are left to the discretion of the enforcement profession and in accordance with the rules of professional ethics. He is bound by professional secrecy (Article 17).

The persons instructed with enforcement must the subject to regulations governing their professional status which guarantee the quality of the enforcement by demanding a high level of legal qualification. Enforcement agents and judicial officers must be required to comply with obligations regarding initial training and lifelong training. (Article 18). A disciplinary procedure that complies with the rules of fair process before an independent organ that decides in adversarial proceedings must be installed. The disciplinary sanctions must be defined and be proportional to the gravity of the errors committed. The disciplinary decision may be appealed. (article 20)

261. Role of the judge according to the provisions of the Code. In order to make enforcement procedure completely lawful and regular for the debtor, there is also a judge

as a figure in enforcement procedure. Only a judge can rule on disputes arising from the enforcement and order the measures necessary for its implementation at the request of one of the parties or of the enforcement agent or judicial officer. The judge to whom application is made by the debtor, an interested third party, the enforcement agent or judicial officer may suspend or cancel an enforcement measure if a sound reason justify such (article 22) thing. The same judge has the power to grant a stay of enforcement (article 23). It is interesting that the Code prescribes in article 24 that, except if they are agents of the State, enforcement agents and judicial officers perform their activities under the supervision of the Public Prosecutor, who may, where applicable, send them an order to lend their assistance. The Public Prosecutor records all complaints formulated upon the occasion of an enforcement measure.

262. Exception and limitation of goods for seizure. Article 25. of the Code predicts which goods cannot be seized and those goods should be prescribed by national law. Also, when it comes to the seizure of bank assets, a sum must be left at the disposal of the debtor sufficient to ensure his and his family's subsistence. This also should apply to the income of the debtor. The amount of money necessary for his and his family's subsistence as well as his only home, should be basic and almost only limitation for enforcement procedure.

263. Proportionality as an important principle. Article 27. of the Code prescribes that proportionality of the enforcement measure must be ensured, meaning that the enforcement procedure must not be oversized and has to be proportional to the amount of the claim. In the event of abuse, the creditor may be directed to make reparations.

264. The right to choose the most effective mean of enforcement belongs to the enforcement agent. Very important and probably fundamental right of the judicial officer and the enforcement agent is that both of them autonomously implement the measure that is most appropriate to the rights of the creditor and the basic rights of the debtor, which is prescribed in article 28. of the Code.

265. Application of the provisional or conservatory measure by the judge.

An interesting article of the Code is the one which prescribes right to a provisional or conservatory measure to the creditor is article 33 of the Code. It states that every creditor

who shows relevant circumstances may obtain authorization from the judge for the application of a provisional or conservatory measure to ensure the protection of his rights. The creditor who is the holder of an enforceable title may implement the provisional or conservatory measure without the authorization of a judge. This is a very important possibility for every creditor which ensures that the creditor can timely react and prevent the debtor to act fraudulent and alienate his property. It is commonly known that creditor has no benefit even if the debtor has criminal liability for fraudulent acts if his claim will remain unpaid or unfulfilled. Therefore, above mentioned possibility of the creditor is some sort of guaranty that assets of the debtor will remain at his disposal for enforcement procedure. Of course, such possibility cannot be used as replacement for enforcement procedure so the law states in article 34 that preservative or provisional measures must be limited in time. Also, the procedure does not have to be adversarial. The person in whose respect the measure is ordered must be able to dispute it without delay and by a simplified means of applying to the judge. If the judge considers that the measure did not have merit, the party which applied for and obtained the measure must indemnify the other party in full.

Chapter 2 European Convention for the Protection of Human Rights and Fundamental Freedoms

266. Introduction. It is impossible to talk about the international standards and not to mention European Convention on Human Rights and Fundamental Freedoms and its protocols. In this paper, it is necessary to perceive its regulations related to the enforcement procedure. There are several articles that are directly connected to the respective subject and there are numerous decisions issued by European Court for Human Rights that are underlining violation of human rights in respect to enforcement procedure.

The volume of the problem and importance of its solvation may be fortified by analyzing numerous judgments of the European court related to the violation of article 6 (1) European convention and article 1 of Protocol (1). Important numbers of the decisions are related to state of Bosnia and Herzegovina.

Article 6. § reads as follows: "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

Article 1 of Protocol No. 1 reads as follows: "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

267. Presentation of the most interesting cases of the European court related to the enforcement procedure. For purposes of this paper, there will be several cases mentioned and the main points emphasized.

- One of the important cases is Case of Spahic and others v. Bosnia and Herzegovina (16 applicants), applications under following numbers: 20514/15, 20528/15, 20774/15, 20821/15, 20847/15, 20852/15, 20914/15, 20921/15, 20928/15, 20975/15, 21141/15, 21143/15, 21147/15, 21224/15, 21237/15 and 21239/15), final on 14th Feb 2018. The facts of this case are that The Central Bosnia Canton (one of the ten cantons in Federation of Bosnia and Herzegovina) was ordered to pay various sums in respect of unpaid work-related labor claims. Judgments were issued by First instance court in period from year 2009 – 2012 and became final. Enforcement procedure was initiated in order to collect the debt but, due to limitation of the enforcement on Budgetary funds, these claims were never collected. The state explained that financial situation is not god so the state has not enough funds to pay all claims and that they predict 5% of the budget for the enforcement but it was not enough. Both, domestic Constitutional court and European court for human rights found violation of Cantonal Constitution and the article 6 of The Convention Article 6 § 1 and Article 1 of Protocol No. 1 to the Convention.

The state of Bosnia and Herzegovina was ordered to secure enforcement of the domestic judgments under consideration in the present case within three months of the date on which the judgment becomes final and to pay each applicant sum of 1.000,00 EUR in respect to non-pecuniary damage and 500, 00 EUR with all possible taxes in respect of costs and expenses.

- The other case known as Kunic and Others v. Bosnia and Herzegovina, judgment issued 14th of Nov 2017, final 14th Feb 2018. This also judgment related to 16 applications (68955/12, 7270/15, 7286/15, 7316/15, 7321/15, 7325/15, 7336/15, 7408/15, 7418/15, 7429/15, 19494/15, 19501/15, 19547/15, 19548/15, 19550/15 and 19617/15) against Bosnia and Herzegovina. The facts of the case are similar to the previous only in this case Zenica-Doboj Canton was ordered to pay certain amount of money for labor related claims. Period of the judgments is from year 2008 to year 2009. The decisions became final in year 2008 and 2009. None of these claims were paid. The budgetary funds intended for that purpose have already been spent. The Court found that there has been a violation of Article 6 § 1 of the Convention and of

Article 1 of Protocol No. 1 to the Convention. The state of Bosnia and Herzegovina was ordered to secure enforcement of the domestic judgments under consideration in the present case within three months of the date on which the judgment becomes final and to pay each applicant sum of 1.000,00 EUR in respect to non-pecuniary damage and 500, 00 EUR with all possible taxes in respect of costs and expenses.

- Another case also related to the violation of Article 6 § 1 of the Convention and of Article 1 of Protocol No. 1 to the Convention is case Panorama LTD and Milicic v. Bosnia and Herzegovina. The court decision-judgment was issued in 2007 ordering the Federation to pay the first applicant 521,556.20 convertible marks (BAM) in respect of pecuniary damage, together with default interest at the statutory rate from April 1992, and legal costs. After legal remedies procedure, in 2009 enforcement order was issued. In 2013 enforcement procedure was still not completed. European court found State responsible for not enforcing final judgment and was ordered to secure full enforcement of the judgments on 10 and 28 May 2007 by paying of the applicants default interest awarded by these judgments.

- One of the important decisions that have to be tackled on this spot is case Vaskrsic v. Slovenia, application No 31371/12. The decision was issued on 25th of April 2017 and became final on 25th of July 2017. The main issue coming out of this judgment was disproportion between amount of the claim and the mean of enforcement as well as that in enforcement procedure house of the applicant got sold which was his only home. Facts of this case are as follows: against the applicant enforcement procedure for utility company claim and leasing company (whose claim was paid during the enforcement procedure) was performed. First, enforcement action was taken against movable asset of the debtor and hence resulted with no collecting of money; mean of enforcement became house of the debtor. Finally, his house got sold for debt amount of EUR 124. He argued that the decision was unlawful and that the sale of his house for such small amount of claim represents disproportionate interference with his property right. In this sense, the court found violation of Article 1 of Protocol 1 to the

Convention ordering the state to pay the applicant pecuniary damage, non-pecuniary damage, costs and interests.

268. Latest decisions related to violation of the article 6. Of the Convention.

There are numerous cases and final decisions of the European court for protection of human rights stating that human rights protected by The Convention and related to the article 6, right to the fair trial, has been violated in Bosnia and Herzegovina. But the problem is that such situation is still the same and **there are some new decisions** and in text that follows, those cases will be emphasized as well.

- Case Elčić and others (5 other applicants: Muhamed Hasičić, Fehim Musić, Hasib Duraković, Dževad Smaka and Jozo Jaković) - application number 34524/15 dated 17.01.2019., applicants were complaining for not enforcing or delayed enforcement of domestic decisions. Again, the Court reiterated that execution of a judgment given by any court must be regarded as an integral part of a hearing for the purposes of Article 6.
- Case of Šain and others v. Bosnia and Herzegovina, application number 61620/15 and 53 others, 17th of January 2019 where The Court found violation of stated article of the Convention and emphasized the same-the importance of efficient enforcement procedure. In this case, applicants have final court judgment against state (working disputes) but enforcement is pending before state bodies since there is a limitation on amount which can be enforced on budget means.
- Case of Dujak and Others v. Bosnia and Herzegovina, Application number 17303/15 and 52 others dated 07th of February 2019 where The Court found the violation of stated article of the Convention and emphasized the same-the importance of efficient enforcement procedure.
- Case of Hrnjić and others v. Bosnia and Herzegovina, application number 20954/13 and 57 others, dated 07.02.2019. , case Avdić and others v. Bosnia and Herzegovina, application number 47345/15, dated 07.02.2019., case of Zahirović and others v. Bosnia and Herzegovina, applications numbers 4954/15, 7294/15, 7311/15, 7356/15, 7419/15, 7434/15 and 10758/15), Case of Kaltak v. Bosnia and

Herzegovina, dated 25.09.2018., case of Josić v. Bosnia and Herzegovina, application number 48616/14, dated 25.09.2018.[181]

269. Final cases where violation of the articles of the convention was found.

There are numerous other cases against Bosnia and Herzegovina. In each of them the Court basically found violation of stated articles of European convention and the fact that final and enforceable court judgments were not enforced for period of six years or more. Each applicant was awarded with amount of EUR 1.000,00 in respect of non-pecuniary damage and amount of EUR 300, 00 to EUR 500, 00 in respect of costs and expenses.

The number of above stated cases and even more, number of applicants (considering that in particular cases more than 50 applications were jointly solved and decided shows how serious problema regarding enforcement procedure in Bosnia and Herzegovina are and they emphasize the importance of its solvation.

[181] For more cases and final judgments against Bosnia and Herzegovina before The court please see: http://www.mhrr.gov.ba/ured_zastupnika/odluke/default.aspx?id=170&langTag=bs-BA

Chapter 3 Other relevant international standards

270. Introduction. When it comes to the other relevant international standards, there are two directions to look to: 1. enforcement procedure within the member states of the European Union and 2. the Council of Europe instruments.

271. "General approach and means of achieving effective enforcement of judicial decision" Resolution. In Moscow, on 4th and 5th October 2001 Council of Europe's Conference of European Ministers of Justice was held. At the conference, there was a resolution adopted named "General Approach and Means of Achieving Effective Enforcement of Judicial Decisions". The Conference agreed that "The proper, effective and efficient enforcement of court decisions is of capital importance for States in order to create, reinforce and develop a strong and respected judicial system."[182]

272. Council of Europe Recommendation (2003) 16 on the execution of administrative and judicial decisions in the field of administrative law. Next important document is the Council of Europe Recommendation (2003) 16 on the execution of administrative and judicial decisions in the field of administrative law which stressed that "rights protected by the European Convention on Human Rights, of which the execution of court decisions within a reasonable time must be regarded as an integral part" and that "Resolution No. 3 of the 24th Conference of European Ministers of Justice, held in Moscow from 4 to 5 October 2001 invited to a "general approach and means of achieving effective enforcement of judicial decisions", inviting the Council of Europe to "identify common standards and principles at a European level for the enforcement of court decisions" this resolution said as follows: The Resolution Recommended that the governments of member states "ensure the effective execution of administrative and judicial decisions in the field of administrative law by following, in their legislation and

[182] Resolution No 3 on General approach and means of achieving effective enforcement of judicial decisions, 24th Conference of European Ministers of Justice – October 2001

their practice, the principles of good practice contained in the appendix to this recommendation."

An Appendix consists of two parts. One part is named Execution of administrative decisions regarding private persons and a second part is name Execution of judicial decision regarding administrative authors.

The scope of application is that the principles should apply to any "individual measure or decision which is taken in the exercise of public authority and which is of such nature as directly to affect the rights, liberties or interests of persons, either physically or legally."

What was said and which is really important is that the member states were invited to provide legal framework to ensure that physical persons comply with administrative decisions.

An interesting thing prescribed by this resolution is that decision on appeal of competent body is directly linked to a legal certainty.

Regarding enforcement procedures it was said that enforcement procedure and money fines should be done in such way that they respect principle of proportionality.

273. Another important document was Council of Europe Recommendation (2003) 17 on enforcement. The document gave a clear picture on how enforcement procedure should be like, what principles should be respected and what rights and obligations an enforcement agent should have. This resolution emphasized several very important international principles regarding the enforcement procedure: Those principles are:

- enforcement of a court judgment is an integral part of the fundamental human right to a fair trial within a reasonable time, in accordance with Article 6 of the European Convention on Human Rights
- the rule of law principle can only be a reality if citizens can, in practice, assert their legal rights and challenge unlawful acts

- risk that without an effective system of enforcement, other forms of "private justice" may flourish and have adverse consequences on the public's confidence in the legal system and its credibility

It is interesting that already in year 2003, in this document, "Enforcement agent" was 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.

274. Instructions to the Member States given by the Recommendation (2003) 17. Furthermore, this document gave several instructions for the Member States in order to make enforcement procedures "as effective and efficient as possible". First condition was that each state has a legal framework which will define a powers, rights and responsibilities of each person involved in enforcement process as well as the enforcement procedure itself. It was stressed that each state should prevent misuse of the enforcement process by either party and this has to be prescribed by the law, as well. The document gave a comment to postponement of enforcement procedure and said that there should be no postponement of the enforcement process unless there are reasons prescribed by law and that postponement should be subject to review by the court.

The Resolution was clear about having enforcement procedure prescribed by the law in detail so it is foreseeable and easy to manage by enforcement agents. The enforceable titles should be clearly listed and in specific there should be no dilemma about when they become enforceable. The law should prescribe most effective service of documents and a fee of agents should be reasonable and public available. Regarding enforcement agents, they role has to be in detail prescribed by law and those would have to be persons with high moral standards and relevant knowledge regarding enforcement regulations. Their ethic would have to be strong and they must not be bias towards any of the parties or participants in the enforcement procedure.

These are only some of the very important principles and instructions that state members should be strict when introducing/reforming their enforcement procedure.

275. Role of CEPEJ in the framing of the enforcement procedure. How important enforcement of decisions in each legal system is, shows that the Council of Europe's European Commission on the Efficiency of Justice (CEPEJ) created a working group on enforcement of judicial decisions (CEPEJ GT-EXE). This working group is supposed to elaborate Guidelines for effective application of the existing Council of Europe standards on enforcement. They published these guidelines in December 2009, named them and their are aiming to improve implementation of the existing Council of Europe's Recommendation on Enforcement, CEPEJ (2009) 11 REV.

276. The CEPEJ Guidelines rules. The CEPEJ Guidelines stressed out that already in October 2005 the Secretary General of the Council of Europe underlined that the enforcement of judicial decisions is an essential element in the functioning of a state based on the rule of law. Obviously, back then member states were facing difficulties regarding this important part of legal system. It is absolutely necessary to have an efficient enforcement process in order to have, as said, the functioning state based on the rule of law.

This position of the Secretary General and Council of Ministers was confirmed by numerous cases before the European Court of Human Rights which practice continued up to today.

Main principles and objectives on enforcement procedure were also given and it is stated that for the rule of law to be maintained and for court users to have confidence in the court system, there needs to be an effective but fair enforcement processes. But it was stressed that, of course, this principle is not possible to implement if the debtor has no assets to comply with a judgment and fulfill his obligation stated in the judgment. These cases should be recognized and dealt with in other manner other than enforcement procedure.

Furthermore, the CEPEJ Guidelines emphasized that there should be balance between the needs of the claimant and the rights of the defendant. The European Court of Human Rights issued several judgments where this principle was not respected such as in the case Vaskrsic v. Slovenia, where a house of the debtor was sold for the debt to utility company amounting less than EUR 1.000,00.

Next principle is that the enforcement process should be sufficiently flexible so as to allow the enforcement agent a reasonable measure of latitude to make arrangements with the defendant, where there is a consensus between the claimant and the defendant. Of course, such control should be subject to control of the court and this possibility would have to be prescribed by domestic law.

277. Importance of the transparency of the procedure according to the CEPEJ. Regarding enforcement process, the member states should take measures to ensure that information are available in the enforcement process and that there is a transparency of the activities of the court and those of the enforcement agent at all stages of the process, provided that the rights of the parties are safeguarded. To ensure such transparency and effectiveness, there should be effective communication between the court, the enforcement agent, the creditor and the debtor. All the stakeholders should have access to the information on the ongoing procedures and their progress.

278. Importance of the competition of the private agents according to the CEPEJ Regarding enforcement agents, the CEPEJ Guidelines state the geographical distribution of enforcement agents within a country should ensure the widest possible coverage for all potential parties. Where enforcement agents carry on their profession as a private practice, member states should ensure that there is sufficient competition and clearly defined geographical competence. This is why on each region there should be several private agents to ensure that the citizens will have possibility to choose between agents and at the same time that the agents have opportunity to prove themselves between two or more agents.

As any other legal procedure, while performing enforcement procedure, measures should be taken to ensure that the parties are able to understand the process of enforcement in which they are involved, and, where possible, have the option of participating in the proceedings without the need for legal representation.

279. Importance of the service of the documents according to the CEPEJ.

It is important that all stakeholders are notified about issues concerning the enforcement of judicial decisions or enforceable titles due notification of parties is a necessary element of a fair trial, in the sense of Article 6.1 of the European Convention on Human Rights. According to the CEPEJ Guidelines the member states may draw up standard documents to notify parties. Notification has special importance to encourage the defendant to comply with the court order voluntarily and include a warning that in case of non-compliance enforcement measures could be used.

Furthermore, CEPEJ Guidelines stated that delivery or service of the documents and notifications is of huge importance and enforcement agents should be allowed to perform delivery to the parties or any other participant in enforcement process. It would be his responsibility that service is done correctly and within reasonable time.

280. Importance of public sales according to the CEPEJ. Specific importance by CEPEJ Guidelines was given to the informing potential buyers in the enforcement procedure that public auction shall be held and what are the items and conditions to participate in public auction. It is up to state members to determine way of notifying or publishing such information.

281. Defining enforceable titles according to the CEPEJ. Regarding, what is to be considered as enforceable title, the CEPEJ Guidelines determined that national legislative framework should contain a clear definition of what is considered an enforceable title and the conditions of its enforceability. Furthermore, as an instruction to the subjects issuing enforceable titles, the Guidelines determined that enforcement titles should be drafted in clear and comprehensible way, leaving no opportunity for misinterpretation.

282. Provisions of the CEPEJ guidelines regarding enforcement agents.

Regarding enforcement agents, the CEPEJ Guidelines outlined that in order to have quality enforcement, there have to be quality of enforcement agents. They have to go through a training so the states ensure that all candidates are ready to perform their duties. All this together is to increase public trust in judiciary and enforcement procedure.

283. Importance of the expertise of the enforcement agents according to the CEPEJ. In order to ensure unification of the member states, the CEPEJ Guidelines gave instruction what initial and continuous training could encompass. That would be:

- the principles and objectives of enforcement;
- professional conduct and ethics;
- stages in the enforcement process;
- the appropriateness, organization and implementation of enforcement measures;
- the legal framework;
- role-playing and practical exercises as appropriate;
- assessment of trainees' knowledge;
- international enforcement of judicial decisions and other enforceable titles.

284. Organization of the enforcement agents according to the CEPEJ. The CEPEJ Guidelines also gave some instructions about organizing of enforcement agents and stated that it is desirable that enforcement agents should be organized in a professional body representing all members of the profession, thereby facilitating their collective representation and the gathering of information and if there is such a body or professional organization of enforcement agents, membership of this representative body should be compulsory.

Regarding the rights and obligations, according to a CEPEJ Guidelines, enforcement agents, as defined by a country's law, should be responsible for the conduct of enforcement within their competences as defined by national law. Member states should consider giving enforcement agents sole competence for:

- enforcement of judicial decisions and other enforceable titles or documents, and
- implementation of all the enforcement procedures provided by the law of the state in which they operate.

285. Secondary activities of the enforcement agents according to the CEPEJ. As enforcement agents are to be well trained and educated, according to a CEPEJ Guidelines enforcement agents may also be authorized to perform secondary activities

compatible with their role, tending to safeguard and secure recognition of parties' rights and aimed at expediting the judicial process or reducing the workload of the courts. These may be, among others:

- debt recovery;
- voluntary sale of moveable or immoveable property at public auction;
- seizure of goods;
- recording and reporting of evidence;
- serving as court ushers;
- provision of legal advice;
- bankruptcy procedures;
- performing tasks assigned to them by the courts;
- representing parties in the courts;
- drawing up private deeds and documents;
- teaching.

286. Insurance and other means of the collateral of the enforcement agents according to the CEPEJ. The enforcement agents, according to a CEPEJ Guidelines should not be able to refuse a case except in cases of impediment or where they are related by blood or marriage to a party. Enforcement agents should be precluded from being assigned disputed rights or actions in cases with which they are dealing. Furthermore, they should be obliged to open a non-attachable account specifically intended for depositing funds collected on behalf of clients. This account should be subject to inspection. They should also be required to take out professional and civil liability insurance. Enforcement agents should benefit from social insurance cover.

287. Ethics of the enforcement agents according to the CEPEJ. The CEPEJ Guidelines prescribe that enforcement agents should be subject to clearly stated rules of ethics and conduct, which could be set out in professional codes of conduct. These codes of conduct should inter alia contain professional standards regarding:

- information to be given to parties by enforcement agents concerning the enforcement procedure (grounds of action, transparency and clarity of costs, etc.)

- the rules governing the formulation of notices to parties (enforcement agents' social role, duty of advice, etc.)
- professional ethics (behavior, professional secrecy, ethical criteria governing the choice of actions, etc.)
- smooth enforcement (predictability and proportionality of costs and lead-times, co-operation between enforcement services, etc.)
- procedural flexibility (autonomy of enforcement agents, etc.).

288. Access to the information on the debtors' assets according to the CEPEJ.
One of the most important things prescribed in CEPEJ Guidelines is that, if a country wants to ensure the creditors right to adequate assistance to the enforcement proceedings, the enforcement agent should be allowed to access public registers so that they can confirm essential information about the debtor. These information should include information on identifying the debtor and his whereabouts for enforcement purposes and the data accessible through public registers (i.e., land registers, court registers of companies, etc.) subject to the freedom of information and data protections laws of the national state.

289. Usage of the modern technologies for access to the information according to the CEPEJ. According to the CEPEJ Guidelines, the aforementioned data should be available to the enforcement agent upon a written request and upon production of sufficient proof of interest (i.e., judgment or another enforceable title) but the information should be directly accessible to the enforcement agent where there is an accessible database. Member states are encouraged to consider making such information available to the enforcement agent by Internet through a secured access, if possible. Furthermore, in order to ensure efficient enforcement procedure and in order to prevent the defendants from avoiding enforcement by relocating their assets, member states are encouraged by CEPEJ Guidelines to establish a unique multi-source restricted access database about debtor' attachable assets (i.e., ownership rights over a vehicle, real estate rights, payable debts, tax returns, etc.). Member states should provide the database with an acceptable level of security, with respect to the risks incurred. Access of the enforcement agent to the database should be restricted to that data pertaining to the pending enforcement procedure and it

should be subject to thorough control. Member states should provide the defendants with effective legal means to ensure that any inquiry about their personal assets is justified.

In this regard, it is extremely important that co-operation between the various organs of state and private institutions, subject to compliance with the data protection legislation, is essential for enabling a speedy access to the multiple-source information on defendants' assets.

In those cases where there is no electronic database accessible to enforcement agent, all state bodies, which administer databases with information required for efficient enforcement, should have a duty to provide the information to the enforcement agent, within an agreed time-limit if such information is compatible with data protection legislation.

290. Role of the data protection body for access to the information. In this regard, it is important that national bodies in charge of data protection realize importance of enforcement procedure and in direct connection, access to information, so national legislation on personal data protection should be scrutinized in case it needs to be adapted to allow efficient enforcement procedures. Connected to this, enforcement agents must bear a responsibility for maintaining confidentiality when secret, confidential or sensitive information comes to their attention in the course of enforcement proceedings. In case of a breach of this duty, measures of disciplinary liability should be applicable, along with civil and criminal sanctions.

Furthermore, CEPEJ Guidelines invited member states to consider allowing enforcement agents to reuse information on the defendant's assets in subsequent procedures that involve the same defendant. The reuse of information should, however, be subject to a clear and precise legal framework (i.e. setting strict timeframes for data retention, etc.). This could be multi-useful since debtors are mostly repeating in different enforcement procedures and with different creditors, If several motions for enforcement were filed within a month, for example, it is not likely that the assets of the debtor changed in the meantime.

291. Transparency of costs of enforcement procedure according to the CEPEJ. Regarding the costs, member states are encouraged to introduce regulations governing the level of enforcement costs to ensure effective access to justice or to introduce schemes allowing the waiver of costs or a postponement of their payment, where such costs are likely to fall to the parties. The latter are informed as fully as possible about the enforcement costs (enforcement fees and the performance fees due upon successful completion) that have to be ensured. This information should be made available to the parties not only by the enforcement agent but also by the courts, consumer organizations, procedural codes or via the official internet sites of the judicial and professional authorities.

In order to guarantee access to justice, legal aid schemes, or alternative funding schemes, should be available to claimants who are unable to pay enforcement fees (i.e. by means of state funding or by remitting the fees). Where it is granted, the state may, if considered just, avail itself with mechanisms allowing it to recover its outlay from the proceeds of enforcement.

292. Importance of possibility to set an agreement between the parties according to the CEPEJ. Very interesting position of CEPEJ Guidelines is that it states that priority should always be given to reaching agreement between the parties in order to coordinate enforcement timeframes. Where the parties agree between themselves a timeframe for enforcement then any procedures put in place by the member state should not preclude these agreements from taking effect. In practice, it is very often that parties make an agreement, prolong enforcement procedure for a year or longer and the agreement does not get fulfilled and enforcement procedure takes a place again.

When enforcement procedure is finished and creditors claim gets fulfilled, enforcement agent needs to make sure that this information is communicated to the creditor.

293. Control of the work of the enforcement agents according to the CEPEJ.
The CEPEJ Guidelines proposes that each member state establish European quality standards/criteria aiming at assessing annually, through an independent review system and

random on-site inspection, the efficiency of the enforcement services. Among these standards, there should be, as stated in Guidelines:

- clear legal framework of the enforcement proceedings establishing the powers, rights and responsibilities of the parties and third parties;
- rapidity, effectiveness and reasonable cost of the proceedings;
- respect of all human rights (human dignity, by not depriving the defendant of a minimum standard of mere economic subsistence and by not interfering disproportionally with third parties' rights, etc.);
- compliance with a defined procedure and methods (namely availability of legal remedies to be submitted to a court within the meaning of Article 6 of the ECHR);
- processes which should be documented;
- form and content of the documents which should be standardised;
- data collection and setting-up of a national statistic system, by taking into account, if possible, the CEPEJ Evaluation Scheme and key data of justice defined by the CEPEJ;
- competences of enforcement agents;
- performances of enforcement agents;
- the procedure, on an annual basis:
- the number of pending cases;
- the number of incoming cases;
- the number of executed cases;
- the clearance rate;
- the time taken to complete the enforcement;
- the success rates (recovery of debts, successful evictions, remittance of amounts outstanding, etc.);
- the services rendered in the course of the enforcement (attempts at enforcement, time input, decrees, etc.);
- the enforcement costs incurred and how they are covered;
- the number of complaints and remedies in relation to the number of cases settled.

294. Disciplinary and other sanctions for enforcement agents according to the CEPEJ. Due to a very important role of the enforcement agents, it is important that there are consequences for them for breaking law, regulations or rules. The consequences should be disciplinary sanctions, civil and criminal sanctions. Disciplinary offences and sanctions should be prescribed in advance and feasible to the enforcement agents. But jet, disciplinary procedures should be carried out by an independent authority.

PART 2: PERSPECTIVES OF EVOLUTION

295. Introduction. Considering that Bosnia and Herzegovina and France have basically different enforcement systems, both of them are laying on the similar principles which are aiming to ensure that the claim of the enforcement creditor is efficiently collected but at the same time to protect some basic rights of the debtor. The basic difference lays in the fact that the joint goal of both systems is obtained by one and completely filed to be obtained by the other one. Therefore, enforcement system of France should be implemented in its best shape in Bosnia and Herzegovina introducing completely new enforcement system and introducing well educated and professional enforcement agents, as they should be considering on how important legal issues they are dealing with. Besides well legal education, it is out of crucial importance that enforcement agents have good IT education to able to make use of all that digital technology in the profession. Now days, it is not enough to know the law but it is important that all benefits of different novelties are introduced and used in the profession. That is the only way to keep up and to be able to efficiently fight all challenges to come. But, before introducing new system into one already existing, it is necessary to make direct comparison of those two systems. The comparison would understand underlining all similarities and all differences between two systems (title 1) and in next step proposal of new system.

Another important issue that has to be taken into consideration is the impact of information technologies on enforcement system. That is the reality that should not and cannot be ignored giving the possibilities that are given (title 2). It is impossible to leave out of the system novelties and enormous possibilities that are opening when information technologies are included into the legal system of the one country. These possibilities are opening wide range of the access to the information, service of the documents, more efficient communication between the parties, online sales visible to much more potential

buyers in opposite to the pure sales advertised on the court board and much more other options that become available and at the disposal of all actors of enforcement process interested to finish enforcement case by collecting claim which was the reason why enforcement procedure was even initiated.

TITLE 1 DIRECT COMPARISON OF THE BOSNIA AND HERZEGOVINA AND THE FRENCH SYSTEM OF ENFORCEMENT: THE MAIN SIMILARITIES AND DIFFERENCES

296. Introduction. When it comes to the direct comparison of French and Bosnian system of enforcement it has to be noted that there are areas where these two systems are quite similar and areas where they are completely different. As most of the other systems there are some basic principles which each modern society already implemented in terms of safe guarding dignity of the debtor and ensuring that qualified individual is taking care of enforcement process.

297. When it comes to the similarities. It is important to note that some basic principles are applied to both systems. For instance, there is limitation of the enforcement procedure on personal belongings of the debtor or sum of money necessary to the debtors living and his family. Also, same applies for the income and bank account of the debtor. Other similarities relate to the real estate where both in France and in Bosnia and Herzegovina judge has to be involved and approve enforcement procedure as well as eviction matters.

298. When it comes to the differences. Main difference lays in body which performs enforcement actions. In Bosnia and Herzegovina, complete procedure is carried out by the court bailiff and under constant supervision of the enforcement judge. Opposite to French system where enforcement agents are completely autonomous in performing enforcement actions and other duties, court bailiffs, who perform enforcement actions in Bosnia and Herzegovina, are supervised by enforcement judge. It is the judge who has power to annul actions of court bailiff and actually give orders to the bailiff what and how to do their work. It is interesting to say that court bailiffs have no power to perform enforcement on immovable assets and judge does it by himself, including sales of the immovable assets.

299. Key role of the enforcement creditor in movement of enforcement procedure. Opposite to France where bailiff decides on mean of enforcement and is leading factor when performing enforcement actions, in Bosnian system the creditor has complete control over the decision in which direction enforcement will go and what will be the mean of enforcement.

300. Powers to change mean and subject of enforcement. Even if the judge has information on more efficient mean of enforcement, he has no power to change it until the creditor files a request to the court to change the mean and subject of enforcement. Until recently, it was not possible to change the mean of enforcement until the subject of enforcement (for example salary) was initially declared as unsuccessful. This was a court practice which has now been changed. This change came after numerous decisions of The European court of Human Rights related to the violation of right to fair trial – length of proceedings. After those decisions were issued, now the subject and mean of enforcement may be changed if the creditor has information on more efficient subject and mean of the enforcement procedure (for instance switch from movable assets to the salary).

301. Existing system in B&H may be a foundation for the new system based on the French. Detailed analysis of two respective enforcement systems shows that it is possible to conclude that current system of Bosnia and Herzegovina represents solid foundation for implementation of French enforcement system within it, of course adapted to the social and financial situation in Bosnia and Herzegovina. Such claim can be made with solid justification.

302. Change of the leading body as a possible challenge. Current system of enforcement in Bosnia and Herzegovina already has fundamental/basic principles already in force. One has to have in mind that several issues might appear as a problem. One of the issues to be faced with is separating bailiffs from the court and a judge. Many years ago, the enforcement procedure was a court procedure. Mentally, it can be very hard to make a change in the mindset of the population and to make it accept that it is not the judge who shall decide and lead enforcement procedure.

303. Increase of the expenses as a possible challenge. Introducing new system of enforcement that would include private agents means introducing whole new profession, that would without any doubt increase costs of enforcement procedure. At this moment it is quite cheap to initiate enforcement procedure in Bosnia and Herzegovina. For instance, this is a price list according to the Law on court fees in Zenica-Doboj Canton[183] taking into account value of the claim and bearing in mind that current currency ratio is 1 EUR = 1,95 KM:

- les s than 500,00 KM fee on motion on enforcement is 10,00 KM and on decision on enforcement additional 10,00 KM;
- b) between 500,00 KM and 1.500,00 KM fee on motion on enforcement is 25,00 KM and on decision on enforcement additional 25,00 KM;
- between 1.500,00 KM and 3.000,00 KM fee on motion on enforcement is 40,00 KM and on decision on enforcement additional 40,00 KM;
- between 3.000,00 KM and 10.000,00 KM fee on motion on enforcement is 75,00 KM and on decision on enforcement additional 75,00 KM;
- over 10.000,00 KM to 50.000,00 KM fee on motion on enforcement is 150,00 KM and on decision on enforcement additional 150,00 KM;
- over 50.000,00 KM to 100.000,00 KM fee on motion on enforcement is 250,00 KM and on decision on enforcement additional 250,00 KM;
- over 100.000,00 KM fee on motion on enforcement and on decision on enforcement amounts 1% of specified value of the claim, but not higher than 8.000,00 KM.

The fee that needs to be paid on filed objection is the only double fee that needs to be paid on motion for enforcement and there is no fee for filing an appeal.

304. New profession as a part of the existing system as a possible challenge.
As previously emphasized, Bosnia and Herzegovina has extremely complex political structure and there are three leading ethnic groups whose political leaders are protecting their political functions and positions by maintaining political situation complex as it is.

[183] Official gazette of Zenica-Doboj Kanton No. 1/2016 – consolidated version

In this regard, it will be extremely hard to get four parliaments to adopt the laws which shall introduce this radical change. Each of them is trying to avoid losing cheap political points by passing any law which might lead to the dissatisfaction of the voters they represent. Therefore, it remains to be seen how this extremely complex situation shall be solved.

305. Low life standard as a challenge. In this matter it has to be noted that Bosnia and Herzegovina as a country is facing low salaries and high percentage of the unemployment. It is necessary to mention serious problem B&H is facing in past several years. Hundreds of thousands mid-aged and young people are leaving country looking for a job within other European countries. As latest research show, numerous young, qualified doctors, engineers, pharmacists, carpenters etc. emigrated with their families with no intention to ever return . Bosnia and Herzegovina is a country of emigration that has been continuously declining in the last few decades. A huge population decline was recorded in the 1990s during the war in BiH (1992-1995) because of high war-related mortality and forced migration. Immediately after the war, some BiH citizens returned to the country from exile. However, by the end of the first decade in the 2000s, the population decreased from 4.1 million (1991 census) to 3.5 million (2013 census), while some estimates (based on Labor Force Survey data) suggest that the population has been reduced to less than 3 million in 2018. The second decade of the 21st century, which is the main focus of this report, was also characterized significantly with emigration, especially during the last few years (2016 - 2019). That emigration trend is combined with negative natural population growth throughout the decade, and as a consequence the population has shrunk for both reasons. Cohort approach analysis based on Survey data on the labor force used in this study suggests that net emigration in the past decade (2011 - 2019) resulted in the departure of over 400,000 citizens. That's a decrease of about 13% of the population, and this decrease is higher among the younger and more productive generations, and this makes the older population as the average population of the country.[184]

[184] The report "Interaction of migration, human capital and markets work in Bosnia and Herzegovina", Adnan Efendić, Report drafted by Adnan Efendic for the European Training Foundation, under the supervision of the Vienna Institute for International Economic Studies (wiiw). Manuscript completed in April 2021., page 29

As a consequence, this means that pensions which are even now extremely low (min. cca EUR 150,00) would be even lower since those citizens that make most of the working power are massively leaving the country. This also means that enforcement procedure against such persons with low income of pensions will be in advance doomed to failure. All this has to be taken into account when proposing new system of enforcement in Bosnia and Herzegovina.

Section I. The proposal of a new enforcement system in Bosnia and Herzegovina

306. Introduction. Introducing the new system requires thorough changes in the old system. This is why it is essential that in the proposal for the new enforcement system in Bosnia and Herzegovina there is a proposal of all necessary changes that must be made in order to change the system as a whole. The ultimate goal is to create a proposal for a new system of enforcement that will not be an unnecessary burden for the courts, the system which will recognize the social category of the population and which will be effective towards the debtors which are solvent and are able to pay the debt but just avoiding to fulfill their obligation.

In this section the detailed **proposal for a new legislative framework** will be made with the changes of the existing. Already existing laws regulate a whole different system, a system of judicial enforcement. Because of this, the introduction of the new system of private bailiffs means adopting a completely new legislative framework and new regulations governing the enforcement procedure, private bailiffs, their status and the regulation of other new categories. In addition to the new legislative framework, in this part of the paper there will be proposed changes of those regulations that do not require being completely new but they do require certain changes to fit in the newly-formed system.

Furthermore, **as private bailiffs are a completely new category** in this part of the paper a proposal on how to organize private bailiffs and their training, what are their powers and responsibilities, and so on, will be given. In particular the relation to the changes in social policy will be made so that, in the new system, the category of socially vulnerable people will be recognized. Also, a proposal for a transitional period will be given as it is necessary to leave time for the new system to become operational and it is necessary to find a way for the disposal of bailiffs that perform these duties in the existing system.

307. Characteristics of current system in Bosnia and Herzegovina. As may be concluded from the text above, it is obvious that Bosnian system of enforcement is old fashioned and outdated, since most of the European countries and the ones who are pretending to be so, already accepted private enforcement system, including neighbor countries Croatia and Serbia. But old system of court enforcement would not be so bad if it wasn't so inefficient. That is the worst characteristic of that system. The last one could be also underlined as the most important one since that modern economies request efficient judicial system as a precondition for economic development of the country.

308. Economic crisis as an indirect consequence of the inefficient enforcement.
Bosnia and Herzegovina is facing its biggest economic crisis since war 1992-1995 caused by different factors. The most important one is legal insecurity and therefore lack of serious business investors of big world companies. Bosnian judicial system is still dealing with war crime cases, corruption is on extremely high level[185] and the courts are burdened with the enforcement cases lasting for several years and mostly ending with procedural decision of concluding case without collection of money. All above mentioned represents certain magical circle from which Bosnia and Herzegovina is incapable to move on for decades. Something must be changed as soon as possible. It is not certain that introduction

[185] Bosnia and Herzegovina is the 91 least corrupt nation out of 175 countries, according to the 2017 Corruption Perceptions Index reported by Transparency International. Corruption Rank in Bosnia and Herzegovina averaged 84.27 from 2003 until 2017, reaching an all-time high of 99 in 2009 and a record low of 70 in 2003. Taken from https://tradingeconomics.com/bosnia-and-herzegovina/corruption-rank, on date 01/12/2018

of private enforcement agent will solve crisis but we are convinced that it will be a major step ahead.

309. Efficiency as a must for private enforcement agents. There is no doubt that enforcement agents as private officers are more interested in effective closing of the enforcement case with collection of the claim as a final result than the court bailiffs are. Court bailiffs, acting as employees of the court, have fix salary which is same no matter how enforcement cases are finished. They have no interest to collect money and make claim of creditor's payment. It applies to the judges, as well. For most of them, their real interest is to close a case and put it aside so their work is finished. Those are not result-oriented participants of the proceedings even they are the most important ones.

310. Proposals for new law on enforcement. Proposals for a new legislative framework in Bosnia and Herzegovina and modifying the existing, were necessary and a completely new system is to be introduced in Bosnia and Herzegovina, new legislative will also have to be introduced. Some of the existing laws might be only modified in certain parts but some new laws will have to be introduced as well.

311. Proposal for new law on enforcement agents. In the current system, Law on enforcement procedure is a basic law which prescribes compete judicial procedure of enforcement including the court bailiffs and their role in it. Having that in mind, as above said, completely new law on enforcement would have to be presented, new law on enforcement agents will have to be introduced as well as completely new system of bylaws regulating its status, procedures, competences, liability etc.

Section II. The introduction of the new profession of private enforcement agents

312. Introduction. The new profession of private enforcement agents, as it does not exist in current legal system in Bosnia and Herzegovina, has to be completely regulated

so a new laws and bylaws have to be adopted. There are several regulations related to private agents that will have to be adopted:

- Law on enforcement procedure,
- Law on enforcement agents (which will also include disciplinary proceedings, training, territorial competence, chamber as a part of the law or as a bylaw, if law makers decide to not burden basic law with regulation which normally can be part of the bylaw regulations.);
- Tariff for enforcement agents,
- The code of ethics for private enforcement agents.

It is always hard to complete the system from all over but in the case of Bosnia and Herzegovina it has to be done since, at the moment, efficiency of the enforcement procedure is the weakest circle in the chain of general reforms which are ongoing in last 15 years. Particularly weakness has been showed in judicial sector.

313. Importance of taking into consideration EU legislative. Despite that Bosnia and Herzegovina is not a member of European Union, still, when proposing the new system, including a system of enforcement, European standards have to be respected. As other countries being on territory of the European continent, Bosnia and Herzegovina is streaming to join European Union so Bosnian legislative, as any other segment, has to be harmonized and prepared to join, in advance.

314. Scope of liability of the private enforcement agent. Main characteristics of new system that should be introduced are to be described in text which follows. First of all, it is important that the private enforcement agents have same scope of responsibility and liability as a state bailiff, even wider, due to access to the information that private enforcement agents would have. It is of crucial importance that private enforcement agent has direct access to the information on debtor's assets as well as the power to switch the mean and subject of enforcement if he finds that there is more efficient one. These powers should also be considered in terms of proportionality of claim and the scope of seizure.

315. Direct access to the information and power to use the information as a must. Main problem that caused inefficiency of enforcement procedure can be found in the fact that the court bailiffs have no direct access to the information on debtor's assets nor the power to switch mean of enforcement when relevant information is provided to him. Very often, during the process of seizure of movable assets, the debtor himself provides the court bailiff with the information that he is pensioner, for instance. Even if enforcement on money claim of the debtor is without any doubt more efficient mean of enforcement, court bailiff or judge have no power to switch mean of the enforcement on their initiative. They are not even authorized to provide the enforcement creditor with this information. In the practice, when court bailiff is more proactive, he would note down this fact in his record and afterwards, this record is forwarded to the enforcement creditor through regular procedure. This is how creditor is indirectly provided with the information on more effective mean of enforcement which he later may use to initiate change of the mean of the enforcement. This is the best example to see how enforcement procedure is completely dependent on creditors activities and initiatives during the procedure.

316. The decision of the enforcement judge for every single step of the procedure with appealing possibility. One of the major issues is the fact that the enforcement judge has to approve every single step during the procedure of enforcement with his own decisions. Mostly, the decisions of the enforcement judge may be objected or appealed. All this leads to delay of enforcement procedure to indefinite and with no visible result in terms of collecting the claim and getting positive result which is a solely purpose of enforcement procedure. Access to the information on the debtor's assets, according to the rules of current legislation, is only available to the courts. This access is provided in such way that, upon request of the creditor, judge sends a letter to the holder of the information: Taxes Service which has register of employees, pensioners or if there is any other basis for tax collection, Police Administration body which has register of registered cars and owners, banks as an owner of the information on bank accounts etc. After this information is delivered to the court, then the court is forwarding the information to the enforcement creditor who is afterwards with the information.

317. Enforcement procedure as a never-ending story. All these factors in practice mean that the creditor who has enforceable title has to file the motion to the court asking for the decision on enforcement which can be issued only by enforcement judge. The law on enforcement procedure prescribes what elements of motion it has to contain and if one of those are missing then judge is returning it to the creditor to adapt it. One of the main elements of the motion is mean of enforcement. Motion for enforcement without this element is deficient and must be returned for correction. Next step is that enforcement judge issues a decision on enforcement which can firstly be objected and if objection is rejected by the judge such decision on objection can be furthermore appealed. Afterwards, enforcement creditor has to initiate every single step of the enforcement bodies, judge or bailiff, and missing one deadline shall lead to the closure of the case due to formal reasons.

318. Important factors if aiming to achieve result-oriented enforcement. Based on all above said, when proposing a new system the following has to be bear in mind: Firstly, the enforcement has to be efficient and all regulations have to be result oriented. The state as a debtor, as any other physical or legal person, must not be exempted of enforcement so limitation within the budget must not exist. Enforcement must not depend on another decision in order to begin the procedure. It is well known fact that the litigation procedure is usually long lasting and exhausting. When it finally gets to the enforcement procedure, that means that the debtor did not fulfill his obligation within the deadline and it should be easy to start, fast, easy going and efficient. Every further delay is indubitably leading to the human rights violation. No further decision should be necessary and possibilities for the legal remedies during the enforcement procedure should be minimized. Reason out of which the debtor should have possibility to object the decision on enforcement is that he already paid his debt. The enforcement procedure should be conducted with no further delays. Direct access to the information is out of enormous importance part for enforcement process. It is impossible to have efficient enforcement procedure if the creditor has no direct access to the information on debtor's assets. This access to the information has to apply to all available databases. The access should be provided for private enforcement agents directly and this access should not be subject of any approval or delay. Also, it should apply to already available databases as well as the ones that are jet to be established.

319. Monitoring of the access to the information. It has to be pointed out that direct access to the information should be monitored. There has to be a system that records the access to the information , exact date, time and IP address of the device that made the access . Serious penalties for not obeying prescribed rules and its misuse should be predicted and should lead to dismissal from the function of private enforcement agent.

320. Predictable costs of the enforcement procedure. Enforcement system should, as any other judicial procedure, have predictable costs meaning that one who is initiating enforcement procedure should have a clear vision how high costs of the procedure should be. Today, when it comes to the costs, system of enforcement in Bosnia and Herzegovina is not predictable at all. There are laws on taxes which prescribe what initial costs of enforcement procedure are, but that is all. In practice, courts are charging for expenses for court bailiffs going to the field trip (for appraisal and attachment of movable property) as well as expert for appraisal of immovable property. Unified regulation does not exist and mostly it depends from court to court how much enforcement procedure will cost.

321. Training of future private enforcement agent. Training is very important segment in order to have efficient agents for enforcement. Judges and private enforcement agents should be well trained. In the beginning, the training should be detailed and should be less theoretical and more practical.

322. Code of ethics, disciplinary and criminal offences is also significant area that needs to be considered. The fact that the private enforcement agents are taking over most of the judge's duties and that their powers will be even higher than judicial as they will have direct access to the information, it is important to develop in-depth and comprehensive rules concerning above mentioned fields. The private enforcement agents have to be professionals with high moral and professional standards. The strict rules for acting within and out of working hours should be set and disciplinary procedures should be set up for not obeying the rules. Separate issue should be prescribed criminal offences if agent is violating serious rules about privacy and access to the information on debtors' assets. As in France, prosecutors' office should be involved in such control.

323. The role of the judge in future enforcement procedure. Another, but not less important issue is the role of the judges in enforcement procedure lead by private enforcement agents. First of all, some cases, as said before, have to stay in courts' jurisdiction. Those cases are for instance, cases related to handover of a child. Such cases will have to remain in jurisdiction of the court considering that children are vulnerable category and they need to have all necessary protection. Also social protection services have to be involved and procedure as a whole has to be done by persons specialized in this field and supervised by a judge.

Section III. The impact of introducing private enforcement agents to the future possible entrance of Bosnia and Herzegovina to European Union

324. European union as the idea of the unity of European countries. The idea to establish a community that would unify European countries was born right after Second World War. Basic idea was to create close cooperation between European countries and in such a way to make Europe and countries within Europe economically and militarily stronger. This was a lesson learned from the inability of the countries to defend themselves from German attack in the Second World War and the inability to give an adequate response to the all challenges that the second world war brought.

Therefore, right after the war ended, the idea to unify European countries was born, and the Treaty establishing the European Coal and Steel Community was signed. The next step was to conclude Treaty establishing the European Economic Community and the Treaty establishing the European Atomic Energy Community, both signed in 1957. In the end, in 1992 The Maastricht Treaty – Treaty on European Union was signed establishing European Union.

325. State Members of EU. Today, there are 27 State Members of the European Union. France, Belgium, Germany, Luxembourg, and the Netherlands entered the EU on January

1st, 1958. 15 years later, the EU entered Denmark, the United Kingdom, and Ireland on January 1st, 1973, Greece on January 1st, 1981, Portugal and Spain on January 1st, 1986, Austria, Sweden, and Finland January 1st, 1995, Cyprus, Estonia, Czech, Hungary Latvia, Lithuania, Poland, Malta, Slovakia, and Slovenia January 5th, 2004. The last three countries which entered the EU are Bulgaria and Romania on January 1st, 2007, and finally Croatia on January 7th, 2013.[186] The only state that left European Union is United Kingdom which left the EU on January 31st, 2020.

Turkey, Montenegro, North Macedonia, Serbia, and Albania have the status of candidates for EU membership while Bosnia and Herzegovina has the status of the potential candidate.

At the moment, 19 countries are using EURO as official currency and Croatia is making final preparations to introduce EURO as its official currency.

§ 1. The Treaty establishing the European Coal and Steel Community (ECSC Treaty)

326. ECSTC Treaty. The Treaty establishing the European Coal and Steel Community was signed in 1951. ECSC Treaty was signed by six European countries: Germany, France, Luxembourg, Belgium, Italy, and the Netherlands. The main aim of this treaty was to ensure that the movement of the coal and the steal is ensured to be free between named countries. ECSC Treaty was in force for a very long period: from 1951 to 2002.

At the time, a specific body (The High Authority) was introduced aiming to supervise application and compliance with the Treaty. It was the first step in the foundation of the European Union.

[186] More information is available on: https://europa.eu/european-union/about-eu/countries_en#tab-0-1, seen on 07.08.2021.

327. The aim of the ECSC Treaty. The aim of the treaty, as stated in article 2, was to contribute to the economic expansion, employment, and better living standards through the common market for coal and steel. Thus, the institutions had to ensure an orderly supply of coal and steel to the common market by ensuring equal access to the sources of production, the establishment of the lowest prices, and improved working conditions. All of this had to be accompanied by the growth of international trade and the modernization of production.[187]

328. Creation of joint market of coal and steel. In practice, the result was that the Treaty created a joint market of coal and steel that is free of taxes and customs and does not allow any kind of discrimination between states parties. In particular, the Treaty prohibits any import and export duties or any charges that would have the same effect, it also prohibits quantities restrictions on the movement of products. Also, the Treaty prohibits producers and consumers to be treated differently (discrimination) especially regarding prices, transportation, or delivery terms. The consumer is given full freedom of choice. Any other restrictions were also prohibited . [188]

The European Coal and Steel Community should have as its task to contribute, in harmony with the general economy of the Member States and through the establishment of a common market as provided in Article 4, to to economic expansion, growth of employment, and a rising the standard of living in the Member States. The Community shall progressively bring conditions which will of themselves ensure the most rational distribution of production at the highest possible level of productivity while safeguarding the continuity of employment and taking care not to provoke fundamental and persistent disturbances in the economies of Member States.[189]

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[187] More information available on EUR-Lex - xy0022 - EN - EUR-Lex (europa.eu) , visited on 29.07.2021.

[188] Treaty establishing the European Coal and Steel Community, 1951, article 4, available on: ECSC_Treaty_1951.pdf (pitt.edu)

[189] Treaty establishing the European Coal and Steel Community, 1951, article 4, available on: ECSC_Treaty_1951.pdf (pitt.edu), article 2

329. Clear and strait language of the Treaty. It has to be noted that the Treaty solved numerous important issues regarding its practical implementation so that there was no space left for misinterpretation and only one treaty covered all important issues in terms of the assistance to the parties implementing the Treaty, financial resources, and the transparency in terms of its decisions. It is interesting to say that the Treaty itself required that all duties are done with minimum administration. [190] The Community was guaranteed with extensive legal personality and institutions, all necessary for its functioning in international relations. [191]

At the same time, the Treaty constitutes institutions necessary for its functioning: a High Authority, assisted by a Consultative Committee, a Common Assembly, a Special Council of Ministers, and a Court of Justice.[192] As it may be concluded, all these institutions may be recognized in institutions of the European Union as it exists today.

330. Amendments of the Treaty. The Treaty was amended with several amendments through the years (Merger Treaty - Brussels 1965), Treaties amending certain financial provisions (1970 and 1975), Treaty on Greenland (1984), Treaty on European Union (TEU, Maastricht, 1992 which funded European Union as it is today), Single European Act (1986), Treaty of Amsterdam (1997), Treaty of Nice (2001), the Treaties of Accession (1972 (Denmark, Ireland & the UK (1)), 1979 (Greece), 1985 (Spain & Portugal) and 1994 (Austria, Finland & Sweden)) and finally expired in 2002.

The best way to see how important this Treaty was, shows the fact that all relevant provisions of this Treaty, upon its expiring, were incorporated in the Treaty establishing the European Economic Community.

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[190] Treaty establishing the European Coal and Steel Community, 1951, article 4, available on: ECSC_Treaty_1951.pdf (pitt.edu), article 5

[191] Treaty establishing the European Coal and Steel Community, 1951, article 4, available on: ECSC_Treaty_1951.pdf (pitt.edu), article 6

[192] Treaty establishing the European Coal and Steel Community, 1951, article 4, available on: ECSC_Treaty_1951.pdf (pitt.edu), article 7

§ 2. The Treaty establishing the European Economic Community (The Treaty of Rome, EEC Treaty) and The Treaty establishing the European Atomic Energy Community

A- The Treaty establishing the European Economic Community (hereinafter the Treaty of Rome)

331. Establishment of the European Economic Community. The Treaty signed in the 1957 together with the Treaty establishing the European Atomic Energy Community that was signed in the same year and both of these treaties are still in force.
The countries which signed The Treaty of Rome were: Belgium, Germany, Italy, Luxembourg, France, and the Netherlands. The Treaty of Rome was amended several times to its current content. The Treaty of Rome established European Economic Community with a clear aim to, as it was stated in the Treaty, article 1, establish European Community. The Community should have as its task to establish a common market and an economic and monetary union and by implementing the common policies or activities referred to in Articles 3 and 3a to promote throughout the Community harmonious and balanced development of economic activities sustainable and non-inflationary growth respecting the environment, high degree of the raising of the standard of living and quality of life and economic and social cohesion and solidarity among the Member States.[193]

332. The activities set for the Community by the Treaty. The Treaty of Rome set up a set of activities for the Community to reach aims stated in Article 2 of the Treaty. Firstly,

[193] The Treaty establishing the European Economic Community, article 2, available on https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:11992E/TXT&from=EN

The Treaty of Rome predicted the elimination of custom duties and other restrictions or any other measures which may have a similar effect, related to the import and export of goods between the Member States with not distorted competition in the internal market. It was predicted that the Member States should set up an internal market characterized by the abolition of obstacles to the free movement of goods, persons, services, and capital including the movement of persons in the internal market based on the strengthening of economic and social cohesion as well as strengthening of the competitiveness of Community industry. It was predicted that common policies shall be set up in severe spheres: commercial, agriculture, fisheries, transport, social sphere comprising a European Social Fund, and the environment, development cooperation.

333. Obligation to adjust legislation set by the Treaty. Very important issue tackled by The Treaty of Rome was an obligation for the Member States to adjust legislation to make The Treaty and the common market functional.

334. Obligation to promote research and technological development. This was one of the obligations set by the Treaty along with the obligation to encourage the establishment and development of trans-European network as well as strengthening of consumer protection, civil protection, and tourism.[194]

335. Additional bodies set by the Treaty. In addition to the institutions organized by ECSC Treaty, the Treaty of Rome organized a Court of Auditors, a European System of Central Banks, European Central Bank, and European Investment Bank.[195]

336. Introduction of the citizenship of the Union. This was another important novelty introduced by the Treaty of Rome. This means that Every person holding citizenship of

[194] The Treaty establishing the European Economic Community, article 3, available on https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:11992E/TXT&from=EN

[195] The Treaty establishing the European Economic Community, article 4, 4a and 4b, available on https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:11992E/TXT&from=EN

the Member State is automatically a citizen of the Union, with the right to freely move from country to country, to vote and to be elected and numerous other rights.[196]

337. Amendments to the Treaty. The Treaty of Rome was amended several times and finally got its name changed so today, the title of the Treaty is the Treaty on the Functioning of the European Union.

B- The Treaty of Rome is The Treaty establishing the European Atomic Energy Community (EURATOM).

338. EUROATOM. The main aim of the Treaty is to establish the European Atomic Energy Community so-called EURATOM aiming to speed up the establishment and growth of nuclear industries.[197]

339. Duties of the states set by EUROATOM. The duties of the Member States given by this Treaty were to promote research and ensure dissemination of technical information, to establish uniform safety standards to protect the health of workers as well as to ensure application of those standards. Furthermore, regulations of the Treaty ruled on all important issues related to the development of nuclear energy including financing, investments, technical issues, ownership, etc. It is important to say that the use of nuclear energy according to the Treaty is predicted as strictly peaceful. This means that development and investment in nuclear energy, according to this Treaty, is not meant to be used for military purposes.

§ 3. The Treaty on European Union

340. The Maastricht Treaty. The Treaty on European Union also known as the Maastricht Treaty) was the final step towards the creation of European Union as a Union of European countries as we know it today. All above-described treaties were a prelude to

[196] The Treaty establishing the European Economic Community, article 8, 8a, 8b, 8c, 8d, available on https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:11992E/TXT&from=EN
[197] Consolidated Version of the Treaty Establishing the European Atomic Energy Community, 2012/C 327/01, article 1, available on: EUR-Lex - 12012A/TXT - EN - EUR-Lex (europa.eu)

the formation and to making this final step. The Maastricht Treaty was signed in Maastricht on February 7th, 1992. Initially and officially it established European Union as an even closer union among the peoples of Europe.[198]

341. The set objectives. The Union through the Treaty set itself the following objectives:

- to promote economic and social progress which is balanced and sustainable, in particular through the creation of an area without internal frontiers, through the strengthening of economic and social cohesion and through the establishment of economic and monetary union, ultimately including a single currency in accordance with the provisions of this Treaty; Treaty on European Union Title I

- to assert its identity on the international scene, in particular through the implementation of a common foreign and security policy including the eventual framing of a common defense policy, which might in time lead to a common defense;

- to strengthen the protection of the rights and interests of the nationals of its Member States through the introduction of a citizenship of the Union;

- to develop close cooperation on justice and home affairs;

- to maintain in full the *acquis communautaire* and build it on with a view considering, through the procedure referred to in Article N (2), to what extent the policies and forms of cooperation introduced by this Treaty may need to be revised with the aim of ensuring the effectiveness of the mechanisms and the institutions of the Community.

342. Ultimate objectives set by the Union. The objectives of the Union shall be achieved as provided in this Treaty and following the conditions and the timetable set out therein while respecting the principle of subsidiarity as defined in Article 3b of the Treaty establishing the European Community.[199] European Economic Community by Maastricht

[198] The Treaty on European Union, article A, available at: treaty_on_european_union_en.pdf (europa.eu)

[199] The Treaty on European Union, article B, available at: treaty_on_european_union_en.pdf (europa.eu)

Treaty was renamed in European Community and The Treaty establishing European Economic Community introduced amendments and changes to establish European Community.[200] All amendments were introduced to make Member States closer and more cooperative so that the Union becomes stronger. Amendments are related to the security policy, judiciary and monetary policy including introducing of joint money – EUR, introducing some new joint policies, stronger citizenship authorizations and introducing some changes that are institutionally related, for example, more powers for European Parliament.

[200] The Treaty on European Union, article G, available at: treaty_on_european_union_en.pdf (europa.eu)

TITLE 2: PROPOSALS OF A NEW ENFORCEMENT SYSTEM

343. Introduction. As Bosnia and Herzegovina currently has such enforcement system laying completely on the court, the enforcement judges and the court bailiffs it is not possible to purely introduce changes into existing legislation. What has to be done is the introduction of a completely new law on enforcement and consequently to introduction of legislation on the whole new profession: enforcement agents. It is out of the crucial importance that these two are done simultaneously and at the same time since that is the only way in which a new profession and a new procedure could be implemented efficiently and with no or very few consequences on the existing and new enforcement cases.

Chapter 1 Proposal of a new Law on enforcement procedure

-Proposed text-

Article 1

This law shall govern procedure pursuant to which private bailiffs and courts shall enforce claims based on enforceable titles and authentic documents.

This law shall not be applied to enforcement proceedings prescribed by separate law.[201]

Article 2

The terms used in this Law have the following meanings:

1) "claim" denotes a right to a payment, an act, a restraining from acting or the causing of an act to be performed by someone else,

2) "creditor" denotes a person who either initiated a proceeding for the purpose of satisfying a certain claim, or a person for whose benefit such proceeding has been initiated automatically,

3) "debtor" denotes a person against whom a claim is satisfied,

4) "party" denotes a creditor or a debtor,

5) "participant" denotes a person who is not a party in the enforcement procedure but participates in the proceedings because his/her rights are affected, or because s/he has a legal interest therein,

[201] In legal system of Bosnia and Herzegovina special enforcement procedure is prescribed for example by family laws and by Law on security on movable assets.

6) “decision on enforcement” denotes a decision by which a motion for enforcement is entirely or partially accepted or upon which the enforcement is ordered automatically,

7) “Court referee” denotes a Court official who on the Court’s order directly undertakes certain acts set forth in the enforcement procedure,

8) “farmer” denotes a person whose major source of income is farming,

9) “private bailiff” denotes an official authorized by ministry of justice to perform enforcement procedure.

Article 3

Enforcement procedure shall be initiated by a motion of an enforcement creditor. [202]

Decision on a motion will be issued by a private bailiff or by the court when so prescribed by this law.

When decision on a motion is issued, enforcement procedure shall be carried out.

Article 4

The Civil division of the court is exclusively competent for deciding on motions for enforcement and to perform enforcement procedure related to family matters and returning employee to work.

For the enforcement on enforceable titles and authentic documents related to all issues other than mentioned in paragraph (1) of this article private bailiff is exclusively competent.

[202] In the current system, enforcement procedure is initiated ex officio for example when after criminal proceedings ended and accused person was obligated to pay for criminal proceedings costs. Enforcement procedure to collect such claim in behalf of the state or entity is performed ex officio. In reality, this procedure should be initiated by the state attorney and in that term Law on state attorney on all levels should be amended so that provisions on collection of such claims should be added as well as the laws on criminal procedure which currently prescribes that collection of such claims are done ex officio.

All articles of this law which are regulating duties and powers of private bailiff shall be applied when court is performing enforcement actions within powers of the court.

Article 5

When deciding on motion on enforcement the court and private bailiffs are bound by enforceable title or authentic document.

Legality and regularity of enforceable title cannot be examined in enforcement procedure.

Article 6

Decision on enforcement my be objected within 8 days after decision on enforcement was served to the parties.

If decision on enforcement is issued by the court, objection shall be decided by second instance court.[203]

If decision on enforcement is issued by the private bailiff, objection shall be decided by the first instance court.

Article 7

Jurisdiction over issuance of decisions on the motions for enforcement is on the individual judge of the civil department of the court or private bailiff, based on place of residence of the debtor if motion does not contain proposal of subject and mean of enforcement.

[203] In current legal system decision on enforcement may be objected and objection is decided by the same judge who issued decision on enforcement. Then, this decision may be appealed and appeal is decided by second instance court. Such appeal procedure is subject of multiple misuse and enforcement debtors are very often appealing only to buy time. Since that during litigation procedure enforcement debtor had right to a different legal remedy, in opinion of the author, such multi-instance is not necessary in enforcement procedure and should be abandoned as a principle in order to make enforcement procedure more effective.

Article 8

If monetary claim or bank account are proposed subject and mean of enforcement, proposal for enforcement shall be decided by private bailiff based on a place of residence of the debtor.

If motion for enforcement contains more than one subject and mean of enforcement, proposal for enforcement shall be decided by private bailiff based on the mean and the subject of enforcement first listed. If one of the proposed subjects and means of enforcement is immobility, proposal for enforcement shall be decided by bailiff based on place of immobility.

Article 9

The court competent for the city of residence where private bailiff is situated is also competent during the enforcement procedure performed by private bailiff.

The court stated in paragraph (1) of this article shall decide on fines, requests for exemption of private bailiff and decision on objections.

If enforcement procedure is performed by the court, exclusive territorial jurisdiction to issue decisions during enforcement procedure is on the court which performs enforcement procedure.

Article 10

Private bailiff performs enforcement procedure for the territory to which he has been appointed.

He may perform enforcement actions outside territory to which he has been appointed personally, upon approval of the court or through private bailiff competent for specific territory.

Article 11

Motion to delegate territorial jurisdiction of the court or private bailiff is not permitted.

Article 12

Decisions and conclusions in enforcement procedure shall be issued by a judge or a private bailiff.

Article 13

The competent court decides on motion for exemption of private bailiff.

Motion for exemption on private bailiff shall be decided by chief of civil section of competent court or by the court president, if there is no chief of civil section, within 8 days.

Legal remedy against decision in paragraph (2) of this article is not permitted.

Article 14

The court and private bailiff act upon written motions or ex officio.

In the enforcement procedure the Court shall act in accordance with submissions and other pleadings and Court filings as well as ex officio.

A hearing shall be scheduled as provided by this Law or when court or private bailiff finds holding a hearing is appropriate. Individual leading a procedure may compile an official note of a hearing instead of recording a full transcript.

The Court or private bailiff shall hear a party or a participant in the enforcement procedure outside of a hearing if this Law stipulates so or if finds that it is necessary to clarify certain issues, or to hear a response to a motion by a party.

The absence of one or both parties and participants from a hearing, or their failure to obey the summons to the hearing, shall not prevent further enforcement actions.

In the enforcement procedure and security procedure there is no suspension of procedure.

Submissions, other pleadings and Court and private bailiff filings in the enforcement procedure shall be submitted in a sufficient number of copies for the Court or private bailiff and the adverse party.

Article 15

Enforcement procedure is an urgent procedure.

In enforcement procedure it is not permitted to stop the procedure.

All deadlines for parties and other enforcement procedure actors shall be no longer than 8 days, unless otherwise prescribed by this law.

Article 16

Act of disposal of seized assets is not legally binding until the moment when the debtor receives decision on enforcement.

Article 17

Several judgment creditors who are satisfying their claims against the same judgment debtor and on the same object of enforcement shall be paid in the order they acquired the right to settlement from that object, unless otherwise provided by law.

Article 18

Enforcement may not be ordered against property of a foreign country located in Bosnia and Herzegovina without consent of the Ministry of Foreign Affairs, unless the foreign state agrees to enforcement.

Article 19

Court and private bailiff in enforcement procedure may issue decision or conclusion.

Decision shall be used when ruling on a motion for enforcement, objection, appeal and all other cases when prescribed by this law.

Decision on enforcement shall be issued in a form of a stamp on motion for enforcement and must not be reasoned.

Conclusion shall be used to manage enforcement procedure.

Article 20

Legal remedies in enforcement procedure are objection and appeal.

An appeal shall be used against first instance court decision or private bailiff, unless otherwise stipulated by law.

An objection shall be used against the decisions of the first instance court, private bailiff and as an objection of the third person.

Conclusion in enforcement procedure may not be appealed or objected and such appeal or objection shall be dismissed in the final decision on closing enforcement case.

Article 21

An objection and appeal shall be filed within eight days from the date of service unless this Law stipulates otherwise.

An objection or appeal shall not stay the enforcement of a decision, unless otherwise stipulated by this Law.

Article 22

When deciding on objection and appeal the second instance court cannot cancel the first instance decision and remand the case for retrial.

Article 23

Repeating of a procedure is not permitted in the enforcement procedure.

Article 24

Returning to Status Quo Ante is permitted only when missing the deadline for an objection or appeal in the procedure of appealing decision on enforcement based on authentic document.

Against the decision to accept motion to return to Status Quo Ante appeal is not permitted.

Against the decision to reject or refuse motion to return to Status Quo Ante an objection may be filed.

Article 25

State bodies, holders of public powers, other legal persons and entrepreneurs are obligated to provide for free to the courts and private bailiffs, upon their request, following information on a debtor:

1) First name, last name or business name;

2) address of residence;

3) date of birth;

4) Personal identification number;

5) Tax or ID number;

6) Information on salary or other permanent income including amount, name of debtors' debtor, amount of deductions on income and information on all other permanent income;

7) Bank account numbers, savings accounts, deposits, amount of money on those as well as all other information including all transfers and deductions on those accounts;

8) account numbers on financial instruments and its status;

10) Information on shares in companies and all benefits of debtor out of the shares in last three years;

11) Information on property rights on immobility;

12) Information from data register for registered motor vehicles and trailers;

13) Information from aircraft or vessels registries;

14) Information from registry of movable assets;

15) Information from pension and disability insurance;

17) Information on life or property insurance;

18) Information on tax application for last three years;

19) Information on parties concluded legal treaty, copy of legal document, and if document does not exist, information on legal transaction or other actions related to:

a) Property disposing in last year with or without compensation,

b) Property disposing in last three years with or without compensation in favour of spouse, extramarital partner, relative in direct line or a lateral line up to fourth degree or in-law line upt o fourth degree,

c) Any other free give always in last three years, except for usual appropriate gifts or gifts out of gratitude.

In order to obtain information private bailiff shall show decision on enforcement.

Obtained information court or private bailiff may only process for purposes of enforcement procedure.

Court or private bailiff is authorized to collect for free any other relevant information or data from any data collector if necessary for purposes of efficient enforcement procedure.

All state or private bodies holding information on enforcement debtor have obligation to provide enforcement creditor, court or private bailiff with relevant information on enforcement debtors' assets.

Information must be provided within eight days from recipient of request for information.

Article 26

If public register on data is available to the court and private bailiff there is no obligation to provide any information.

Article 27

If there is technical possibility to give direct access to the information to the court and private bailiff, such access may not be denied by the holder of information or owner of database.

Article 28

Costs of enforcement proceedings shall be advanced by enforcement creditor within the deadline set by the court or private bailiff.

Enforcement procedure shall be closed if enforcement creditor does not advance enforcement costs within given deadline.

If enforcement procedure is initiated ex officio the enforcement proceedings costs shall be advanced out of court and private bailiff budgetary funds and claimed from enforcement debtor.

Article 29

If legal entity is enforcement debtor, delivery of mail will be done to a registered address of the company headquarters or address registered for mail delivery and to a private person to address of his registered place of residence.

If delivery is unsuccessful, a mail will be set up on a bulletin board of the court or private bailiff. Deliverer shall leave in a debtor's mailbox, or other appropriate spot on a receiver's address, a letter containing a name of a debtor, his position in the proceedings and notice that the letter will be on the bulletin of board following day. The notice will also contain information about the bulletin board, and information that delivery shall be considered successful eight days after bulletin board publication. It is considered that delivery is successful after 8 days from letter publication on bulletin board.

If recipient physical person does not have registered address in Bosnia and Herzegovina that the rules for service of the documents set in Civil procedure code shall apply accordingly.

Regulation of this article is applied to the enforcement creditor as well as any other enforcement procedure participant.

Article 30

Delivery of documents in enforcement procedure is performed by private bailiff or a post.

When enforcement procedure is performed by private bailiff then all filings shall be filed directly to private bailiff.

Article 31

If necessary, the Court may impose fines on persons impeding the execution of enforcement before court or private bailiff.

Fines are imposed, impugned and enforced under conditions of this law concerning collection of money claim.

Article 32

The provisions of the Civil Procedure Code shall be also accordingly applied in the enforcement procedure unless this or other law stipulates otherwise.

Article 33

Decision on enforcement is issued based on enforceable title or authentic document.

Article 34

Enforceable documents are:

1) An enforceable court decision and court settlement which order payment of monetary obligation, act, omission or consent;

2) Enforceable decision issued in minor offence or administrative procedure and administrative settlement ordering payment of monetary obligation unless otherwise stipulated by law;

3) Excerpt from Registry of pledge;

4) Document of public notaries with enforceable clause;

5) Other documents prescribed as enforceable document by other law.

Article 35

A court decision as enforceable document is considered court judgment and decision and court settlement is considered settlement before the court.

Decision in administrative procedure is considered decision issued in administrative procedure and administrative settlement is considered settlement in administrative procedure.

Article 36

Court decision which orders payment of money claim or orders some act becomes enforceable if it became final and deadline for voluntarily payment or action expired. The deadline to voluntarily pay or act starts after the debtor received court decision, unless otherwise stipulated by law.

Court decision ordering omission becomes enforceable when it becomes final, unless the decision prescribes otherwise.

Enforceable of decision issued in administrative procedure is evaluated according to an administrative proceeding rule and enforceable of documents of public notaries are evaluated according rules regulating public notaries.

Article 37

Certificate of enforceability confirms that decision became enforceable.

Ungrounded certificate on enforcement shall be cancelled by the court or other body which issued certificate or public notary, based on proposal of party or ex officio.

Article 38

Court and administrative settlement become enforceable when claim settled became due to be paid.

Article 39

Foreign enforceable document is enforced same way as domestic if orders payment and is accepted before the domestic court.

Article 40

Enforceable title shall be enforceable if contains information on a creditor, debtor, type and scope of obligation which needs to be fulfilled. If enforceable title does not contain period for voluntary liquidation, that period shall be eight days and the period starts on the date of service of the enforceable title to the debtor.

A ruling passed in the administrative procedure shall be enforceable if it has become enforceable according to the rules that regulate such procedure.

Article 41

Enforcement procedure shall be ordered upon a motion for enforcement and for the benefit a person which has not been designated as enforcement creditor in enforceable title or authentic document if that person proves by public document that claim named in enforceable title or authentic document has been transferred to that person.

If claim named in enforceable title or authentic document has been transferred to the third person after decision on enforcement has been issued, upon motion of that third person conclusion shall be issued to confirm that third person took over a place of previous creditor, if transfer is proved by public document.

Provisions (1) and (2) of this article shall be accordingly applied to the enforcement debtor.

Third person shall takeover enforcement procedure in stage at the moment of taking over of place of a creditor or a debtor.

Article 42

If the enforcement debtor, according to the enforceable title, has the right to choose between several objects of his obligation, the executing creditor is obliged to indicate in the motion for enforcement on objects of enforcement.

The right to make a choice for enforcement debtor lasts until the enforcement creditor, in whole or in part, receives the item he has indicated in the motion for enforcement.

Article 43

An enforcement debtor who is obligated to fulfil a non-monetary obligation in the enforceable title, with the right to be exempted from payment of a certain amount of money or act specified in an executive document, may pay the monetary amount or take action until the executive creditor partially receives the fulfilment of the non-monetary obligation.

Article 44

A decision on enforcement based on an authentic document shall be issued in order to settle the monetary claim.

Authentic documents are:

1. An invoice,

2. Bill of exchange and check with protest and reverse account, if necessary, for the establishment of a claim,

3. Calculation of interest shall be also considered as an invoice.

4. A bill or excerpt from business book for price of utility services of delivery of voter supplies, electricity and garbage

5. Reimbursement and reimbursement of lawyers' fees.

Article 45

The means of enforcement are actions performed in order to settle a claim of enforcement creditor.

The means of enforcement to settle monetary claim are: sell of immobility of enforcement debtor, sale of movable property of the enforcement debtor, transfer of the monetary claim of the enforcement debtor, transfer of the enforcement debtor's salary, transfer of funds from the enforcement debtor's account in the bank, transfer of funds from the savings deposit or current account of the enforcement debtor, sale of the financial instruments of the enforcement debtor and sale of the share of the enforcement debtor in the economic entities.

The means of enforcement for the purpose of realization of non-monetary claim are: the transfer of movable property of the enforcement debtor, the discharge and transfer of immovable property of the enforcement debtor, the act, the omission of the enforcement debtor, the transfer of a child and the enforcement of other decisions concerning family relations and the return of an employee to work.

Article 46

The objects of execution are the things and the rights of the enforcement debtor in which execution is carried out.

The objects of execution cannot be things outside the traffic, objects, weapons and equipment intended for the defense and security of the state, nor things that are exempt from execution by this or other law.

Article 47

The private bailiff is obliged to take into account the proportions between the amount of the obligation of the executing debtor and the asset and value of the object of execution

when selecting the asset and the objects of enforcement in order to settle the monetary claim.

Article 48

In the decision on enforcement, for the purpose of settling the monetary claim, body performing enforcement procedure shall decide on, number, mean and object of enforcement.

If more than one means and objects of execution are determined in the decision on enforcement so that the next is carried out only if the previous ones are insufficient to satisfy the enforcement creditor, the private bailiff or the court may restrict enforcement to only some means and objects sufficient to settle enforcement creditor.

If they are insufficient to satisfy the enforcement creditor, the private bailiff or the court shall order continuation of enforcement procedure against next mean and the subject of enforcement.

Article 49

If the settlement is not possible from the assets and objects of enforcement that are already determined, the body performing enforcement procedure shall change the mean and the subject of enforcement by the decision or order that the enforcement be continued by other means and objects in addition to the ones already determined.

Provision 1 of this article shall be applied if body leading enforcement procedure finds out about more efficient mean or object of enforcement

Article 50

The motion for enforcement shall indicate identification data on the enforcement creditor and the enforcement debtor, enforceable title, enforcement creditor's claim and other data necessary for the execution of enforcement.

The execution document shall be accompanied by an enforceable title with a certificate of enforceability.

If the motion for enforcement is submitted to a court that has decided at first instance on the claim of the enforcement creditor, enforceable title does not have to contain a certificate of enforceability.

Article 51

Enforcement creditor is not obliged to propose mean and subject of enforcement.

If mean and subject of enforcement are not proposed in motion of enforcement, such motion shall be decided by court or private bailiff competent based on place of residence of debtor.

Article 52

The motion for enforcement on the basis of an authentic document shall contain identification data on the enforcement creditor and the enforcement debtor, authentic document, creditor's claim and other data and documents necessary for the enforcement procedure.

The motion for enforcement on the basis of an authentic document also contains a request that the court obliges the enforcement debtor to settle the monetary claim of the executive creditor with the estimated costs of the procedure within eight days from the date of delivery of the decision, and the request to order the enforcement in order to settle the monetary claim of the enforcement creditor and the costs of the proceedings.

The enforcement creditor is obliged to enclose to the proposal the authentic document in the original or a certified copy or a transcript.

Article 53

The enforcement creditor is obliged to indicate a specifically designated and local competent private bailiff to carry out the enforcement procedure in a motion for enforcement based on an enforceable title or authentic document.

Article 54

The decision on the motion for enforcement based on an enforceable title or authentic document shall be issued within eight days from the date of receipt of the motion.

The decision on enforcement on the basis of an enforceable title or authentic document may be issued or the decision shall be issued to reject or dismiss of the motion for enforcement.

Article 55

The enforcement creditor may, during the entire enforcement procedure withdraw the motion for enforcement without the consent of the enforcement debtor.

In this case the enforcement procedure shall be closed.

The enforcement Creditor may file a motion for enforcement again.

Article 56

The decision on enforcement shall contain title of the court or private bailiff, the enforcement creditor and the enforcement debtor with identification data, the enforceable title, the creditor's claim, the means and the objects of enforcement, the instruction on the

right to file a legal remedy and other data necessary for the performance of the enforcement procedure.

After decision on enforcement enters into a force, private bailiff shall issue a conclusion identifying means and objects of enforcement.

Decision on enforcement based on authentic document, beside information indicated in paragraph 1 of this article, shall also contain obligation of the enforcement debtor to settle the monetary claim of the executive creditor with the assessed costs of the procedure within eight days from the date of delivery of the decision, and in the disputes of bills of exchange and check within a period of three days.

Article 57

The decision on enforcement determines that the execution is carried out by the private bailiff who has been indicated by the enforcement creditor in the motion for enforcement. Appeals, or complaints, are allowed only if decision on enforcement indicates private bailiff incompetent for the respective territory.

The enforcement debtor may request the exemption of the private bailiff until the decision on enforcement becomes final. The court decides on the request for exemption with a decision within five days from the date of receipt of the request.

If it adopts a request for exemption of private bailiff, the court immediately requests enforcement creditor to indicate another private bailiff within five days, otherwise the court shall suspend enforcement procedure.

An appeal against the decision to reject or dismiss the request for exclusion of a private bailiff is allowed.

The request for exclusion of a private bailiff shall not stop or postpone enforcement procedure.

Article 58

The private bailiff may inform the court that he has been prevented from accepting the implementation of the enforcement, within five days from the date of receipt of the decision on enforcement or conclusion on determining competent private bailiff.

The court immediately sends the notification to the enforcement creditor and automatically decides on new private bailiff by issuing new decision in which he changes the enforcement order in that regard.

Against this decision an objection is allowed, but only if newly appointed private agent is not territorially competent.

Article 59

A decision on enforcement is delivered to the enforcement creditor and the enforcement debtor.

The decision on the rejection or disposal of the motion for enforcement is delivered by the court only to the enforcement creditor.

The decision on enforcement that is delivered to other parties (the debtor of the enforcement debtor, the enforcement organization, the Central Register of Securities, etc.) shall be delivered by the private bailiff.

If the court is exclusively competent for execution, the decision on enforcement is submitted to all by the court or private bailiff.

Article 60

If the court to whom motion for enforcement has been filed is not competent to carry out the execution, and the court is exclusively competent for enforcement, the court shall transfer case file to the court that is competent for enforcement.

Article 61

The enforcement debtor may appeal against the decision on enforcement.

The enforcement creditor may appeal against a decision rejecting a motion for enforcement or a decision on the refusal of an enforcement order or enforcement order which exceeded motion for enforcement.

If decision on enforcement is appealed only in part related to the costs of procedure, appeal shall be considered as an objection.

Article 62

The enforcement debtor may appeal a decision on enforcement for the following reasons which prevent the execution of the execution:

1) If the document on the basis of which the decision on enforcement has been issued does not have the status of an enforceable title;

2) If the enforceable title has been annulled, abolished, revoked, abrogated or is not enforceable;

3) If a court or administrative settlement or a public record of a settlement on the basis of which the decision on enforcement has been issued, has been annulled or otherwise put out of effect;

4) If the deadline for fulfilment of the obligation of the executing debtor has not expired;

5) If the enforcement debtor's obligation depends on the prior or simultaneous fulfilment of the enforcement creditor's obligation or on the occurrence of conditions, and the enforcement creditor has not fulfilled his obligation or has not secured its fulfilment or the condition did not arise;

6) If the claim has been terminated on the basis of the fact that occurred at the time when the enforcement debtor could no longer expose him in the proceedings from which the enforcement document was issued or after the conclusion of the court or administrative settlement or the public notary of settlement;

7) If the claim has not been transferred to the enforcement creditor or if the obligation has not been transferred to the enforcement debtor;

8) If the period within which enforcement may be required is exceeded;

9) If the enforcement is determined on means and objects that are exempt from enforcement or where the enforcement is limited;

10) If the claim granted in the enforcement document has become obsolete;

11) If the decision on enforcement determines a non-competent public enforcement agent.

Article 63

The enforcement debtor is obliged to state in the appeal the reasons why he / she appeals the decision on enforcement, the facts and evidence supporting the reasons for appealing the decision on enforcement and to enclose all the written evidence referred to in the appeal.

Otherwise, the appeal shall be dismissed as incomplete by a decision, without prior repatriation.

Article 64

The appeal shall be submitted to the first instance court that issued the decision on the enforcement.

The first instance court dismisses an appeal that is not timely, complete or permitted, within eight days from the date of receipt of the appeal. The enforcement debtor against the ruling on the dismissal of the appeal has the right to appeal within eight days from the date of receipt of the decision.

If the enforcement debtor files an appeal against the decision rejecting the appeal, the first instance court shall deliver it to the second instance court of the next working day from the date of its receipt. If the second instance court adopts an appeal against the decision

rejecting the appeal, it submits an appeal against the decision on enforcement to the reply to the executive creditor and then decides on it.

Article 65

The first instance court, which does not reject the appeal against the decision on enforcement, submits an appeal to the other party within eight days from the date of receipt of the appeal.

The deadline for responding to the appeal is eight days from the submission of the appeal.

Article 66

The court of first instance submits an appeal, a response to the appeal and case files to the second instance court of the next working day from the receipt of the response to the appeal or the expiration of the deadline for responding to the appeal.

The second instance court examines the first instance decision within the limits of the reasons stated in the appeal, taking ex officio the proper application of the substantive law, whether the court is competent to reach a decision on execution, to the real and territorial jurisdiction of the court, whether the document on the basis of which the decision was made the enforcement has the status of an enforceable title, whether the period in which enforcement can be enforced and whether the enforcement is determined on a matter that is outside the legal traffic.

If in the appeal against the decision on enforcement is stated that there is a violation of the procedure which the court does not observe ex officio (paragraph 3 of this Article), the second instance court is obliged to assess whether they really influenced the legality and regularity of the decision on enforcement.

Article 67

The second instance court shall reject, approve or dismiss the appeal within 15 days from the date of receipt of the file of the case.

The court is obliged to adopt an appeal if the enforcement debtor proves the existence of a reason that prevents the enforcement procedure by a final decision or public or according by law certified document.

Article 68

By the decision on the adoption of the appeal, the enforcement procedure is suspended, the first instance decision on enforcement is revised, the motion for enforcement is abolished, or the first instance decision on enforcement is abolished and the motion for enforcement is rejected.

If the enforcement procedure started, in addition to the suspension of the enforcement procedure, all the executed actions of enforcement procedure shall be abolished.

Article 69

The second instance court decides on an appeal against other court decisions.

The second instance court who is competent to decide on an appeal against the enforcement order decides on an appeal against the decision of a private bailiff.

The appellant is obliged to state in the appeal all the reasons why the decision and the facts and evidence upon which the appeal is based are challenged.

Otherwise, the appeal shall be dismissed as incomplete by a decision, without prior repatriation.

Article 70

The appeal shall be submitted to the first instance court or to the public enforcement agent if his decision is appealed.

An appeal shall be submitted for an answer to the other party, and the response time is eight days from the submission of the appeal for the response.

The provisions on the conduct of the first instance court on an appeal against the decision on enforcement (Article 76) shall apply accordingly to the proceedings of the first instance court.

Article 71

The court of second instance takes care by the official duty of proper application of substantive law, whether the court is competent to issue a decision, both on the real and territorial jurisdiction of the court.

The Court of Appeal is obliged to assess whether the violations of the proceedings stated in the appeal affect the legality and regularity of the decision only if the decision on the rejection or dismissal of the motion for enforcement on the basis of the enforceable document.

In all other cases, the provisions of the appeal against the decision on enforcement (Article 78-80) are applied accordingly to the actions of the second instance court.

Article 72

At the proposal of the enforcement creditor, the private bailiff postpones enforcement procedure that has not yet begun, by a decision against which the appeal is not allowed.

If the performance of enforcement has begun, and the enforcement debtor opposes the postponement within the set deadline, the private bailiff shall reject the proposal of the executive creditor.

If enforcement can be requested only within a specified time limit, the enforcement creditor may propose postponement only until that time limit expires otherwise the private bailiff rejects the proposal.

An appeal is not allowed against the decision to reject or dismiss the enforcement creditor's proposal.

Proposal to postpone enforcement procedure can be filed jointly by parties. Appeal against decision cannot be filed.

Article 73

Enforcement procedure may be postponed only once during enforcement procedure for the period no longer than six months.

Article 74

Decision upon motion to postpone enforcement procedure shall be issued within eight days.

Against decision upon motion to postpone enforcement procedure with consent of debtor objection or appeal is not allowed.

Article 75

The decision on the postponement of execution produces the effect as of issue the decision.3

While the enforcement procedure is postponed, no actions are taken to perform the enforcement.

Article 76

Postponed enforcement procedure shall proceed upon motion of enforcement creditor which has to be filed by the date to which it is postponed.

On the proposal of the enforcement creditor, enforcement procedure may be continued before the expiration of the time to which it is postponed, if the enforcement creditor makes it probable that the reasons for the postponement have ceased.

If the duration of the delay is determined by the agreement of the parties or parties, the enforcement procedure shall continue before the expiration of the time to which it was postponed only with the consent of all of them.

If the enforcement procedure is postponed at the proposal of the enforcement creditor or under the agreement of the parties, the private bailiff shall, upon the proposal of the enforcement creditor, who has entered the enforcement proceedings, continue the enforcement procedure.

An objection is allowed against the decision to continue the enforcement procedure before the expiration of the time to which it is postponed.

Article 77

Enforcement procedure ends by closure of procedure or rejection or refusal of motion for enforcement.

Article 78

Enforcement actions shall be performed after decision on enforcement becomes final.

Article 79

Court and private bailiff during the enforcement procedure shall make efforts in order to conclude settlement between parties.

Article 80

Private bailiff has powers prescribed by law and will use all his powers to ensure that claim of enforcement creditor is urgently collected obeying law and rights of enforcement debtor.

Private bailiff is not obligated to obey proposal or order of enforcement creditor to perform or not to perform any enforcement action or any other action authorized by law.

Private bailiff cannot refuse or call off enforcement to the enforcement creditor.

Article 81

Enforcement creditor is authorized to request that enforcement procedure is performed by another private bailiff out of justified reasons.

In such case private bailiff shall issue conclusion to terminate proceedings before him and deciding that another private bailiff shall take over the case. Casefile shall be immediately passed to the new private bailiff who shall immediately issue conclusion on continuation of enforcement procedure.

Article 82

Private bailiff who is determined to carry out enforcement procedure and is not able to accept or continue enforcement procedure, is obligated to inform court who shall inform enforcement creditor and assign the case to another private bailiff.

Article 83

Enforcement procedure shall be performed every day from 7 to 20 hours.

Enforcement procedure may be carried out of these hours if enforcement creditor is avoiding fulfilment of his obligation or if it is justified by justified reasons.

Article 84

Private bailiff shall perform enforcement action respecting personality and human rights of the enforcement debtor and his family members.

Seizure and assessment of movable assets shall be done in presence of enforcement debtor and if he is not present than two adults shall be present.

Private bailiff is authorized to open locked room if two adults are present, if enforcement creditor is not present or is refusing to open the room.

Article 85

Private bailiff is authorized to request police assistance if during enforcement procedure enforcement creditor resisted or there is grounded suspicion that resistance shall be given. Written request shall contain reasoning for request and copy of decision on enforcement.

Article 86

When during enforcement procedure there is motor vehicle that needs to be found, private bailiff may order to publish warrant.

Private bailiff shall deliver warrant to the police office for execution.

Warrant shall be published by police office according to place of residence of the court which issued decision on enforcement.

Police officers are entitled to seize motor vehicle and hand it over to the private bailiff within 24 hours who is obliged to take it over.

Article 87

Parties or any other person involved in enforcement procedure may request that irregularities in enforcement procedure are corrected.

Request mentioned in paragraph 1 of this article may be filed within 8 days as from performed action, decision delivered or date when decision supposed to be issued.

Request shall be filed to the private bailiff or to the court, depending of who is performing enforcement actions.

Decision on request shall be issued within 8 days and does not stay enforcement procedure.

Article 88

When request to correct irregularities in enforcement procedure is grounded, court or private bailiff shall cancel performed actions and performs new actions.

Article 89

To decide on motion for enforcement on immobility to settle money claim, exclusively competent shall be the court where immobility is placed.

If immobility is placed within competence area of more than one court, competent shall be the court to whom motion for enforcement has been filed first.

Article 90

Enforcement on immobility to settle money claim shall be executed by notice to land registry, evaluation of immobility, sale of immobility and settlement of enforcement creditor.

Article 91

If immobility owner is changed after lien has been registered in land book, enforcement creditor will mark enforcement debtor as party in motion for enforcement but enforcement procedure shall be carried out against same immobility.

Motions and letters of court, private bailiff and enforcement procedure parties shall be delivered to a new immobility owner.

Article 92

If immobility which is subject to enforcement procedure is in co-ownership, decision on enforcement or conclusion of private bailiff will decide that enforcement procedure is executed on co-ownership share of enforcement debtor.

With consent of all co-owners enforcement procedure may be executed on immobility as a whole to co-owner or third person.

In such case, co-owners shall be priority settled, in accordance with their shares.

Pre-emption rights of co-owner are not talked by this article.

Article 93

Private bailiff shall deliver decision on enforcement to land registry right after decision is issued, in order to register enforcement procedure.

Land registry shall register enforcement procedure in land registry book within 72 hours from delivery of the information.

By registration enforcement procedure in land registry enforcement creditor shall be entitled to settle his claim even if ownership on immobility gets changed.

Article 94

After enforcement procedure is registered in land registry, it is forbidden to change ownership on immobility or any other property right based on disposal of owner, irrelevant when disposal has been made.

If ownership on immobility changes during enforcement procedure and change is not based on disposal of owner, enforcement procedure shall be continued against new owner as enforcement debtor.

All actions performed before change of ownership shall stay in force and new owner has no right to perform any action which could not be performed by old owner.

Private bailiff shall issue conclusion to continue enforcement procedure towards new owner as a new debtor.

Article 95

It is not allowed to perform two or more enforcement procedures on the same immobility.

New enforcement creditor shall enter enforcement procedure and right to settle his claim is in order in which enforcement procedure was registered in land registry.

Article 96

Lien creditor has right to settle his claim in enforcement procedure irrelevant if he did not file motion for enforcement or report his claim in enforcement procedure.

Lien will no longer exist as from issue conclusion for hand over immobility to the buyer, even when enforcement creditors' claim is not completely settled.

Article 97

Easement on the property shall continue to exist after immobility is sold.

Article 98

Conclusion on sale shall include information on time when immobility may be visited by potential buyers.

Article 99

Agricultural land of farmer cannot be subject of enforcement up to 10 hectares.

This shall not apply for claim secured by mortgage or statement on lien.

Article 100

Value of the immobility shall be evaluated as market price of immobility at the time of evaluation.

Article 101

When evaluation of immobility is done, the fact that certain rights will continue to exist, shall be taken into consideration.

Article 102

After evaluation of immobility is done, its value will be set by conclusion.

Article 103

Buyer of immobility cannot be enforcement debtor, private bailiff, deputy or assistant private bailiff or any other person employed by private bailiff, any other person involved in enforcement procedure or relative in direct line or side line up to fourth degree, marital or extra-marital partner or in-law relative up to second degree or guardian, adoptive parent, adoptive child or foster parent.

Article 104

Holder of legal pre-emption right of immobility has priority over the most favorable bidder if, right after publication of information on most favorable bidder and before conclusion on awarding most favorable bidder, declares that he will buy immobility under the same conditions as most favorable bidder.

Holder of legal pre-emption right has priority over holder of contractual pre-emption right.

If immobility is sold by direct contract, private bailiff shall invite holders of pre-emption rights to declare in written form, within deadline of 8 days, if they intend to use their pre-emption right.

Holders of pre-emption rights pay security as any other person.

Article 105

Immobility may be sold on public auction or via direct contract.

Private bailiff may only set a public auction.

Parties may make an agreement about sale by direct contract.

Article 106

Conclusion for sale of immobility on public auction shall be issued after decision on enforcement becomes final and after immobility is evaluated.

Article 107

Conclusion has to contain following information:

1. Conditions for sale of immobility on public auction;
2. Description of immobility;
3. Rights of third persons which are to stay on immobility after it is sold;
4. Easiness that are to stay on immobility after it is sold;
5. Evaluated value of the immobility and date and time of evaluation;

6. Time and place of public auction and start price of immobility.
7. Deadline for buyer to pay price of immobility;
8. Amount of security that is to be paid, deadline and account for payment of security

Deadline to pay price shall not be longer than 15 days from issuing decision conclusion on the award of immobility.

Article 108

Conclusion on sale of immobility on public auction shall be published on advertising board of private bailiff chamber, web site of chamber and other applicable way.

Enforcement party may publish conclusion on public sale in other means of public information and shall inform private bailiff about publication.

Conclusion on sale of immobility shall be delivered to a parties, plaintiff, other participants in procedure, and holders of pre-emption rights.

Public auction shall take place in the office of private bailiff, unless otherwise decided by private bailiff.

Article 109

Only bidders who paid security by the date of public auction can bid for immobility.

Amount of security is one tenth of value of immobility.

Enforcement creditor does not have to pay security.

Article 110

Public auction shall be held even if only on potential bidder access public auction.

Article 111

Two public hearing shall be held at the most.

First public auction shall be held within 15 and not longer than 30 days from advertising of conclusion on public auction on advertising board of Bar.

If immobility does not get sold on first public auction, private bailiff shall announce that first public auction is unsuccessful, second public auction shall be scheduled.

Second public auction shall be scheduled within 15 to 30 days from first public auction

Article 112

On the first public auction immobility cannot be sold for the price under 70% of evaluated price.

On the second public auction immobility cannot be sold for the price under 50% of evaluated price.

Article 113

Public auction shall start by publishing object of sale and initial price than all present bidders are invited to give offer.

Public auction shall be concluded if there are no bidders or if any of bidders give higher price.

Article 114

After public auction is closed, private bailiff is checking validity of bids and declaring who is the most favorable bidder and issues conclusion on sale of immobility.

The most favorable bidder is the one who offered highest bid.

Article 115

Conclusion on sale of immobility contains following information: title, name and last name of three most favorable bidders.

Conclusion contains information that immobility shall be assigned to a bidder who offered next most favorable bid or the one after him, if prior bidder does not pay price within given deadline.

Conclusion shall be published on advertising board of the Bar and shall be delivered to all of those to whom conclusion on sale was delivered as well as to all bidders.

Article 116

To bidders whose bid was not valid or was not accepted, security amount shall be returned right after closing of public auction.

Article 117

Public auction session shall be considered successful even of there were no bidders and second auctions shall be organized. Same applies to the second public auction.

Article 118

Buyer of the immobility has obligation to pay price within deadline set in conclusion on sell of immobility. The deadline shall be set by private bailiff and last between 8 and 60 days.

If the bidder with the most favorable bid does not pay the price within given deadline, private bailiff shall issue conclusion declaring that sell is not valid towards that bidder and immobility shall be awarded to second favorable bidder giving him a deadline to pay the price. If he does not pay the price either, immobility shall be awarded to third favorable bidder giving him a deadline to pay the price.

Same rules shall apply if person with pre-emption rights declared that he will bay immobility under same conditions as most favorable bidder.

If third bidder did not pay the price within given deadline, private bailiff shall declare that sell did not succeed.

Article 119

Conclusion on handover immobility to the buyer shall be issued after price is paid and shall be delivered to everyone to whom conclusion on sale of immobility. Conclusion shall be delivered to tax office and competent land registry book.

Conclusion on handover immobility shall contain order to the holder of immovable property to handover immobility to the buyer within certain deadline, confirmation that all security rights on immobility stopped existing, order to the land registry book to change ownership on the immobility and to delete all rights or liens written in land registry book, if not taken over by buyer.

If request for correction of irregularities is filed against this conclusion, decision on accepting such request shall have effect of ground for compensation of damages.

Article 120

Holder of immobility shall handover the immobility to the buyer within deadline given in conclusion on handover, if otherwise is not prescribed by law or agreement between buyer and holder.

If immobility should stay in possession of third person or enforcement debtor, buyer will have legal possession upon the date when conclusion on handover was issued.

Article 121

If holder of immobility does not hand over immobility to the buyer within given deadline, private bailiff, upon motion of buyer, issues conclusion which is to be enforced under articles of this law related to the enforcement to empty and handover immobility.

Article 122

Settlement shall take place right after conclusion to award immobility to the buyer.

Conclusion on settlement shall be issued.

Private bailiff shall transfer funds of price from his to the bank account of enforcement creditor.

Article 123

Out of sell price shall be settled claim of enforcement creditor whose registration of enforcement procedure in land registry is the oldest and further creditors.

Article 124

Out of sell price shall be settled further claims:

1) Expenses of enforcement procedure;
2) Interests
3) Enforcement creditors claim.

Article 125

To decide on motion for enforcement for settle monetary claim on movable assets, territorial jurisdiction has court on whose territory movable assets are located.

If movable assets are located on territory of different courts, territorial jurisdiction has court to which motion for enforcement has been filed.

Article 126

Subject of enforcement cannot be:

1) Clothes, shoes and other items intended for personal use, furniture essential for use for enforcement debtor and his household members;

2) Food and firewoods necessary to the enforcement debtor and members to his household for three months;

3) Medals, war recognitions, personal letters and family photography of enforcement debtor;

4) Devices for disabled person necessary to perform everyday actions.

Article 127

Enforcement to settle money claim on movable assets shall be performed by listing and evaluation of assets, sale of assets and settle of claim out of sell price.

Evaluation of movable assets shall be performed after listing, if evaluation is not possible to be done at the same time as listing.

Article 128

Decision on enforcement shall be handed over to the enforcement debtor before listing of movable assets and he should be invited to settle claim together with interest and costs of enforcement procedure.

If decision on enforcement couldn’t be handed to the enforcement creditor for any reason, decision shall be left on the place where listing of movable assets is performed.

Enforcement creditor shall be informed about date, time and place of listing of movable assets and that action shall take place even if he is not present.

Lack of presence of enforcement parties shall not stop listing of movable assets.

Party which was not present to the listing of movable assets shall be informed that listing was done.

Article 129

Listing and seizing movable assets shall be limited to an amount sufficient to cover enforcement procedure expenses and claim of enforcement creditor.

Article 130

Enforcement debtor or person who is in possession of seized items shall not dispose seized items in any way. Any disposal shall not take effect.

Article 131

Record of listing and seizure of items shall be made.

Record of listing shall be ground to make pledge note in pledge registry.

Article 132

One copy of the record of listing shall be delivered to the enforcement creditor on the spot or afterwards, if he was not present at the spot.

Seized items shall be properly marked as seized.

Person who removes mar of seizure from seized item shall be fined.

Article 133

Private bailiff shall deliver to the Pledge registry original or certified copy of the record of seizure, together with motion on enforcement, decision on enforcement, due to registration of pledge on seized items in favor of enforcement creditor.

Article 134

Enforcement creditor shall acquire pledge on seized item in the moment of record of pledge in Pledge registry.

If pledge is registered in favor more than one enforcement creditor, order of settlement shall be determined based on date and time of registration.

Article 135

Listed and seized items shall be left for storage to the enforcement debtor, enforcement creditor, private person or legal person registered for storage, or person who is already in possession of seized item.

Money and gold or other preciousness shall be storage in depo of private bailiff or other registered legal person for storage of such items.

Place of storage can be changed upon request of enforcement creditor or ex officio.

Article 136

Listing and seizure of items shall be declared as unsuccessful if there are no items suitable for seizure.

Enforcement creditor shall be informed of unsuccessful listing and seizure of items if he was not present on the spot of seizure.

Article 137

Private bailiff may repeat a seizure within a six months or switch subject and mean of enforcement. Enforcement procedure shall be closed if private bailiff does not find any item to seize upon second attempt and there is no any other mean and subject of enforcement.

Article 138

Movable items shall be evaluated on the spot of seizure and evaluation shall be done by private bailiff according market value of item on the day of evaluation.

If private bailiff is not capable for reason of lack of knowledge to evaluate item, evaluation shall be done upon written information of relevant body.

Enforcement creditor and enforcement debtor may settle in written form on value of item.

Article 139

After seizure of item, another enforcement procedure shall not be performed on same item. New enforcement creditor shall join to already open enforcement procedure and one enforcement procedure shall be conducted.

Join to the already opened enforcement procedure may be done until sold item is assigned to the buyer.

Article 140

Seized items shall be sold in public auction or direct agreement and way of sell shall be determined in conclusion on sale aiming to achieve most favorable price.

Article 141

Conclusion on sale shall contain following information:

1) Description of item;

2) Evaluated price of item;

3) Time and place of public auction and initial price of item;

4) Deadline to conclude an agreement for sale by direct agreement;

5) Deadline for buyer to pay the price;

6) Amount of security and deadline and information on to whom security shall be payed.

Deadline to pay buying price shall not be longer than 6 months.

Article 142

Conclusion on sale shall be published on advertising board of Bar, web site of private bailiff and any other appropriate way.

Conclusion shall be delivered to all persons as conclusion for sale of immobility.

Article 143

Conclusion on assignment of item shall contain name of most favorable buyer.

Conclusion on assignment shall contain information that item shall be awarded to the second most favorable buyer, if first one does not pay the price within given deadline another conclusion shall be issued announcing first conclusion annulled and awarding item to another buyer and so on until list of all buyers is exhausted.

If no buyer paid sell price, private bailiff shall declare public auction as unsuccessful.

Article 144

If second public auction did not succeed private bailiff shall invite enforcement creditor to choose between sell of item by private agreement or to settle his claim by transfer of ownership on item. Enforcement procedure shall be closed if enforcement creditor does not choose within given deadline.

Article 145

Buyer of movable item cannot be person who cannot be buyer of immobility.

Article 146

Conclusion on handing over movable item to the buyer shall be issued after price is paid.

Conclusion on handing over movable item shall be delivered to all persons to whom conclusion on sell of movable asset and to the tax registry. Conclusion on handing over item gives to the buyer power to register movable asset on his name in all public registers.

Same articles as to immobility shall apply if buyer does not pay the price within given deadline.

Article 147

Lien on movable asset shall stop to exist when conclusion on handing over movable asset is issued.

Conclusion shall contain authorization for buyer to request deletion of lien from lien registry.

Article 148

Conclusion on settlement shall be issued after conclusion on handover movable asset.

Article 149

Order of settlement is as follows:

1) Claim of lien creditors;

2) Claim of enforcement creditors who have lien right on property;

3) Claim of enforcement creditors who don’t have lien right on property.

Settlement of next order of creditors will begin after claims of creditors from prior order of creditors are settled.

If selling price is not cannot cover claims of all creditors of same order of settlement, they will be settled according to the order when they got right to settle, and if right order is the same, they shall be settled proportionate to their claim.

Article 150

To decide on motion for enforcement on money claim of enforcement creditor is competent court of place of residence of enforcement creditor.

Article 151

In enforcement procedure shall not be seized:

1) Income on ground of social support;

2) Income on ground of child support;

Article 152

Enforcement on income shall be performed up to two thirds of income if amount of income is less than 1.000,00 BAM and up to one half if amount of income is higher than 1.000,00 BAM

Article 153

Enforcement on money claim of enforcement debtor shall be performed by seizure and transfer of claim due to settlement of claim of enforcement creditor.

Article 154

Decision on enforcement shall be delivered to a debtor of enforcement debtor.

The debtor of enforcement debtor has no right to appeal decision on enforcement.

Article 155

Money claim of enforcement debtor may be seized and transferred only on amount necessary to cover claim of enforcement creditor.

If more than one enforcement creditors filed motion for enforcement on the same money claim, seizure and transfer shall be determined separately in favor of each of them.

Article 156

Money claim of enforcement debtor shall be considered seized when decision on enforcement is delivered to the debtor of enforcement debtor.

Enforcement debtors' debtor is ordered to transfer money claim to the enforcement creditor and is forbidden to fulfil claim to the enforcement debtor. At the same tome enforcement debtor is forbidden to except fulfilment of claim from his debtor.

Money fine shall be pronounced to one who brakes upon named restrictions.

Article 157

Debtor of enforcement debtor is reliable for damage to the enforcement creditor if he failed to fulfill his duty to transfer money.

Article 158

Claim based on legal support shall be fulfilled first which are proven by enforceable title and registered before issuing conclusion on transfer of money claim.

Secondly, claims with pledge shall be fulfilled if pledge is register in Registry of pledge or if claim is registered before issuing conclusion on transfer of claim.

Enforcement creditors are settled afterwards.

Enforcement procedure expenses and interests are in the same order of settlement as main claim.

Article 159

If more than one enforcement creditors claim is decided to be settled out of money claim of enforcement debtor, and money claim of debtor is not enough to settle of all claims, order of their settlement shall be determined by date and time of receivement of motion

for enforcement in the court. Following creditor shall be settled when the claim of previous one is completely settled.

Article 160

Conclusion on settlement shall be issued based on court or private bailiff file status.

Only claims which are recognized in decision on enforcement shall be considered.

After all claims are settled, the rest of money amount shall be transferred to enforcement debtor's account.

Article 161

Out of sale price firstly shall be settled enforcement creditor with mortgage, than enforcement creditors whose remark on enforcement in land book was made firstly, afterwards enforcement creditors which entered enforcement procedure from other enforcement cases. After these, following claims shall be settled:

1. Costs of enforcement procedure,
2. Claims of legal support of dependents,
3. Interests,
4. Claims of enforcement creditors

If collected money is not enough so that claims of all creditors are settled, the claims shall be settled in order of filing motion of enforcement.

Article 162

To decide on motion for enforcement to return employee to the work and to perform enforcement actions, exclusive competence has the court where employee was performing his duties.

Article 163

Motion based on enforceable title to return employee to the work may be filed within 30 day from finality of enforceable title.

Article 164

The court shall in decision on enforcement give a deadline to a debtor to return employee to the work and inform court about his fulfillment of the obligation.

The decision shall contain warning to the debtor that the court shall fine a legal person and responsible persons in that legal person, if he does not return to work employee within a certain deadline.

If employee was not returned the court will fine him upon the article 165 of this law.

Article 165

To a physical person and responsible person in legal entity amount of the fine may be from BAM 500,00 to BAM 10.000,00.

To a legal entity amount of a fine may be from BAM 5.000,00 to BAM 150.000,00.

The fine shall be pronounced to a debtor who did not fulfill his obligation within a given deadline.

When pronouncing a sentence, the court shall bear in mind financial capability of the debtor.

The decision on pronouncing a fine may not be objected or appealed.

The funds collected by fining a debtor shall be assets of the budget and the debtor shall pay all expenses made by collecting money of fine.

Article 166

When deciding on motion for enforcement and performing enforcement procedure, the court shall apply relevant provisions of the family laws.[204]

Article 167

When deciding on motion for enforcement when subject of enforcement is certificate from pledge registry as an enforceable title and performing enforcement procedure, the private bailiff shall apply relevant provisions of the Law on pledge[205].

[204] For instance, articles 361 to 368 of Family law on enforcement of Federation of Bosnia and Herzegovina prescribes procedure of enforcement in case of handing over or returning a child to a parent.
[205] Law on pledge, Official gazette of Bosnia and Herzegovina number 28/04

Chapter 2 Proposal of a new Law on private bailiffs

Section I. Content

Article 1

Private bailiff has public powers entrusted to him by this or other law.

Private bailiff may be an entrepreneur or member of the company whose members are exclusively private bailiffs.

Article 2

Number of private bailiffs shall be determined by minister of justice and shall be determined upon number of citizens.

Article 3

Private bailiff has right to be paid for its work as well as to cover of expenses.

Article 4

Tariff and expenses mentioned in article 3 of this law shall be prescribed by minister of justice.

Article 5

Private bailiff shall be appointed by minister of justice within the area of second instance court.

Article 6

Persons who fulfil following conditions may be appointed as a private bailiff:

1. Citizen of Bosnia and Herzegovina

2. Has full legal capacity
3. Has obtained law degree in Bosnia and Herzegovina or Former Yugoslavia. If diploma was obtained in some other country other than Bosnia and Herzegovina, this condition shall be considered fulfilled upon diploma recognition,
4. Was not convicted for crimes against humanity and international law or any other criminal offence which sanction was not deleted from criminal offence register not there is ongoing criminal process against him,
5. Has two years of experience after law school diploma obtained,
6. Has passed bar exam,
7. Has passed bailiff exam,
8. Was not expelled from private bailiffs bar or attorneys of law bar.

Article 7

Private bailiff exam might be taken from person with faculty of law degree, bar exam and has minimum of two years relevant experience.

Ministry of justice shall form a register in digital format regarding persons who took private bailiff exam.

Register shall contain of following information: name and last name, date of birth, personal number, address, data on education and experience, date of exam taken and results.

Program, method, vacancy procedure, vacancy committee and work of the committee including its payment, regarding exam for bailiffs shall be prescribed by ministry of justice.

Article 8

Vacancy committee shall present a proposal of possible candidates to a minister of justice together with resumes of the candidates.

Article 9

Minister of justice shall appoint a private bailiff among proposed and the decision shall be published in official gazette.

Article 10

Decision on appointment may be impugned only before competent court.

Article 11

Private bailiff shall take the oath before minister of justice within 15 days starting from the day of receiving of the decision.

The text of an oath shall e: “I swear-declare that I will perform service of private bailiff in such way that I will protect a Constitution and law and I will perform it with dignity, conscience and commitment and will protect official secret”.

Article 12

Private bailiff shall within 60 days as from given oath file a prove that he fulfilled necessary conditions regarding equipped office, stamp and insurance.

Conditions regarding stamp, equipment and insurance shall be prescribed by minister of justice.

Article 13

Private bailiff shall start performing his duties within 60 days as from taking an oath.

Minister of justice may prolong this deadline in justified cases.

Article 14

Private bailiff shall put a board on the building where his office is located, containing his name, official signs of the state (entity, canton), his name and last name and remark that it is private bailiff.

Article 15

Private bailiff has identification card, whose content shall be prescribed by minister of justice and which shall be issued by ministry of justice.

Article 16

Private bailiff may end performing his duties in one of the following ways:

1. On his personal request
2. When fulfilled conditions for retirement
3. When removed from a function.

Article 17

Private bailiff may be removed from function out of following reasons:

1) If one of the conditions necessary to became a private bailiff stop to exist

2) If he concludes another contract for employment;

3) if he does not pay for prescribed insurance;

4) if he was under the measure of ban to perform a function of private bailiff;

5) if he was convicted for criminal offence other than offence against traffic.

Article 18

Decision on termination of function of private bailiff issues minister of justice who is also starting a procedure.

Article 19

Termination of function of private bailiff shall be published in official gazette and the decision on termination may be appealed before the court.

Article 20

After private bailiff ended his work, another private bailiff shall be appointed for the same area.

Article 21

If private bailiff is prevented to perform his duties his duties shall be performed by his deputy.

If private bailiff has no deputy, he shall appoint another private bailiff to deputy for him or deputy of another private bailiff.

Private bailiff shall inform ministry of justice bar association and competent court about him being prevented to work.

If private bailiff for any reason did not name his deputy within the deadline of 15 day as of his prevention to work, the deputy shall be appointed by minister of justice.

Article 22

Powers of private bailiff:

1. Issues conclusion defining mean and subject on enforcement;

2. Issues other decisions and conclusions;
3. Performs enforcement actions;
4. Service of the documents from and to the court and private bailiff;
5. Collects data on enforcement debtor.

Article 23

Each action of private bailiff shall be marked by official minute, official note or in other appropriate form.

Article 24

Private bailiff shall be excluded if in enforcement procedure party is:

1. bailiff himself
2. His marital or extra-marital partner
3. His relative in strait line with no limitation and in lateral line up to fourth degree,
4. Person to whom private bailiff is tutor or adoptive parent.
5. If he was at any point included in any way in legal proceedings which resulted with enforceable title or authentic document,
6. For any other reason which my endanger impartiality of private bailiff.

Article 25

Private bailiff obeys code of ethics for private bailiffs, issued by bar of private bailiffs.

Article 26

Private bailiff shall compensate for the damage caused to another person by performing his duty.

For caused damage to another person bailiff shall be held responsible upon general rules for damage compensation.

Private bailiff shall be held responsible for damage caused by his deputy or other employee in his office.

Article 27

Private bailiff shall regularly attend professional education to which program shall be prescribed by private bailiff bar.

Initial training shall be attended within the six months from taking an oath.

Article 28

Private bailiff shall open a separate account intended to be account for funds collected in enforcement procedure and separate account intended to be account for expenses and awards.

Funds collected on this account shall be without any further delay transferred to an account of enforcement creditor.

Article 29

Once a year private bailiff shall file a report on his assets and financial report.

Bar of private bailiff shall do necessary checks to control the reports of private bailiff.

Once a year private bailiff shall file a report on his work to a ministry of justice and to a bar.

Article 30

Private bailiff shall pay a fee to a bar prescribed by a bar.

Article 31

Private bailiff may have deputies and assistants of private bailiff who may be a person qualified to be appointed as a private bailiff.

Deputy and assistant private bailiff is authorized to perform all enforcement actions in name and in behalf of private bailiff and issue all decisions and conclusions which shall be signed by his name.

Article 32

Deputy and assistant private bailiff shall be appointed by private bailiff.

Article 33

The bar of private bailiffs is professional organization of private bailiffs whose members are all appointed private bailiffs.

The bar has status of legal entity and has powers prescribed by law.

Article 34

Powers of the bar association of private bailiffs are:

1) adopts statute of the bar, code of ethics of private bailiff and other acts prescribed by law,

2) Initiates disciplinary proceedings against private bailiffs, their deputies and assistants;

3) Represents private bailiffs before state and other bodies, protects their rights and represents their interests,

4) Introduces initial education and permanent trainings for private bailiffs, their deputies and assistants;

Article 35

Supervision over work of private bailiff shall be done by the minister of justice.

Official control of private bailiff's work shall be done upon initiative of the bar, minister of justice, court president, or upon complaint of party or other person involved in enforcement procedure.

Ministry of justice has all powers to collect information on work of private bailiff.

Article 36

The private bailiff shall be disciplinary liable for violation of official duty done by fault.

Criminal or minor offence liability shall not exclude disciplinary liability of private bailiff if such acts represent violation of official duty of private bailiff.

Article 37

Following actions shall be considered as violation of official duty:

1) violation of articles of law on enforcement and other applicable law while performing enforcement procedure actions,

2) Calculates fee higher than prescribed by law or makes a pressure to a parties to file an enforcement case to his office,

3) If he disobeys enforceable title of the courts or other relevant bodies,

4) if he buys item on public sale for himself or his relatives,

5) If he misuses money collected in enforcement procedure and prolongs transfer of the funds on the account of enforcement creditor,

Article 38

Following sanctions may be imposed to a private bailiff:

1) Written warning,

2) Money fine in amount from 1.000,00 BAM to 30.000 BAM,

3) temporarily suspension up to a one year,

4) Revocation of private bailiff license to work.

Article 39

Disciplinary proceedings shall be led by first instance committee and appeal committee within the Bar.

Disciplinary proceeding rules shall be prescribed by the Bar.

Article 40

Disciplinary sanction shall be issued by first instance committee and such decision may be appealed to an appeal committee within 15 days from receiving reasoned decision.

Article 41

Same provision regarding disciplinary proceedings against private bailiff deputy and private bailiff assistant shall apply.

Article 42

Final decisions in disciplinary proceedings may be challenged before competent court within 30 days from receiving reasoned decision of disciplinary committee.

Article 43

All enforcement cases opened under law on enforcement prior to this law shall be finished in accordance to that law.

Article 44

All court bailiffs shall be offered either to continue to work within the court as a curt bailiff or to work in other available positions in the court under the same or similar conditions.[206]

Article 45

The Bar and the minister of justice has obligation to adopt all necessary regulations within 90 days from publishing this law in official gazette.

Article 46

This law shall come into force within 8 days from publishing in official gazette and shall be applied as of 2 years from coming into force.

Article 47

Law on enforcement will no longer be applicable as from 8 days from publishing of this law.

Section II. The bylaws regulation new system of enforcement and private bailiffs

344. Introduction. Since that institution of the private bailiffs is completely new in legal system in Bosnia and Herzegovina, it was important to give a proposal of the roof laws introducing the completely new system. But, not less important are bylaws which need to be adopted and which shall be a fundament for these laws and the new system to

[206] There is high probability that transitional period before all cases are transferred to private bailiffs will take several years which will give enough time that all court bailiffs are either given other appropriate position, find employment in private bailiff offices or to find another job out of the court and private bailiff office.

come into the force. Regards to this matter, text of these bylaws shall not be given here but just an important content that these bylaws will have to contain.

§ 1. Access to the profession

345. The rulebook to regulate initial exam of private bailiffs. The rulebook should be issued to prescribe a program for private bailiff initial exam. Also, this rulebook should contain regulation regarding the procedure this exam shall be organized and composition of the committee organizing the exam. The exam should be taken before a committee formed by minister of justice and should consist out of 3 to 5 members.

346. Members of the committee and their expertise. It is important that the members of the committee are high level professionals, among whose, as a member of committee, there should be an experienced judge specialized in enforcement, an enforcement agent (court bailiff with practical experience) and of course a representative of ministry of justice. The decision should be made by majority votes of the committee members. A committee should have a president who would manage a work of the committee, prepare a final report with a final result of the exam and deliver a final report to a ministry of justice. Secretary of the committee should perform administrative duties regarding organization of the exam such is control of payment of exam expenses, minutes on the exam, manages admission to the exam etc.

347. The body organizing the exam. The ministry of justice should be the one organizing the exam initiated by vacancy publishing the date, time and place of exam as well as a deadline to file an application. The exam should be organized at least once a year. Still, within a first period of the two years from introducing the new system it may be organized more often than once a year.

348. Rules related to the vacancy. A vacancy to file application with necessary documentation should be published on a website of the ministry of justice, official gazette and at least one daily newspaper distributing on the whole territory of the state. Applicants

should be left enough time to prepare for the exam due to complexity of the subject. Applications should be open to the citizens of Bosnia and Herzegovina who have obtained a law degree, has relevant experience after obtained law degree. Ideally, the candidate should have a relevant experience in enforcement procedure but necessarily. After the system is implemented, the conditions may be more restricted in terms of years and type of experience.

349. Parts of the exam. The exam itself should consist out of written and oral part. Written part of the exam should contain different types of questions showing that the candidate has relevant knowledge about the constitutional order and organization of judicial institutions of the country he will perform his duties and out of the practical task. Special attention should be given to the civil litigation procedure, enforcement procedure and commercial law. Important part of the exam should be dedicated to a delivery of the documents in legal system due to task of private bailiffs to deliver court documents and their own as well. Also, the candidates should be aware of international standards related to enforcement area so this should be part of written exam as well. By solving written part of the exam, the candidate should show competence to write legal acts and documents related to an enforcement procedure. In terms of working on practical task, the candidates should be allowed to use all available literature due to also check their competence to use literature when solving a complex legal task. Firstly, the candidate should take the written part of the exam and then practical task. In order to ensure complete anonymity of the candidates, the exams should be done under the codes and not under the real names of the candidates. Considering complexity of the written exam, the candidates should be given enough time to complete all the tasks – written test and practical task. Oral exam should be organized on a different day than a written test. Of course, only candidates who passed written part of the exam should be entitled to take oral exam. Oral part of exam should be organized publicly, and in front of all committee members. The candidate should be asked specific questions regarding law on enforcement, law on private bailiffs and bylaws regulating work of private bailiffs.

350. The exam should be transparent and documented by relevant documentation. In order to ensure transparency, the minutes/record on the exams should be done for every

exam. The minutes should contain all relevant information so that in any moment it can be identified who were members of the committee, which candidates took the test, the exact date, time and place of the exam and what questions were asked on written and oral part of the exam. Also, the record should contain information on the success of each candidate and any other relevant information regarding the exam.

351. Ranking of the candidates. Based on the results measured in points scored, the ranking list of successful candidates should be made by the committee and delivered to a ministry of justice which than should inform in written each candidate about his success on the test. The candidates who did not pass the private bailiff exam should be informed in written form. They should be allowed to inspect their papers/tests, on their request.

352. Initial and continuous training of private bailiffs. In terms of making private bailiffs' profession as more professional as possible there needs to be initial training organized as well as a continuous training for all professionals that are and shall be part of the profession.

353. Rulebook on rules for training of private bailiffs. To ensure all above mentioned, there should be rulebook adopted to prescribe rules for this training. The rulebook should regulate subject and content of initial and continuous training of private bailiff. Initial training may attend any interested person who completed law degree and is preparing to take exam for private bailiff. But the initial training is obligatory for professionals who passed exam for private bailiff and started an office. The initial training has to be done within three months from opening an office.

354. Content of initial training for private bailiff. Initial training for private bailiffs include enforcement procedural regulations, civil law regulations as well as practical training in terms of performing duties of private bailiff. It has to be emphasized that initially, educators should be brought from elsewhere since it shall be a whole new profession and whole new system for Bosnia and Herzegovina but within the time, experienced lawyers and practitioners should be able to take over the task.

355. Importance of the practical training. It will be important that first appointed private bailiffs are, beside theoretical knowledge, practically trained well so that they are aware of importance they have in legal system that they are taking over. It is also of great importance that the private bailiff realize how important ethics is in their new profession. Considering that they shall have all access to the all funds and that the trust of the citizens and public as a whole will depend firstly on their ethics and attitude. The training should consist not only of theoretical part but important part of it should be workshops, discussions with different stakeholders and primarily practical part. It should be organized in small groups so every participant has attention of the lecturer and opportunity to be directly involved in all activities. It should be primary interest to have all communication between a Bar, ministry and justice and a private bailiff is enabled to be electronically as well as through the paper.

§ 2. The code of ethics

356. Introduction. The trust of the public population in judiciary and in public institution as a whole is on a very low level in Bosnia and Herzegovina. In the future, all public institutions will have to work hard in order to improve their position in the public. In light of above mentioned, the code of ethics and its implementation is one of the most important documents in terms of implementation of new system. The code of ethics should be obligatory for all private bailiffs and their deputies and its basic rules should be mandatory to all employees of the office of private bailiffs.

357. Importance of the private bailiff. It is important to say that private bailiffs should be keeping and independency and public trust in institution of private bailiff, not only within working hours but out of the working hours too, considering importance of the profession.

358. Dignity of the private bailiff. Private bailiff needs to have a dignity and be worth of the function he performs. He has to be person of high moral qualities, be honest, just,

dignified, honest and a row-model for the citizens. Private bailiff needs to act in accordance with moral standards of its profession, to protect his professional and personal reputation.

359. Honor and reputation of private bailiff. Private bailiff should guard honor and reputation of private bailiff profession with every action he performs, professionally and private. In terms of his reputation, private bailiff needs to obey dress code appropriate for the professionals and the function he performs. The private bailiff should keep a reputation of the private bailiff profession by his appearance and his behavior and should hold back from visiting such places which could lead to a suspect

360. Working principles and rules of private bailiff. Private bailiff should work under the principles which should become his rules of action. First rule to obey by private bailiff is independency. Performing his working duties as a bailiff, one should be independent of any influences from aside and to act within his personal beliefs. Together with this, he should apply international standards, constitution, law and other regulations. Private bailiff should not be influenced by his close colleagues as well as his family and friends. His actions should not be determined by his private religious, political, race, ethnicity or sex-orientation opinions. He must not be dependent from any person and in any way, financially or somehow else.

361. Professionalism of the private bailiff. Private bailiff should perform his duties professionally and with expert knowledge, streaming to improve his knowledge and expertise. He shall attend professional education and trainings, will monitor and apply change of regulations, court practice and professional literature. Same shall apply to an employee in the office of the private bailiff.

362. Equal treatment for all involved in enforcement procedure. All clients and parties in the enforcement procedure should be equally trite by private bailiff and employees of his office. Personal characteristics of the party must not be an element when treating the parties in terms of race, religion, ethnicity, sex or sex orientation or any other personal characteristic. Private is not authorized to refuse a case once when a party brought a case to him.

363. as a must to private bailiff. One of the main issues when a court was dealing with an enforcement case, was inefficiency. Private bailiff is professional dealing only with an enforcement case so he has an obligation to efficiently deal with enforcement cases and solve them. The private bailiff will have to strictly follow all deadlines prescribed by the law respecting all procedural and material law rights that parties have. Also, it is his job to prevent parties to misuse their rights and that unduly delay enforcement procedure.

Private bailiff shall make sure that all his actions are done by respecting principle of economy and that expenses that are made are the necessary one.

364. Principle of the proportionality. One of the most important principles in enforcement procedure, irrelevant is it in powers of the court or in private bailiffs is principle of the proportionality. This principle means that seized scope of the seized items have to be in proportion with a debt. What does this principle mean in practice? In practice, this firstly means that for instance, debtors' real estate should not be seized to collect an amount of 1.000,00 EUR and 200,00 EUR of expenses. And secondly, that the assets whose sell shall create higher expenses than a debt should not be subject of enforcement. In second case, this would mean that, for instance, if the subject of enforcement is some assets ftor whose evaluation will have to be hired expert costing more money than a debt, such asset should not be subject of enforcement procedure.

365. Conflict of interest. Private bailiff shall not perform any action if he or his close relative has financial interest in it and should inform a court and a party if such interest exists.

366. Prohibition of advertisement. As all other professions in judiciary, new profession of private bailiffs should not be advertising profession via television, newspapers, electronically or any other way. Advertisement for the private bailiff should be his knowledge, efficiency and results of his work. The only advertisement for the office of private bailiff should be a board outside of building showing that in the building are premises of the private bailiff which also would be a guiding instruction for a citizen looking for a bailiff.

367. Work remuneration. As any other entrepreneur, private bailiff shall charge for his work. Charge of private bailiff consist out of his expenses and his award. Private bailiff shall not charge more or less than it is prescribed by a tariff of private bailiff.

368. Obligation to advise and inform subjects involved in the enforcement procedure. Private bailiff shall give all necessary explanations to the parties informing them what are the consequences of the work of private bailiff and shall instruct a private person about necessarily to have legal representative if he pounds that the person is not capable to take care of his rights without legal help.

Chapter 3 Proposal of a new Law on personal bankruptcy

369. Introduction. It is the fact that in Bosnia and Herzegovina large percent of population is on the edge of poverty. Large number of unsolved enforcement cases is related to the unpaid utility bills related to the water supplies, garbage removal, unpaid telephone bills, TV taxes etc. This means that large number of these cases is pending before courts, wasting time of judges with no real chance of collection of money. In order to release courts of these cases, the problem should be solved systematically. The state should recognize such population and takeover at least part of these obligations. In this context personal bankruptcy procedure has to be mentioned.

370. Personal bankruptcy as novelty in Bosnia and Herzegovina.
Personal bankruptcy is institute which is unknown in linguistic and legal system in Bosnia and Herzegovina. It is of crucial importance that personal bankruptcy is introduced so individuals are prevented to take more debts than they are able to pay and therefore to be prevented from becoming one of the cases ending up before courts/private bailiff. Personal bankruptcy should be opportunity for the debtor to have fresh start and to, after certain period of time, to be able to start from scratch and to start over again without debts. It has to be noted that there is possibility of abuse of this institute so that one declares personal bankruptcy to damage creditors and to avoid payment of his debts.

371. Aim of the personal bankruptcy institute. Personal bankruptcy procedure has to be effective and result oriented. Has to be voluntarily based and debtor should not be forced. It should be possible to start personal bankruptcy procedure only if creditor is not able to pay for his debts for period longer than 90 days. Mediation procedure should be possible prior to opening formal procedure so that creditors and debtor have opportunity to negotiate and settle their legal relations prior to coming to the court or private bailiff. It is out of crucial importance that mediator has powers to check all records and databases regarding debtors' assets and properties so that arrangement before mediator has ground and real possibility of fulfilment.

372. Subject to the law on personal bankruptcy. This law should be applied only to a psychical person dealing as a psychical or natural person out of any business relations. In personal bankruptcy procedure court and bankruptcy administrator should be involved. The court should name bankruptcy administrator and to supervise a procedure and bankruptcy administrator to lead procedure. If mediation procedure does not succeed, debtor may start procedure of personal bankruptcy. The court shall issue decision on opening of bankruptcy procedure and when decision is publicly released than legal consequences of bankruptcy opening shall be placed.

373. Content of the proposed text. Content of the law on personal bankruptcy:

-Proposal text-

Article 1

This law shall regulate rules of personal bankruptcy, conditions for initiation of personal bankruptcy procedure, court proceedings and conditions to write off leftover debts of the personal bankruptcy debtor.

Article 2

Aim of this law is to consolidate all financial obligations personal bankruptcy debtor has and to release personal bankruptcy debtor from leftover debts after all his assets are encased and divided among creditors.

This law shall apply only to the financial obligations of the personal bankruptcy debtor created upon his actions as a consumer and not to an obligations on relation psychical person to a psychical person.

Article 3

Bankruptcy procedure shall be conducted over assets of a physical person.

Under provisions of this law, physical person is considered every person acting for its personal needs out of registered activity.

Article 4

Personal bankruptcy procedure may be opened only due to insolvency of the personal bankruptcy debtor which shall be demonstrated in inability of physical person to pay its money obligations in period of time longer than 3 months in amount higher that 10.000,00 BAM.

Article 5

Competent court for personal bankruptcy proceedings is municipal court where person has a residence.[207]

It is single judge who will preside the case.

Second instance court shall decide on appeal in the panel which consists out of three judges.

Article 6

Personal bankruptcy procedure is urgent procedure.

The court might issue a decision with or without oral hearing.

The court shall collect all necessary evidence and other relevant information related to the proceeding.

Article 7

[207] When it comes to a bankruptcy of legal entities, for instance in Federation of Bosnia and Herzegovina it is jurisdiction of municipal court based in the center of the each Canton. But, considering that physical person is going through bankruptcy proceedings due to lack of money, then it would be unreasonable to make that person travel to an administrative center of canton and in such way to produce more expenses.

Decisions in personal bankruptcy proceeding shall be made in form of decision or conclusion.

Conclusion shall be made when deciding on procedural issues.

Article 8

First instance court decision may be appealed.

Appeal may be filed within 15 days from receiving decision and shall be filed to the first instance court.

First instance court shall forward an appeal to a second instance court within 8 days from receiving an appeal.

The second instance court is to be deciding on appeals.

Appeal shall not stay the proceedings.

Article 9

Appeal against conclusion is not permitted.

Article 10

The competent court shall issue confirmation on ongoing or closed personal bankruptcy proceedings on the request of interested person after the interest has been proved.

Article 11

The competent court in personal bankruptcy proceedings shall perform following actions:

1) Lead personal bankruptcy proceedings

2) Decide on plan on debts salvation and decides on opening of personal bankruptcy proceedings,

3) Declare and depose of personal bankruptcy governor, oversees its work and instructs him during his work,

4) Determines award for work of personal bankruptcy governor and costs cover,

5) Decides on amount of funds necessary for everyday costs of person under bankruptcy proceedings,

6) Approves pay off of the creditors

8) Decide on period of control of the personal bankruptcy debtor,

9) Decide on release of leftover obligations,

10) Decides on conclusion of personal bankruptcy proceedings

11) Decides on all other relevant issues regarding personal bankruptcy proceedings.

Article 12

As a personal bankruptcy governor may be declared a person who is listed on the official list of a personal bankruptcy governors.

The list of personal bankruptcy governors shall be made for an area of a second instance courts.

As a personal bankruptcy governor shall not be named a person who is:

1) Debtor in personal bankruptcy proceedings,

2) Employee with a personal bankruptcy debtor while he was self-employed person

3) Relative of the judge or personal bankruptcy debtor in strait line to any degree and in side-line up to fourth degree.

Article 13

Ministry of justice sets up a list of personal bankruptcy governor which can be amended and shall be published on website of ministry of justice.

Ministry of justice shall issue a regulation regarding conditions to become personal bankruptcy governor.

Ministry of justice shall issue a regulation regarding exam for personal bankruptcy governors.

Article 14

A person from a list of the governor for certain area shall be appointed as a governor by automatic choice.

Article 15

Decision on appointment of a governor shall be made in decision on opening personal bankruptcy.

Decision on appointment of governor may not be appealed.

Article 16

Governor shall act with an attention of good expert.

Governor shall govern an asset of the debtor due to settlement of the debts of the personal bankruptcy debtor.

Governor shall sell debtors assets trying to achieve the best price and the selling price divide between creditors, without any due.

Governor shall file the reports to the court every 6 months especially adding new elements of the material situation of the debtor affecting his ability to pay his debts.

Article 17

The work of governor shall be supervised by the court.

The governor may be discharged by the court if he does not perform his duties by the rules or does not obey decision s made by the court and this decision shall be forwarded to the ministry of justice.

Article 18

Governor shall open separate bank account for each debtor he is governing at the latest 3 days after he was appointed as a governor by the court.

Funds on this account my not be subject to a seizure against governor.

Article 19

Governor has right to be awarded for his work and has right to costs compensation.

Decision on compensation and costs shall be made by a court.

Decision on costs may be appealed to a second instance court by debtor, creditor, governor.

If governor was discharged due to irregular work, he has no right to an award.

Article 20

Personal bankruptcy procedure shall be initiated on an initiative of a debtor.

To a motion to initiate procedure, debtor shall attach list of his debts and his assets and a plan for fulfilment of obligations.

Article 21

The debtor shall advance costs of the personal bankruptcy procedure in amount determined by a judge.

If the debtor cannot advance the costs the judge may decide to cancel procedure or that the costs shall be advanced from budgetary funds and later paid by a funds out of the sold assets.

Each creditor shall pay for his costs of proceedings.

Article 22

The personal bankruptcy debtor and his creditors may ask a stay of procedure before decision on bankruptcy was issued due to possible agreement on debt payment whose justification is to be decided by a judge.

Stay of procedure shall last no longer than 6 months.

After the deadline of six months passed, and no continuation was requested, the court shall close a proceeding.

Article 23

Before issuing decision to start personal bankruptcy proceedings, the court shall set a hearing to consolidate all debts and assets of the personal bankruptcy debtor and to consider a plan for debt payment.

Article 24

Summons to a hearing shall be sent to a personal bankruptcy debtor, creditors stated in a motion for opening of the proceedings and shall be publish on the website and advertising board of the court.

The summons published on the web site and advertising board of the court shall contain invitation for any person which has claim towards a debtor to file a motion to the court and to join the proceedings.

The time between summons and hearing may not be less than three months.

Article 25

Hearing before a court starts by invitation to all creditors to declare and prove their claim towards personal bankruptcy debtor. Afterwards, the debtor and the creditors shall be invited to declare and prove all personal bankruptcy debtors' assets. Finally, the plan for payoff the debts shall be considered.

Article 26

If for any reason payoff plan was not accepted by creditors or a debtor it will be stated that the plan for payoff the debts was not accepted and personal bankruptcy procedure shall be opened.

It will be considered for the creditor who did not oppose the payoff plan in written form and did not come to a court hearing, that he gave his consent to a payoff plan.

The accepted payoff plan shall be entered into the court minutes and shall have effect of court settlement and shall be enforceable title.

As of the moment of accepting the payoff plan, interest of the creditors will no longer be increased.

Decision on opening personal bankruptcy proceeding shall be delivered to a national registry of debtors under personal bankruptcy procedure.

Article 27

The consent of the creditor may be substituted by a court decision on a motion of the debtor on other creditor after a creditor who declined to give his consent was heard before the court.

Such decision of the court may be issued if the claims of consented creditors is more than 2/3 of total claim.

Such decision of the court may be appealed to the second instance court within 15 days.

Appeal shall suspend effect of the decision.

Article 28

If the payoff plan was not accepted the court shall issue a decision to open personal bankruptcy proceedings.

Article 29

Decision on opening of bankruptcy proceedings shall contain following:

1. Data about a personal bankruptcy debtor including his name, last name, address and personal number,
2. Data about all known creditors,
3. The date and an hour when personal bankruptcy proceedings opened,
4. Invitation to the creditors to report their claims within 90 days from opening a personal bankruptcy proceeding,
5. Invitation to the debtors to report their claims towards a debtor, to a court,
6. Information that decision on opening personal bankruptcy proceeding shall be delivered to all public books, land registry, vehicle registry, all banks performing their business on the territory of the court, and on the website of the court.

Decision on opening personal bankruptcy procedure shall be published on website of the court with no delay.

Article 30

Decision on opening personal bankruptcy proceedings shall be delivered to:

1. Debtor
2. All banks doing their business in the place of competence of the court and particularly to the banks doing any business with a personal bankruptcy debtor,
3. Tax office
4. State attorney office
5. All available public registries.

Article 31

If the court, based on the all collected evidence, finds that the debtor has no assets or that the assets are enough only to cover expenses of personal bankruptcy proceedings, it will issue decision that personal bankruptcy proceeding shall not be opened and that all debts of the debtor are written off.

In such case the personal bankruptcy debtor shall be oversighted by a governor who shall control every future action of the debtor, for a following 3 years.

Article 32

If the court, based on the all collected evidence finds that the debtor has enough assets to pay his debts back, the list of priorities shall be made for all creditors and the debts shall be paid according to that list.

The list of priorities shall be made based on list of settlement in law on enforcement except for the obligations for support of legal dependents which will have priority in pay.

Article 33

If bankruptcy proceedings debtor dies during the proceedings, the proceeding shall be continued against previously confirmed assets, if possible.

Article 34

Assets of the debtor shall consist of all assets existing in the moment of opening of personal bankruptcy proceedings and an asset which debtor will obtain during the personal bankruptcy procedure.

Assets which shall not be seized are the ones necessary for living of the debtor and his dependents including household items, woods for heating, food for next three months and necessary clothing.

Article 35

Marital heritage shall not be subject to a personal bankruptcy proceeding until it is divided between the debtor and his spouse.

Article 36

During the personal bankruptcy procedure, the governor shall protect dignity of the debtor and that the debtor is left with enough funds to cover basic life expenses of him and his dependents including for expenses for rent, utility and services.

Article 37

Sell of the assets in personal bankruptcy proceedings shall be performed by rules in enforcement procedure.

Article 38

While the period of control of his actions lasts, the debtor may file motion for permission from the court to perform self-employment activity.

Motion to perform self-employment activity shall contain a business plan.

Prior to issuing the decision on the motion the court shall obtain an opinion from the creditors and if from collected evidence and business plan follows that the income might be made, the court shall issue decision and approve proposed self-employment.

Article 39

Approval for self-employment shall be cancelled by the court if the debtor shows loss in his yearly financial report.

Article 40

Final division of funds shall be performed after assets of the debtor are sold without any delay.

For that purpose, final hearing shall be held where decision on division shall be issued as well as a decision on leftover funds, if there are some.

Article 41

Decision on closure of personal bankruptcy procedure shall be issued after division of assets is done and the decision shall include an information that all leftover debts of the personal bankruptcy debtor are written off and a period of control of actions for the debtor which would be no less than a year and no longer than a three years.

Period of control of action shall begin on the day of final of decision on closure of personal bankruptcy procedure.

Article 42

While period of the control is lasting, debtor is not allowed to conclude any deals or business related to an asset that are part of the personal bankruptcy proceedings funds.

All necessary deals and business shall be done by the governor in the name and for the account of personal bankruptcy debtor.

Article 43

The court shall not allow write off of the leftover debts of the debtor if the debtor violates any of his duties prescribed by this law aiming to fraud the creditors.

Violation of the duties of the personal bankruptcy debtor prescribed by this law shall be considered as a criminal offence according to a criminal law and shall be subject to prosecution.

Article 44

After period of control of action expires, the court shall issue a decision on write off of leftover debts of the debtor.

Decision of the court may be appealed by creditors.

Decision to write off the leftover debts shall be bounding to all creditors including the ones which did not participate in personal bankruptcy proceedings.

Article 45

The decision to write off the leftover debts shall not be issued if the debtor was pronounced guilty for the feud related to the personal bankruptcy proceedings and if such decision was already issued, after such judgment is made, the decision to write off the debts shall be annulled.

Article 46

Decision to write off the debts to a personal bankruptcy debtor shall not have an effect to a claim of the creditor to a guarantors and co-debtors but the debtor is released of his obligation toward his guarantors and co-debtors.

Decision to write off the debts shall not affect following debts of the debtor:

1. Debts toward physical persons confirmed by final judicial decision,
2. Legal support of his dependents,
3. Return of the material gain obtain by criminal or minor offence,
4. Damage reparation for the damage created by criminal or minor offence.

Article 47

All bylaw acts mentioned in this law shall be issued within 90 days as of coming into force of this law.

Article 48

This law shall be published in official gazette and will come into force within a year from the date of the coming into force and shall be applied within a year from coming into force.

374. Change of relevant existing regulation and introduction of the new one.
In order to have courts competent for this new competency, existing laws on courts must be amended as well as the laws on fees. None of these regulations recognize personal bankruptcy procedure for the physical persons. Competent court should be first instance court of regular competences.[208] Furthermore, it is important to establish national registry of the debtors under the bankruptcy proceedings as a public database which shall contain relevant information on all personal bankruptcy debtors.

375. Transitional period. In order for the newly introduced system to work well the country and its population should be given enough time to adapt to the new system, it is of crucial importance that there is enough time given as transitional period. The other reason why this is important is that current court bailiffs are given enough time to do necessary steps so they may continue to work as bailiffs (finish school etc.). Transitional

[208] Competent courts for bankruptcy proceedings of legal persons according to the current legislative are only first instance courts in headquarters of the cantons, in Federation of B&H, and specialized commercial courts in RS.

period should not be less than four years. Two out of four years should be the years where both systems should be existing at the same time. Courts should finish cases they already started applying the old regulations. In the period of two years new enforcement agents should be appointed and new enforcement offices should be set up. After two years, newly appointed agents should start to work and courts should be given a deadline to close all existing enforcement cases and after four years in total, new system should be completely applied.

TITLE 3: IMPACT OF INFORMATION AND COMMUNICATION TECHNOLOGY (ICT) TO THE ENFORCEMENT PROCEDURE

376. Introduction. Enforcement as any other branch of law must not be reluctant to the development of the information and communication technology. Completely opposite. It has to embrace all novelties and possibilities that ICT is bringing. Careful analysis of enforcement procedure brings us to the conclusion that even the biggest shortage of enforcement procedure may be overcome by introducing ICT to the system (chapter 1). But, as any other novelty, introducing ICT to the enforcement may not be implemented without fulfilling some preconditions (chapter 2).

377. Enforcement through history. Enforcement procedure as a legal procedure to enforce the judgment, authentic document, or another enforceable title when the debtor failed to pay his debt voluntarily, has been part of the legal system since old times and goes back to the early Romanian law. When the debtor is not willing to pay his debt or is denying the debt in whole, there is a high percentage of probability that he shall not pay the debt even when there is enforceable title issued and that enforcement creditor shall have to enforce his claim through the system using available means. Nowadays, talking about the usage of enforcement, it does not understand the usage of means such as slavery or other drastic measures, which were used in old times, but usage of the help of state or other institution in claim collection.

378. Personal execution as principle of early stage of enforcement procedure.
Looking back through history, it may be concluded that the enforcement procedure of early Romanian law was based on personal execution. In practice, that meant that the enforcement creditor was entitled to make the debtor be his slave until the debt was considered paid or even to make him a slave for a lifetime. But, even so far back in time, this principle was abandoned and enforcement started to be implemented on assets of enforcement debtor. Ways of implementation of enforcement procedure on enforcement debtor's assets varied from seizure of all assets of enforcement debtor to seizure only to the content that is necessary to cover the claim of enforcement creditor. In modern times,

seized items normally get sold to cover the claim of enforcement creditor. Of course, the buyer may also be an enforcement creditor and in such a situation, he would keep his seized assets.

Chapter 1 The necessary introduction of digital enforcement

379. Late year of slavery abandonment. It is interesting to mention that only in 1978 institution of slavery of debtors was abandoned in the area of former Yugoslavia including the area which covered a territory of modern Bosnia and Herzegovina as well.

380. Acceptance of the novelties as a necessary step. Information and communication technology understands different types of electronic means of communication such as computers, land and cell phones, television, radio, and as one of the most important, the internet. As technology is more and more part of the everyday life of every human being, privately and business-related, it is obvious that legal systems and legislation will have to accept its innovations and open their arms to the changes that technologies are bringing to it. It is not only that those modern technologies are something that everyone will have to let enter their life but it is something that makes our lives easier and easier. The judicial system is quite closed to the impact of any novelties and especially technology, but it is not possible to ignore all benefits that technology may bring to the everyday life of every participant of judicial procedure no matter conducted by the courts or other institutions.

381. Open minded lawyers as recondition to implement ICT in legal and enforcement system. So far, the emphasis on technology in the legal system has been to support lawyers and their staff in some of the work they do, such as email, accounting systems, word processing, and more. Now, we're beginning to see the merits of using technology to automate some tasks such as document analysis or document drafting - essentially moving from the back office to the front office. One of our biggest struggles in the future of the law profession are law schools because they're still generating 20th-century lawyers when what we need is 21st-century lawyers to meet the demand of companies and individuals who want a lower-cost legal option that is conveniently available and delivered electronically. Some legal work can now be done by machines when in the past, this was unthinkable. Large disputes often have a huge number of documents to analyze. Typically, armies of young lawyers and paralegals are put to work to review these documents. A properly trained machine can take over this work. Document drafting by

machines is also gaining traction. We also see systems that can predict the outcome of disputes. We're beginning to see machines take on many tasks that we used to think were the exclusive role of lawyers.[209]

382. Numerous possibilities and opportunities. There are numerous possibilities and opportunities for the usage of modern technologies in legal systems and it is hard to make every single count of them. But some have to be mentioned such as electronic evidence, online court hearings, access to the different databases, electronic court case files, electronic communication between legal institutions and the parties, online access to the court files, online court or out of court sales in enforcement procedure, etc. It is very important to mention that digital technology is also changing ways in which law is practiced since today it is possible to find online almost every relevant case of courts deciding on violation of human rights as well as relevant literature which may also be found online as well as different kind of templates for judgments, letters, contracts and so on. This is a non-exhausting list that may and shall be much wider in close future. It is well known that even legal advice may be found online through different applications or organizations offering online legal advising.

383. Two basic possibilities in technology usage. Summarizing above mentioned, it can be noticed that there are two types of usage of information and communication technology in legal procedure: the first one when the body leading procedure (court or private bailiff) is communicating with the external parties (parties in the procedure as well as third persons) and a second one, to improve processed within the institution leading procedure. Both of them are equally important and out of crucial significance in the improvement of legal procedures.

384. Digitalization and storage of case law, statutes and regulations. One of the biggest steps that have enabled technology in law to involve is the digitalization and storage of case law, statutes, and regulations. Recently, Harvard Law School has made its

[209] The Future of Lawyers: Legal Tech, AI, Big Data And Online Courts (forbes.com), seen on 26.07.2021.

entire collection of case law available to the public. This has enabled technology firms to aggregate, store, and provide statistics about the law in a way that we have not seen in the past. Artificial intelligence is on the rise and may change how legal research is done. Recently, the company called ROSS Intelligence has started using the IBM computer called Watson to perform legal research. Specifically, they are attempting to get Watson to understand and interpret the legal terminology used by lawyers to look up case law and statutes. Other firms are developing similar technology that will enable lawyers to delegate the task of reviewing contracts to a computer. Some firms are even trying to develop intelligent contracts that can alter themselves based on a variable set of information.[210]

385. Importance of sharing electronic documents. Important innovation is the use of e-mail and forums or areas to share electronic documents**.** Although e-mail technology has been diffused between judges all around Europe, in most cases it is used as an informal means of communication. This is mainly since, in many countries, the law requires both certified e-mail and digital signature for official communications (e.g. Belgium, France, Greece, Italy). In most cases, such technologies are not provided, while several countries have run pilot projects experimenting with such technologies (e.g. Belgium, Italy). Forums and discussion groups in which judges can 'virtually' meet and discuss legislation, procedures, and cases, have been an important development. In some cases, with the reduction of opportunities for judges to work in panels (e.g. in The Netherlands), electronic forums and discussion groups have been thought to be a tool providing an opportunity for judges to share information and receive support (and training). [211]

386. Some countries are actively working to introduce ICT in their legal system. Countries across the world have perceived the gravity of technology in the legal system.

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[210] New Technology and Its Impact on the Practice of Law (expertinstitute.com), seen on 27.07.2021.

[211] Justice Systems and ICT What can be learned from Europe? Marco Velicogna, pgs 136-137, available at: https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwjGl_6T8YPyAhWP4IUKHYUHDKYQFjAAegQIAxAD&url=https%3A%2F%2Fwww.utrechtlawreview.org%2Farticles%2F10.18352%2Fulr.41%2Fgalley%2F41%2Fdownload%2F&usg=AOvVaw0BWmXHEI1aYIwI6O09D5Kg

For instance, Turkey is the epitome to enhance technology in the legal system as all the judicial functions are done digitally. In 2006, The Civil Procedure's Federal Rules amended to introduce a class of Electronically Stored Information (ESI) in the legal system and mentioned the necessity of lawyers to be tech-savvy. A country like China become 1st nation to establish the mobile court and cyber courts; on the other hand, Dubai aims to have block chain technology in all government services by 2020. Withal to this U.K., U.S. and Malaysia aim to go paperless by establishing computer software insubordinate and various state courts and further endeavors to make automated transcriptions (recording proceeding in audio and video format). India is still battling to get advanced with technology to some extent in judicial services.[212]

387. Opinion No. (2011)14 of the Consultative Council of European Judges (CCJE). How young idea of introducing electronic communication in judicial procedures is, the best states Opinion No. (2011)14 of the CCJE "Justice and information technologies (IT)" of Consultative Council of European Judges. This Opinion was Adopted by the CCJE at its 12th plenary meeting held in Strasbourg, 7-9 November 2011.

388. Resolution number 2054 (2015). Another document that underlines the importance of ICT technology within the judicial system is a resolution of Parliamentary Assembly of Council of Europe who in its Resolution number 2054 (2015) named Equality and Non-discrimination in the access to justice stated: "… Assembly calls on member States to: 4.1. promote and improve legal awareness by exploring and implementing specific information mechanisms and innovative communication strategies…"

389. Progress in B&H in terms of usage of the technologies in judicial institutions. It has to be noticed that in the last decades' huge progress was noticed in terms of using technology in the judiciary. In Bosnia and Herzegovina Case Management System and SOKOP were introduced. Those systems and especially the CMS system were very important in terms of organization of case files, quick access to the cases, access to the

[212] Technology: Rejuvenate Legal Regime - iPleaders, seen on 27.07.2021.

different types of reports, easy measuring work of judicial officers (judges, legal officers, etc.) et cetera, et cetera.

390. Fast and secure case management. Computerization assists courts in rationalizing file management as well as in registering and keeping track of cases. In this way, a series of files or connected cases can be managed under more secure conditions; templates may be designed to support the formulation of judicial decisions or orders and multi-criteria statistics for each type of litigation, which can be made publicly available.

391. Improvement of work of the judicial officers. Computerization can also improve the quality of the judge's work, for example through databases with links to judicial decisions, legislation, studies of identical questions of law, legal commentaries on previous decisions delivered by a court, and other forms of knowledge-sharing between judges.

392. Access to the relevant information and case law. The most advanced and complete methods of this kind existing on the market should be made available free of charge to judges, who need to be able to verify all sources of legal information available to other actors in the judicial process (defense lawyers, experts, etc.). The aids to the judicial decision must be designed and seen as an ancillary aid to judicial decision-making, and to facilitate the judge's work, not as a constraint.[213]

393. Full capacity of ICT possibilities jet to be embraced. Still, the full capacity of possibilities of technology in the judicial system did not get into force. Even though that most employees of judicial institutions are reluctant to accept technology as part of their everyday working hours, still, we believe that it is necessary to take everything (all benefits) that technology may give to improve in the first place, capacity and judicial efficiency. Finally introducing technology in court procedure, aside from its benefits, also may underline some serious human rights, legal and technical issues.

[213] Opinion No. (2011)14 of the Consultative Council of European Judges, "Justice and information technologies (IT)", part 26 and 27

394. The COVID 19 is the indicator of the necessity of electronic communication. The worldwide pandemic caused by the virus COVID 19 started in late 2019. And it lasts until today. The monster virus threw the whole world on its knees. It was something completely different from everything that happened so far in modern history and no one was prepared for what it brought. The wars that were happening in respective countries did not have much effect on other countries other than the ones affected by the war so the rest of the world functioned normally. The fact that life was everything but normal in those countries did not have any impact on the rest of the world. But COVID 19 pandemic should be an important lecture to the world teaching it that there are monsters that may affect not only small countries but the other ones as well.

395. World as global market. It has to be acknowledged that the world became one global market and that is the fact that may be scary and impressive at the same time. But the most important thing is that the world has to acknowledge that only one stacked ship at Suez Canal may affect the price of gasoline in the whole world. As soon as world power countries realize, accept and take into consideration these facts when creating long-term strategies, the world will be a more and more friendly place for all living on it. Therefore, this lecture must be taken into consideration when thinking about introducing technology, firstly in everyday life then in legal procedures.

396. ICT must be affordable and available. As a precondition to introducing technology to everyday life and thus in legal procedures, the technology has to be available and possible for everyone. One cannot ignore the fact that not everyone has internet of that quality which may answer all modern requests. Also, not every party in the legal process has the necessary equipment such as computer, laptop, tablet, or modern phone to be equally equipped for participating in modern legal procedures. And last but not least it is of crucial importance that persons which are participants of legal processes are capable to use modern technology. Only when all these conditions are fulfilled, it will be possible to introduce modern technologies into the everyday lives of ordinary people. It has to be underlined that covid 19 pandemics showed that, without the inclusion of every person in electronic life and electronic communication, it does not make much of sense to set up

electronic communication between a small percentage of the rich population since those who are not rich and do not have all necessary equipment are way more numbered.

397. Rich countries to help poor to overcome differences. In practice, this would mean that countries worldwide should do their best to ensure that every adult citizen that may be a party in judicial (enforcement) procedure has an electronic mail address or at least to be provided with one when entering or starting legal procedure including enforcement procedure, ensuring him to know how to properly use one. It is equally important that one understands that proper usage and regular inbox controlling is crucial to be an equal participant of legal (enforcement) procedure.

Chapter 2 Important preconditions for the efficient implementation of the technology to the enforcement system

398. Introduction. Introducing technology into judicial procedures and especially to the enforcement procedure system, is not that easy as it seems at first . Judiciary is almost as old as the world and it has always been that judiciary is a special, closed world for itself with all rules and regulars, demanding and strictly procedural.

399. Professionals to accept novelties as a precondition. The first and maybe the most important step is that the legal profession has to accept all novelties that information technologies are introducing. It has to be underlined that the legal profession has over the years been a traditional profession and did not change much over years. It is closely related to the area and mentality where it is practicing and world changes did not change the legal profession too much. Therefore, introducing modern technologies to the legal systems may be the biggest change in the last hundreds of years.

400. Enormous possibilities opened by ICT. It was almost impossible to imagine that trials may be conducted anywhere else except in the courtroom and that written communication between court and parties may be conducted in any other manner but directly or via regular mail. Today, modern technologies enable all participants in court procedures to be situated not only in different rooms but on different continents. This method enables that judicial procedure is performed not only in times of pandemic but enables to overcome any other obstacle that may appear during, very often log time lasting, court procedures.

401. All information available online and accessible via ICT. Today, information on every person, almost every plaintiff, defendant, and on every enforcement debtor may be found online and it is not necessary anymore to go around, from door to door in terms to find out what are movable or immovable assets of enforcement debtor. Now, it may be enough to do several mouse clicks to collect all necessary information to perform enforcement procedures and to successfully collect the claim.

Section I. Basic conditions

402. Four basic conditions to be fulfilled. Introducing modern technologies to the legal enforcement system may be possible if basic conditions are fulfilled:

- Introduce databases with relevant up-to-date information,
- Introduce necessary legislative changes for collection and usage of personal data and access to relevant data by technology usage,
- Ensure link between judicial institutions and relevant databases,
- Practical usage of technology in concrete procedures.

All above-mentioned preconditions need to be fully fulfilled to have efficient usage of technology in enforcement procedures.

§ 1. Introduce databases with relevant up-to-date information

403. Updated databases as primary condition. Introducing databases with relevant up-to-date information is a condition sine qua non to use information technology for enforcement purposes. It is the fact that the technology may be used also when it comes to the sale of the property but equally important is to use technology to collect data on the assets of the enforcement debtor. Since that technology is, at this moment, on that level that almost every information collected by relevant bodies as of our birth to death including schooling, employment, purchase of the real estate, car or other assets of value, opened a bank account and every other information is collected in some sort of database of some data collector. One of the most important issues is information on the residence of the enforcement debtor. With smart usage of information technology, all these data may be easily accessible and out of enormous usage in enforcement procedures.

404. Tax office, land registry, vehicle ownership database and banks as primary information holders. The tax administration office is a holder of all data related to the payment of taxes. This means that the Tax office has all relevant information about the income of the enforcement debtor whether he is an employee, pensioner, or is receiving some sort of financial help. It is of crucial importance that all this information are available in digital format that is a matter of practical approach to use this information for enforcement procedure. Another authority is the land registry office which is administrated by the office within the court or office within the municipal body administrating possession of the real estate. These are the offices where all transfers of ownerships and possessions of real estate are registered. It is very important that, like the others, these registers are updated to be relevant for usage in enforcement procedures. Ownership of motor vehicles is also to be administrated electronically. All motor vehicles may be included: cars, motorbikes, boats, plains, and all other sorts of vehicles. Banks are keeping evidence of all opened bank accounts, savings accounts, and all other types of bank account and savings information. Due to the relevance of this information to be updated, it is on the tip of the fingers to collect this information simply picking it up from relevant up-to-date information.

405. Electronic communication between judicial officers (court and private bailiff) and procedure participants. Another possible usage of technology in enforcement procedures is electronic communication between private bailiff and creditor, bailiff and debtor and the creditor and the debtor between themselves. Also, there is a possibility of conducting online hearings which are not that often when we talk about enforcement procedures but there are some situations where it is necessary to have an oral hearing as well as online sales of assets. Such communication between main participants of enforcement procedure would extremely improve the efficiency of the procedure and remove the issue of delivery of the document as an obstacle of enforcement procedure.

406. Electronic signature as an issue. The main issue when talking about this subject is the usage of **e**lectronic signatures as a guarantee of authentic communication and how to be sure that the document was seen and read by the recipient. It has to be bear in mind that service of the document is the main precondition to perform enforcement action as well

as any other legal action.[214] [215] In any case, Justice cannot be disconnected from its users, and the IT development should not be used to justify courts being dispensed with.[216] It has to be underlined that an efficient system of service of the documents may also improve the efficiency of the private bailiffs since that it is up to them to perform successful delivery of documents, as one of their duties regularly.

§ 2. Introduce necessary legislative changes for collection and usage of personal data, access to relevant data by technology usage and electronic communication

407. Change of existing and new legislation as a basic precondition to introduce change. Introducing necessary legislative changes for the collection and usage of personal data and access to relevant data by technology usage is the first precondition that needs to be fulfilled to use data collected by different data collectors. Introducing any novelty is not possible without introducing new legislative changes to support that novelty especially when it comes to the collection and usage of personal data. Personal data used when collecting relevant information has to be properly protected and it has to be guaranteed when using these databases.

408. Intermediary is waste of precious time and unnecessary expense. To have effective enforcement procedure body performing enforcement actions (court, enforcement agent, other body) must have direct access to the relevant information on the enforcement debtor. Firstly, information on the residence of the enforcement debtor is out of crucial importance to perform enforcement procedures. Furthermore, it is important to have information on assets of enforcement debtor, movable, immovable, information on salary, or any other income which may be subject to enforcement proceedings.

[214] The importance of this issue was underlined in Council of Europe Recommendation number 17/2003 under II, (2) d. as well as Recommendation number 16/2003 under 2A iii.
[215] About the relevance of service of the documents also see: CEPEJ 2009 Guidelines no. 17-19
[216] Opinion No. (2011)14 of the Consultative Council of European Judges, "Justice and information technologies (IT)", part 20

Furthermore, access to all these data is not possible without the usage of personal information of a person which is subject to data verification.

409. Direct access to the information needs to be precisely regulated and strictly controlled. Considering that this type and usage of personal information represents serious encroaching to the private sphere of the subject, it has to be strictly controlled and regulated. It is not enough to regulate this sphere by bylaws but it has to be regulated by laws and with clear and strict consequences in case of violation of those regulations. It is out of crucial importance that persons (legal or private) who will have access to that information is strictly controlled and that there is a control mechanism to control every access to every information at any time. Data and information, such as those contained in case registers, individual case files, preparatory notes and drafts, judicial decisions, and statistical data on the evaluation of judicial processes and court management, need to be managed with appropriate levels of data security. Within the courts, access to information should be limited to those who need it to accomplish their work. Having in regard the nature of the disputes brought before courts, the online availability of certain judicial decisions could place the privacy rights of individuals at risk and jeopardize the interests of companies. Therefore, courts and judiciaries should ensure that appropriate measures are taken for safeguarding data in conformity with the appropriate laws.[217]

410. Dedication to details when adopting legislation. In terms of introducing necessary legislative changes, it has to be done with strong attention and dedication to details. Particular care should be taken to evaluate proposed legislation in advance concerning its implications for the appropriate IT treatment of cases arising under it. The CCJE recommends that such legislation comes into force only after the IT systems have been adjusted to the new requirements, and court personnel are properly trained.[218]

[217] Opinion No. (2011)14 of the Consultative Council of European Judges, “Justice and information technologies (IT)”, part 16 and 17
[218] Opinion No. (2011)14 of the Consultative Council of European Judges, "Justice and information technologies (IT)", part 12

411. Electronic signature needs to be animated. Law on electronic signature in Bosnia and Herzegovina was adopted on state level in 2006.[219]But, again, due to political reasons it was never put into force. As from 2019. new law on electronic signature proposal is in procedure but it is not passing the procedure yet. Main issue arises from political figures and is about competencies on the state level. The problem is that the Law prescribed that state office for supervision and accreditation shall be organized but politicians from RS did not give their consent to its organization considering that it would be transfer of the powers from entity to state level, which they don't want. For this reason, the Office was organized only in 2019, and by that time, completely new law came into procedure. The new proposal law did not get adopted due to obstacles from RS politicians. EU regulation in this regard requests that this body is on the state level.[220] This is position that needs to be changed, relevant law have to be adopted in order to have functional and EU recognized electronic communication within relevant legal institutions and subjects involved in the legal proceedings.

§ 3. Ensure link between judicial institutions and relevant databases

412. Currently available databases in Bosnia and Herzegovina. Current situation in Bosnia and Herzegovina is such that there are different databases available but no one, but the data collector, has direct access to those databases. Currently, different databases are available and mostly updated. But the main issue is the availability of data from those databases to the end-users. At this moment, data from those databases can mostly be obtained upon request from the court. This practically means that the enforcement creditor has to request the court to obtain information on some assets of the enforcement debtor: salary, bank account, etc.

[219] Law on electronic signature, Official Gazette of Bosnia and Herzegovina No 91/06
[220] For more information see REGULATION (EU) No 910/2014 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/E

413. Current system of collecting information in Bosnia and Herzegovina. According to the current rules, the court upon the request of enforcement creditor has to send an official request towards the data collector to provide relevant information. After the court collects such information, the information is to be forwarded to the enforcement creditor who is to dispose of the further direction of enforcement procedure. Regularly, such information is stored and directly linked to the personal number of enforcement debtors and if the court does not provide such information, then the data collector requests that the motion is updated with a personal number of data holders. If the court does not have such information, again, it has to be requested from enforcement creditor, who again has to collect it from some other body, and this is functioning as a magic circle, sometimes lasting for several months, before for instance data on the income of enforcement debtor gets collected. It should be mentioned that information on real estate or vehicles is public and anyone may collect it from a data collector but very often enforcement creditors are still sending motions towards the court to collect that information instead of them even though such motion is regularly denied by the court.

414. When new system is introduced, one of the most important novelties should be direct access to the information by private bailiff. To avoid all this empty walk between data user and data collector, it is out of crucial importance that direct link between judicial institutions (private bailiff) and relevant databases is ensured. That would be the only way that there is no intermediary between data collector and data user. Direct access to the relevant information means that information may be used and controlled over and over again without the need to consult or to request data collection mediation from the court or some other bodies including data collectors. What would this mean in practice? In practice, this would mean that private bailiff aiming to obtain information on assets of some enforcement debtor, would be able to directly access information from time to time to check whether enforcement debtors who did not have any income or other assets, meanwhile, got employed or obtained some other usable asset. There is a practice in Sweden named “washing machine” which is extremely efficient. This means that the data of enforcement debtors are entered into a system named “washing machine” and this system is checking all available databases. If assets of enforcement debtors were not found, information are kept into the system and the system keeps calmed for a certain

period (for instance for six months) and after that period it elapses, the system is activating again and searching for the assets of the debtor through those same available databases. This system shows all practicality of such system which enables those assets of enforcement debtor are getting searched without the interference of any other body but with pure usage of technology.

§ 4. Practical usage of technology in concrete procedures

415. Multiple possibilities exist to use technology in concrete legal procedures. Usage of the technologies may contribute to the effectiveness, efficiency, and economy of the procedure.

416. Electronic communication between private bailiff and creditor. Firstly, possible usage of technology in enforcement procedures is electronic communication between private bailiff and creditor. In legal systems where private bailiffs are introduced, there is no constant communication between a private bailiff and enforcement creditor since, that in most systems, enforcement creditors are to file a motion for enforcement and all other decisions and actions are to be performed by enforcement agents leading enforcement procedure. Anyhow, there is still a need to communicate between enforcement creditor end enforcement agent at some point. To be more precise, there is no reason why not to enable enforcement creditors to file motions for enforcement electronically and to enable that all further communication between them is performed electronically.

417. Electronic communication between the bailiff and the debtor. This communication is more delicate due to sensitivity and dependency of further enforcement actions of successful delivery of documents. Faulty delivery of documents is one of the most common reasons to break of right to access to the judicial authority. In this term, it is necessary to regulate conditions for delivery to be successful or to be considered successful within a certain number of days from sent or received electronic mail.

418. Electronic communication between the creditor and the debtor. As a parties in the enforcement procedure each motion filed to the body leading enforcement procedure is further passed to the other party. Such communication may also be performed electronically but there has to be ensured full confidence in such communication and documents exchanged.

419. Possibility of conducting online hearings and online sales of asset. It has to be noted that oral hearings are not that common in enforcement procedures and are performed only exceptionally. But still, there are some situations where it is necessary to have an oral hearing.

420. Possibility to set online sale. In the end, last but not least, usage of technology for online sales of assets may be out of huge help to increase the number of buyers and of course to increase the price achieved which is in interest not only of enforcement agents and enforcement creditors but in the interest of enforcement debtor as well.

421. Voluntarism or obligation? To have fully implemented and used information technologies in enforcement procedure, as described above all parties either must give their consent to use technology either to be obliged by law to its usage. At this stage, considering that not everyone has all necessary preconditions, as described above, to use technology in everyday communication, it will be more likely to obtain the consent of the parties and body performing enforcement procedures, to electronic communication. This is especially to be applied when delivering documents while online sales may be organized without consent of anyone case-related. Access to this register should be public and free of charge so anyone may collect this relevant information and protect themselves from doing business with insolvent partners and in long run, to avoid any legal procedure, civil, or enforcement.

422. Database of enforcement procedures including debtors. To fully use the benefits of available technologies in enforcement procedures, there should be issued database containing all relevant information on ongoing and closed enforcement cases including enforcement debtors.

Such a database would be out of crucial help especially for persons aiming to start doing their business with legal entities. They would be able to use this information when issuing a decision whether to go into business with that legal person or not. It is same with a physical person. When one has relevant and up to date information about ongoing enforcement cases and when he can see what is the amount of the debt, when the debt was created and how long enforcement procedure is lasting, that person, legal or psychical, would have the option whether to start doing business with such person or not. Such information would improve the certainty of creditors and would improve their position on the market.

Section II. Challenges to be faced with

§ 1. The French example

423. Usage of information and communication technology in the legal system in France. The good development and proper use of ICT is an important element of the good functioning of judicial systems as it contributes to increased transparency, efficiency, access, and quality of the services delivered. ICT is no longer a novelty in European judicial systems. Judicial systems whose traditional activities and work organization were based on paper (legal texts, case files, court registers, etc.) are increasingly replacing the old tools with digital ones. The courts are being transformed to accommodate new options and move online. Some hearings are taking place via videoconferencing, electronic evidence is regularly presented, while case files and court decisions are becoming digital objects with their content tagged to ease search, analysis, and legal reasoning. Data collected by the CEPEJ over the last years through its evaluation exercises and studies show the growing reach of digital tools. The focus of the report will therefore shift from basic well-established technologies to the more advanced areas that still represent a

challenge for the judiciaries. However, significant differences remain between countries and this makes it difficult to compare them. [221]

424. PAGSI Program. In October 1998 in the context of the Governmental action program for an information society (PAGSI), the Ministry of Justice set up an intranet network to connect all its sites, under the name of Réseau privé Virtuel justice (RPVJ).[222] Regulation number 2000-230 of 13 March 2000 adapted the Law of evidence to information technology and relating to electronic signatures which regulated relevant fields in terms of usage of electronic evidence and usage of electronic signatures.

425. Liberty to set up a web site for the courts. When it comes to electronic information related to the legal system, there is a need to say that the courts have the liberty to develop their websites to publish relevant information. That is one-way communication providing interested persons (parties and other third interested persons) with relevant information including relevant case law.

426. Electronic communication between court and parties. Concerning the electronic communication from the parties to the court, certain technical preconditions need to be fulfilled to be able to electronically communicate with the court. At the moment, according to the latest research, France represents a positive example in terms of electronic communication between parties and the courts. CEPEJ report states: Another advanced example comes from France which offers a user-friendly easily understandable intuitive search system for most common proceedings and legal situations (justice.fr).[223] The information shows that in France, only 1,88 % of average participation of the implemented ICT budget in the budget of courts in a period of 2014-2018 while, for instance, participation in Azerbaijan is more than 12 %.[224]

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[221] European judicial systems CEPEJ Evaluation Report, Part 1, 2020 Evaluation cycle, page 95
[222] Judicial electronic data interchange in Europe: applications, policies and trends, Instituto di ricercar sui sistemi giudiziari consiglio nazionale delle ricerche . Italy, 2003, page 212, available on: (PDF) Judicial electronic data interchange in Europe: applications, policies and trends | Francesco Contini - Academia.edu
[223] European judicial systems CEPEJ Evaluation Report, Part 1, 2020 Evaluation cycle, page 90
[224] European judicial systems CEPEJ Evaluation Report, Part 1, 2020 Evaluation cycle, page 96

427. Digital transformation in France. When it comes to the Impact of Digital Transformation the French system continuously introduces laws that recognize the use of digital tools to implement enforcement measures. For example, the notification of a judgment by a bailiff, a prerequisite step before every enforcement action, may be executed electronically, but only with the debtor's express agreement. This specific requirement explains why electronic notification is rarely used. The law of 23 March 2019 imposed the use of electronic acts in matters relating to the seizure of bank accounts. Electronic acts are also used to seize vehicles through notification to the public authority in charge of vehicle registry, thus preventing the sale of vehicles subject to judgments.[225]

§ 2. The perspectives in Bosnia and Herzegovina

428. Challenges to be faced with in Bosnia. It has to be noted that introducing technology in the legal systems is a change that will have to be embraced in close future. It has already entered different legal systems by a small door but not all possibilities are exercised in its full capacity.

429. B&H system is open to improvements but with no real political will for improvement. In the past, it was not even possible to imagine that trials may be conducted online and that judges may communicate with the parties online. Furthermore, there was no technical possibility to organize a trial session while all participants are out of the court. Also, it was beyond imagination to have electronically written communication between courts and parties. Today, all these possibilities are wide open and are on the tip of the fingers to all participants. But, normally, as other novelties, these are novelties that are to be faced with multiple obstacles and challenges. Those challenges and obstacles may vary from inadequate internet quality, inadequate technical equipment, private and credibility

[225] More information available on Enforcement of Judgments 2020 - France | Global Practice Guides | Chambers and Partners, seen on 25.07.2021.

issues not to mention that there is a high percentage of the population that is not familiar with how to use information technology. Such lack of knowledge, if ignored, may lead to the violation of their rights in a wide spectrum. Specific attention has to be paid that the access to the court and justice is ensured for all vulnerable persons and the introduction of information technologies must not endanger their rights related to the justice sector. Certainly, the introduction of information technology in the legal system is fund consuming to have well-functioning, usable technology in legal procedure. Therefore, it has to be bear in mind that those funds have to be predicted end timely allocated before making any concrete steps toward its implementation.

A. Access to justice and enforcement

430. "Right to access to justice" principle. Regarding challenges that are to be faced with, one of the main issues is recognition of the "right to access to justice" principle. This principle means, among others, that anyone has the right to directly access the court and direct access to the presiding judges. This means that, even when IT technologies are used by the courts or other bodies leading judicial understanding enforcement procedure as well, traditional adversarial hearing before a judge must be enabled as well as the production of the evidence. Also, parties must be able to have witnesses heard before the judge as well as enabled to present evidence that considers relevant to win the case.

431. Lack of face-to-face contact. Furthermore, it is well known how body language may be out of crucial importance whether, for instance, the presiding judge shall give faith to the parties or witness testimonies, or not.[226] In practice, this means that video-

[226] Specific gestures to pay attention to as people testify. There's a fascination when witnesses testify in a trial. A part of the fascination is knowing whether someone is telling the truth. And people rely on body language to read witnesses. If you're going to rely on body language, then it's important to understand what you're seeing. And let me start with there's no one universal body language sign of deception. Many times, what you're seeing of signs of stress. If someone sounds calm, they can still show body language signs that reveal nervousness. For example, someone might push the tongue on the inside of the cheek to relieve the stress that they're feeling. Others

conferencing may facilitate hearings in conditions of improved security or the hearing remotely of witnesses or experts. It could, however, have the disadvantage of providing a less direct or accurate perception by the judge of the words and reactions of a party, a witness, or an expert. Special care should be taken so that video-conferencing and adducing evidence by such means should never impair the guarantees of the defense.[227]

B. Equal access to technical equipment

432. Possible lack of technical equipment. The second issue that has to be taken into consideration is that not everyone has equal opportunities and not everyone has equal access to the internet and technical equipment. To have a completely functioning electronic procedure before courts, equal arms have to be given to all involved parties. This means that it is not acceptable that one has a full quality of the all-necessary equipment while the other does not have the same. All these may be factors to impact the decision as a result of non-adequate communication with a court. Also, this may deprive court procedures of a personal approach which may in a further step, lead to dissatisfaction of the parties involved.

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might swivel in their chair as a way to release anxiety. Or someone might fiddle with clothing or play with jewelry. What's significant is noticing what question or what point in their answer is causing the anxiety. This gives you more information than noticing that they're nervous or anxious. There's are body language signs that can undermine a trial witness' testimony. For example, shrugging their shoulders when they're testifying. A shoulder shrug is a sign of uncertainty. When you're testifying unless you say that you're not sure, you don't know, or don't remember then your body language shouldn't negate your message. This opens the witness for further questioning as well as places seeds of doubt in the minds of jurors. Hand gestures can be contracting. For example. when someone is feeling confident about their testimony, they might show a hand steeple, which indicates confidence and authority. But, if they're tapping the tips of their fingers together or sliding their fingers down their hand, then their anxiety is coming through.
Web site: Courtroom body language: What to look for in a witness | wfmynews2.com, seen on 25th 07. 2021.

[227] Opinion No. (2011)14 of the Consultative Council of European Judges, "Justice and information technologies (IT)", part 30

433. What ever form adopted, enforcement has to stay true to its main purpose.

No matter what novelties are introduced in the certain legal system, it has to be bear in mind that the basic and most important purpose of legal procedures: protection of human rights and satisfaction of parties involved-not with court decision since that there is always one side in the dispute which shall not be satisfied with court decision-but with court procedures. Parties must have a feeling that court procedure was fair, that they had equal arms, and only in such a way all involved parties shall respect court decision, even when that decision is not in their favor.

C. Risk of enforcement being dehumanized

434. The introduction of IT in courts should not compromise the human and symbolic faces of justice. If justice is perceived by the users as purely technical, without its real and fundamental function, it risks being dehumanized. Justice is and should remain humane as it primarily deals with people and their disputes. This is best seen when evaluating the demeanor of litigants and their witnesses, which is an exercise performed in a court of law by the judge trying the case. [228] It remains the fact that judges play a crucial role in every case presented before the court or other body involved in judicial procedure. This role must be preserved and no matter to what extent technology is involved in procedures, judges or other person leading procedure has to have its impartiality and other relevant attributes to preserve the confidence of users (parties) in the procedure. Over-dependence on technology and on those who control it can pose a risk to justice. Technology must be suitable for the judicial process, and all aspects of a judge's work. Judges should not be subject, for reasons solely of efficiency, to the

[228] Opinion No. (2011)14 of the Consultative Council of European Judges, "Justice and information technologies (IT)", part 6

imperatives of technology and those who control it. Technology also needs to be adapted to the type and level of complexity of cases[229]

[229] Opinion No. (2011)14 of the Consultative Council of European Judges, "Justice and information technologies (IT)", part 30

GENERAL CONCLUSION

435. Important of the efficiency of enforcement procedure. As seen from the all said above, it is clear that the enforcement system in Bosnia and Herzegovina is not functional and effective as it should be due of its importance in legal system as a whole. It is not that important how long the litigation procedure will last. In fact, it might be the fastest procedure in the world but if enforcement procedure is inefficient, then it might be said that legal system failed in fulfilling its basic obligation: to be in service of the citizens. Legal system of Bosnia and Herzegovina proved to be exactly like that: inefficient and failed to fulfill its basic tasks-to ensure that claims of the creditors are efficiently collected. Bosnia and Herzegovina as a state with the history of flaming wars every 50 years and at the moment, as an outcome of last war lasting from 1992-1995, has extremely complex political structure. It needs to have efficient judiciary in order to be able to fight all existing challenges which are also leftover of last war. As it may be seen on official website of High Judicial and Prosecutorial Council of Bosnia and Herzegovina, High Judicial and Prosecutorial Council of Bosnia and Herzegovina, there are still open cases initiated in year 2005 or earlier.[230]

436. Necessity of measures to take. In such situation, urgent measures need to be taken in order to improve efficiency of the courts. It has to be noted that introduced system of the quota system for judges and so-called Plan for salvation of the cases did not give desired results and did not achieve much other than creation of pressure for the judges and legal associates. The real problem lays down in the legislative such it is something that needs to be changed as soon as possible. Relocation of the enforcement cases out of the court and starting a whole new profession might look like a radical move but after all these years of ineffective judiciary in Bosnia and Herzegovina and since this label was put on it mostly because of unsolved enforcement cases, it is time to try something completely new.

[230] For more information please see: https://vstv.pravosudje.ba/vstv/faces/vijesti.jsp?id=82334, page visited on 26.10.2019. This information includes all type of cases not only enforcement.

437. Numerous attempts to amend the law and make the process efficient. Whole legal community witnessed numerous attempts to reform enforcement procedure. Existing law on enforcement was changed numerous times but with no substantial changes since that the most important changes were not adopted in Federation of Bosnia and Herzegovina, in Republic of Srpska there were adopted only partially and in District Brčko as whole new law but it takes time to implement it. Now, there is a new working group drafting something complete different. Old drafted and not adopted laws become outdated in the drawer of the legislative and there is a need to start all over again.

438. Does removal of enforcement cases from the represent brake of human rights. Actual dilemma is, what if enforcement is out of the court and private bailiff issues decisions during the enforcement, is that violation of the debtors right to the access to the court and to a judge? It shouldn't be. The debtor in this process has access to the court through legal remedies. European court for human rights itself ruled in some of its decisions that possibility to appeal to the judge ensures guaranteed right to access to the court.

439. Complexity of the structure of Bosnia and Herzegovina state as aggravating factor. Unfortunately, Bosnia and Herzegovina with all its constitutional units and political complexity, numerous ministries, is rigid country with very few perspective of any progress. It is interesting to say that according to the research of Transparency international, Bosnia and Herzegovina has approximately 3.500.000,00 citizens and large percent of citizens are employed in some type of state institution. To be more precise, unfortunately, most of those employments were made according to some connection: private, political or something else. There are no a lot of employed based on their competence, knowledge and education.

440. Corruption as aggravating factor. In direct relation to previously said, there is report of Transparency international published in 2020 finding that Bosnia and Herzegovina is among most corrupted countries in Western Balkans. In such political ambient it is very hard to expect that efficient enforcement in interest of those who are

making policies and adopting laws. On the other hand, only efficient judiciary may to end this political situation. This is vicious circle that needs to finish at some point.

441. Thousands of unresolved cases need to be solved. All above stated, underlines importance of the efficient judiciary. It is the fact that judiciary may not be efficient if burdened with thousands of unresolved enforcement cases. Judiciary needs to be relieved of these cases, dealing with claims established by courts that needs to be enforced in procedure which does not have to be judicial procedure.

442. Current judiciary and enforcement situation tackling the system as a whole. Summarizing all said above, it is clear that enforcement system in Bosnia and Herzegovina became burden on judicial shoulder and became heavier and heavier to carry. Price that Bosnian judicial system is paying is too expensive price to let it be for coming years. Such consequences are not tackling only judicial system but a country as a whole, since that judiciary and justice are basic pillar for functioning institutions, economy and finally is main obstacles towards European Union.

There is no country which can afford to have inefficient judicial system with loads of unsolved cases and especially with numerous unsolved enforcement cases.

443. Numerous attempts of reforms remain unsuccessful. State Bosnia and Herzegovina had several successful reforms in past. Some of them are introducing notaries as separate service and transferring almost all inheritance cases to public notaries. In such way, huge load of luggage was taken from shoulders of the judiciary. Moreover, reforms in terms of the civil procedural law and criminal procedure code and adopting whole new principles in terms of procedure and was quite successful and facing no any mayor problems. Question arises whether judiciary in Bosnia and Herzegovina is ready for such important step such as transferring all enforcement cases to another service? Answer to that question is – yes. Problems in current system are so deep and so long lasting and there were so many unsuccessful attempts to try to introduce useful changes which would lead to efficiency of courts in enforcement cases, that there is no any trust that any change might lead to significant change.

444. Radical change as the only solution. Only radical change, such as introducing new profession and introducing new system of the private enforcement agent and in correlation to that, introducing new relevant legislative, might lead to wanted goal: efficient enforcement of enforceable titles and most likely efficient judiciary as a whole. This radical change is not possible to introduce at once. It would costs and time consuming. All interested parties would have to be given enough time to adjust and once the system is introduced, there is no path back and there would be no double system. All cases would have to be transferred and given to enforcement agents to continue to work on. Of course, enforcement creditors would have to be given possibility to decide whether they want to move on with their case or they want to withdraw their motion for enforcement since that, obviously, enforcing enforceable title by private bailiff would be more costly than enforcement by court and court bailiff.

445. Advantages of the newly proposed system. Once when case is transferred from court to the private bailiff, there would be no way back and enforcement creditor would not be authorized to influence course of the case. Private Bailiff would be independent, court separate, well-educated and trained service highly qualified to deal with simple and complex enforcement cases. The service should be goal oriented with focus on main aim: collecting claim of enforcement creditor at any price. Private bailiffs should not be impartial, which is a principle associated with courts and judges, they should be dedicated to one task: to get the most out of the enforcement procedure and as efficient as possible to satisfy claim of enforcement creditor. Private bailiff should comply with rules and procedures prescribed by law but all interpretation of rules and regulations should be in light of his aim – claim collection.

446. Direct access to the information as a *conditio sine qua non*. Direct access to the information is condition sine qua non for private bailiff. Any reform shall not be possible if private bailiff is not given possibility to access all available information on enforcement debtors' assets. This means that absolute must is to have changed position of Agency for data protection which will have to approve access to information of private bailiff. Of course, such access to information would have to be

under all liabilities of private bailiff (disciplinary, civil, criminal and any other) which would have to be prescribed by law and seriously applied.

447. Updated databases of the IDDEEA. In Bosnia and Herzegovina there are databases with almost all necessary information which private bailiff shall need in order to perform efficient enforcement procedure. Firstly, there isa database of addresses of all citizens of Bosnia and Herzegovina. Database is on state level therefore easy to use and access. This database is under control of The Agency for Identification Documents, Registers and Data Exchange of Bosnia and Herzegovina (IDDEEA). This agency was established by the adopted in 2008.[231] This Agency sets rules and standards related to documents for personal identification as well as administration of electronic systems containing personal data of all citizens in Bosnia and Herzegovina. This Agency is issuing all personal documents, ID and passports. This database is out of crucial importance for identification and locating enforcement debtor. Without access to this information, all other information is not of much use. Now days, when a lot of adult citizens are changing places of their residence it is highly important to have updated information on current address of citizen/enforcement debtor. According to the information provided on website of the Agency, currently, there are two possible access to the data contained in registry of the IDDEEA: 1. Periodical data access – which means that person obtains approval for access to information periodically and 2. Permanent data access – which means that there is permanent communication link between database of IDDEEA and database of the one who access information. This means that such person has approval to access database at any time. All this means that in terms of the access to the information on residence of enforcement debtor, which in practice represents major obstacle to efficient enforcement procedure, institutions of Bosnia and Herzegovina are ready to support proposed reform.

[231] Law on Agency for Identification Documents, Registers and Data Exchange of Bosnia and Herzegovina, "Official Gazette of B&H", 56/08

448. Updated database of Tax administration office. Another important database which might to be on disposal to private agent is Tax administration office. This office has electronic record of all tax application of all citizens, paid taxes on all income based on immobility, access to all working engagements, listing of all paid taxes on all income of all sorts. Since that all records are keep electronically and that all tax application may be filed electronically, there is a possibility to access that information electronically and it is only matter of approval and linking private bailiffs' system and system of tax administration. As said previously several times, there is enormous importance of enforcement on money claim and income of enforcement debtor. This is the most efficient subject of enforcement and requires a minimum of effort of all engaged especially of private bailiff, who would have direct access to such information. Claim of enforcement debtor would be collected in minimum period of time and with almost no extra procedural expenses.

449. Registry of immovable assets. Next registry very important to mention is registry of immovable assets. This registry is administrated in land registry office within the court. There are very few municipalities with destroyed land books, as consequence of war, in all other cases, land registry contains all necessary information about ownership on real estates of enforcement debtor and private bailiff would be able to directly collect all relevant information and thus to decide on subject and mean of enforcement. It has to be mentioned that in correlation to this registry there would not be personal information issues considering that this is already public database accessible to anyone.

450. Registry of motor vehicles registration. Next registry, already existing as a public registry is the one of motor vehicles registration. These registries are with police department and are administrated by administration office with police. This registry is public and electronic, as well as compatible with an idea of direct connection of private bailiff with relevant registries. Seizure of motor vehicles as movable assets are without any doubt more effective mean and subject of enforcement than other movable assets (sofa, table, chair etc.) and for sure more attractive to the buyers than other above mentioned subject to enforcement procedure. Besides all above mentioned,

enforcement debtor takes procedure more seriously if it is his vehicle that is seized and is going to be put on sale.

451. Registry of the pledge. Another registry, which would have to be on disposal to enforcement agent, is registry of the pledge. Access to this registry of private bailiff is important due to legal certainty. This registry contains all registered pledge on movable assets and therefore represents certain security for private bailiff that movable assets he is seizing are not under the pledge and that no other claims are on those assets.

452. Registry of the companies. This registry is of huge importance for private bailiff considering that subject to enforcement may be enforcement debtors share in company. In such case, access of private bailiff to the registry of companies may give to him needed information.

453. Paperwork free business. It is important to say that out of crucial importance is that in enforcement procedure private bailiff should not depend on any paperwork, meaning requests or motions, towards holders of information. He should be enabled and given technical and legal opportunity to have direct access to the relevant, above mentioned, databases and thus that direct link is established. Private bailiff might be obligated to pay certain fee depending on number of accesses made and his access might be limited to the necessary information and in any case all records (pledge, mortgage etc.) should be requested electronically through the system but would have to be approved by authorized person for certain registry.

454. Future of Bosnia and Herzegovina is in hands of enforcement procedure. It would not be exaggeration to say that future of Bosnia and Herzegovina is depending on a radical change that has to be made in terms of change of enforcement system of enforceable titles. As long as the system is functioning as it is, makes state itself rigid and incompetent to fight all existing challenges. Bosnia and Herzegovina as a country aiming to join European Union will have to be more valuable and secure partner with more stable legal system and more efficient enforcement of enforceable titles. This is

the only way for country to be considered as valuable and equal partner to the member states.

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https://www.osce.org/bih/ : OSCE Mision to Bosnia and Herzegovina

https://europa.eu/european-union/about-eu/countries_en#tab-0-1 : Official web site of European Union

EUR-Lex - xy0022 - EN - EUR-Lex (europa.eu) : Access to European Union law

https://www.fzmiopio.ba : Pension fund of Federation of Bosnia and Herzegovina

http://www.fondpiors.org/ : Pension fund of Republic of Srpska

http://www.acta.sapientia.ro : An International Scientific Journal of Sapientia Hungarian University of Transylvania, Cluj-Napoca, Romania Scientia Publishing House

https://www.legifrance.gouv.fr : Official Journal of the French Republic

https://www.service-public.fr : Official site of the French administration

http://www.mhrr.gov.ba/ : Ministry of Human Rights and Refugees of Bosnia and Herzegovina

https://tradingeconomics.com : Trading economics

https://vstv.pravosudje.ba : Official site of the High Judicial and Prosecutoral Council of Bosnia and Herzegovina

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SUMMARY

Enforcement procedure is the most important part in the complex puzzle named civil procedure. Lack of this part of the puzzle, results with the imperfection of the system as a whole. Successful closure of enforcement procedure represents a way that the party in the civil procedure gets to his final award - getting his claim collected. If enforcement procedure is not efficient and effective than all actions and efforts done through the civil litigation procedure are meaningless. If the party got to the point to initiate enforcement procedure that means that the debtor did not fulfil his obligation within the deadline stated in the enforceable title. After it was initiated, enforcement procedure has to be easy to start, fast, easy going and efficient. That is the only what counts. None of this is on the table, regarding enforcement procedure in Bosnia and Herzegovina. Therefore, it has to be changed as soon as possible and without any further delays. Enforcement procedure has to be radically changed. Role model for this change may be found in enforcement system in France. Building completely new enforcement system based on the French one, but also taking into consideration local customs, Bosnian tradition and finally legislative of the European Union shall for sure lead Bosnia and Herzegovina to efficiency of the enforcement procedure, consequently to the efficiency of the courts, improvement of the trust of public in judiciary and finally, make Bosnia and Herzegovina better future partner for European Union.

Key words:

Enforcement system; private bailiff; court bailiff- enforcement judge; enforcement procedure; European Union; Comparison-Bosnia and Herzegovina and France

RÉSUMÉ

La procédure d'exécution est la partie la plus importante de l'ensemble complexe de procédure civile. Les failles de la procédure d'exécution entraînent l'imperfection du système dans son ensemble. La clôture réussie de la procédure d'exécution représente un moyen pour la partie à la procédure civile d'obtenir la concrétisation de la finalité du procès civil : le recouvrement de sa créance. Si la procédure d'exécution n'est pas efficiente et efficace, toutes les actions et tous les efforts déployés dans le cadre de la procédure civile n'ont aucun sens. Si la partie en est arrivée au point d'engager une procédure d'exécution, cela signifie que le débiteur n'a pas rempli son obligation dans le délai indiqué dans le titre exécutoire. Après qu'elle a été initiée, la procédure d'exécution doit être facile à mener, rapide, simple et efficace. C'est la seule chose qui compte. Rien de tout cela n'est véritablement mis en œuvre, en ce qui concerne la procédure d'exécution en Bosnie-Herzégovine. Par conséquent, le système doit être modifié dès que possible et sans plus tarder. La procédure d'exécution doit être radicalement réformée. Le modèle de ce changement peut être trouvé dans le système d'exécution existant en France. La mise en place d'un système d'exécution entièrement nouveau fondé sur le système Français, mais tenant également compte des coutumes locales, de la tradition bosniaque et enfin de la législation de l'Union européenne conduira certainement la Bosnie-Herzégovine à l'efficacité de la procédure d'exécution, par conséquent à l'efficacité des tribunaux, à l'amélioration de la confiance du public dans le système judiciaire et, enfin, à faire de la Bosnie-Herzégovine un partenaire futur de l'Union européenne.

Mots-clés:

Procédures d'exécution- huissier de justice privé- secrétaire du tribunal- juge chargé de l'exécution- Union européenne- Droit comparé- Bosnie-Herzégovine et France