

PART XIII

ENFORCEMENT

CHAPTER 5

ORGANIZATIONAL MODELS OF ENFORCEMENT INSTITUTIONS

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TABLE OF CONTENTS

1 Introduction	1
2 Classification of Enforcement Systems	2
2.1 Enforcement Institution ‘Models’	2
2.2 Court-Centred model.....	2
2.3 Administrative/Executive Model.....	4
2.4 Judicial Officer Model.....	7
2.5 Hybrid Systems	9
2.5.1 Common law jurisdictions.....	9
2.5.2 Germany.....	12
2.5.3 Other examples of hybridity	13
3 Allocation of Enforcement Responsibilities	14
3.1 Variety of Actors.....	14
3.2 Issue of an Enforcement Title (<i>Titre Exécutoire</i>)	14
3.3 Authorization for Enforcement	14
3.4 Service of Documents Relating to Enforcement	17
3.5 Attempt to Achieve Settlement of Debt or Instalment Arrangement	17
3.6 Creditor Application for Enforcement.....	18
3.7 Obtaining Information about a Debtor and their Assets	18
3.8 Choice of Enforcement Method.....	19
3.9 Seizure of Assets.....	21
3.10 Realization of the Value of Assets.....	21
3.11 Dealing with Competing Creditor Claims.....	21

3.12 Challenges to enforcement.....	22
3.13 Complaints about Enforcement	22
4 Functional Competences of Enforcement Institutions	23
4.1 Public and Private Debt Recovery	23
4.2 Other Functions	25
5 Territorial Competence and Forms of Organization	27
5.1 Administrative/Executive Enforcement Institutions	28
5.2 Court-centred Enforcement Institutions	29
5.3 Judicial Officers.....	30
5.4 Hybrid Institutions	31
6 Qualifications, Training and Access to the Profession	32
6.1 Judicial Officers.....	32
6.1.1 Qualifications and training.....	32
6.1.2 Access to the profession	33
6.2 Administrative/Executive Agencies.....	34
6.3 Court-centred Systems	35
6.4 Hybrid Systems	36
7 Professional Organization	36
8 Supervision and discipline.....	38
8.1 Court-centred and Hybrid Enforcement Institutions	38
8.2 Administrative/Executive Enforcement Institutions	39
8.3 Judicial Officers.....	41
8.3.1 General and financial oversight	41
8.3.2 Disciplinary proceedings	44
9 Funding of enforcement	47
Abbreviations and Acronyms.....	51
Legislation	53
International/Supranational	53
National.....	53
Bibliography	61

1 INTRODUCTION

- 1 This chapter focuses specifically on the way that the institutions responsible for enforcement are organized and in particular the way that enforcement personnel are regulated. There is great diversity in the institutional frameworks for the enforcement of judgments and other enforcement titles – extending across the spectrum of judicial and executive branches of the state and the private sector. This renders comparison difficult. On the one hand, tasks that are necessary to the enforcement process may be divided between several different entities. On the other hand, an institution that undertakes enforcement-related tasks may also undertake tasks that have little or no relationship to enforcement. This chapter explores the historical processes that have led to this fragmented approach and pursues some of the regulatory issues that have arisen – particularly where enforcement action has been privatized.
- 2 The majority of this chapter will be concerned with the various models of enforcement institutions responsible for the recovery of money and property, since this accounts for the large majority of enforcement work – and enforcement of non-pecuniary obligations often, in fact, resolves into the recovery of a financial penalty such as a fine or *astreinte*. One of those models is court-centred enforcement, whereby courts are part of the enforcement machinery itself. But evidently, courts have more general significance in the enforcement process. They deal with claims concerning the lawfulness of the process of enforcement – for example, allegations that a step taken in enforcement action was unlawful – and they may also play a role in the regulatory oversight of enforcement institutions.¹
- 3 With respect to non-pecuniary obligations, courts may play a more or less extensive role in enforcement.² Courts are involved in assessing whether a financial or other penalty should be imposed and the level of that penalty. Further consideration by the courts may be required when it is sought to quantify a periodic penalty, however, in some jurisdictions, an enforcement agent may calculate the amount due on a purely arithmetic basis.³ More controversially, courts may be extensively involved in the oversight of compliance with non-pecuniary obligations. This is primarily the case in the United States, but courts elsewhere have also experimented with an enhanced supervisory role.⁴

¹ See further below at sections 3 and 8.

² See pt XIII ch 4.

³ This is, for example, the case in the Netherlands (Art 611c Rv).

⁴ See W Kennett, 'Comparative Enforcement Law' in M Woo and CH van Rhee (eds) *Comparative Civil Procedure* (Edward Elgar, Research Handbooks in Comparative Law) forthcoming.

2 CLASSIFICATION OF ENFORCEMENT SYSTEMS

2.1 Enforcement Institution ‘Models’

- 4 A useful heuristic for the comparison of enforcement institutions is to group them by reference to certain institutional ‘models’, although the reality is that there is much transplantation or cross-fertilization of elements between models. These models spread right across the public and private sectors. Many countries rely on the courts to enforce their judgments and courts may also enforce other enforcement titles (a ‘court-centred’ model). Others rely on some form of public sector executive organization (an ‘administrative’ or ‘executive’ model⁵). In jurisdictions where a clear distinction is being drawn between judicial functions and court management functions, the latter are being brought more closely under the control of the Ministry of Justice. As part of this general separation of the judicial and non-judicial aspects of the administration of justice, there are states in which a court-centred model is shifting towards an executive model with enforcement functions being taken outside the court. A third enforcement model gives responsibility for civil enforcement to enforcement agents in the private sector. In some jurisdictions, these are members of a highly regulated legal profession (a ‘Judicial Officer’ model), but elsewhere reference is made to the civil enforcement ‘industry’.⁶
- 5 Many countries use a combination of these models – in particular, courts may be used for some methods of enforcement and an agent external to the courts may be used for others. This external agent is sometimes a Judicial Officer. But in other cases, they may be a public sector executive organ or a representative of a more commercially orientated enforcement ‘industry’. As explained at 2.4 below, enforcement agents working in the commercial sector can trace their origins back to the assistants of powerful local executive agents of the monarch in former centuries. Differences in origin mean that it is helpful for comparative purposes to treat them as a category distinct from Judicial Officers. Typically, they are subject to a lower level of regulation and have a more limited range of functions than Judicial Officers – but these distinctions cannot be pressed too far.

2.2 Court-Centred model

- 6 In a court-centred model, courts remain responsible for the enforcement of their judgments (and may also enforce other enforcement titles). Court-centred enforcement in Europe has a long history, dating back to Roman times. Roman law evolved the

⁵ In the European context this has been referred to as an ‘administrative model’, since the main exemplar of the model (Sweden) has a significantly office-based and bureaucratic approach. From a global perspective, however, an ‘executive model’ may be more appropriate.

⁶ This is, for example, the case in England and Wales (see eg, Department of Constitutional Affairs and Home Office, *Regulation of Enforcement Agents* (CP2/07)) and in certain provinces in Canada (see eg, the Office of the Sheriff, <https://www.alberta.ca/office-of-sheriff-civil-enforcement> accessed 17 August 2023).

possibility of confiscation of the totality of the judgment debtor's assets (*venditio bonorum*) as a sanction for failure to pay a debt.²⁹ Later it became possible to enforce a debt out of individual assets (*distractio bonorum*). But these were initially private remedies. With the development of the empire, bureaucratic machinery of justice also emerged and forced execution began to be viewed as a part of the judicial process. Civil procedure in medieval Italy was influenced by Roman law as it found expression in Justinian's *Corpus Iuris Civilis* and in canon law. The resulting romano-canonical procedures spread through much of Europe in succeeding centuries as a result of the university education of judges and administrators and the process of colonization has seen this model transplanted widely around the world and particularly strongly rooted in South America. A court-centred approach has also been developed in China,

- 7 In most jurisdictions that adopt this model, courts take action on the basis of an application made by a creditor to initiate a specific enforcement procedure (such as the seizure of goods).⁷ Thus the enforcement procedure, like the original proceedings on the merits, is driven forward by creditor action. The courts are responsive rather than proactive.
- 8 Within this overall framework, the division of labour in an enforcement court may be very varied. Nevertheless, three general levels of activity may be distinguished. First, certain decisions may require the involvement of a judge.⁸ Below this, however, much of the work in enforcement matters is delegated to a senior administrator with legal training (*Secretario Judicial*, *Letrado de la Administración de Justicia* (LAJ), *Rechtspfleger*).⁹ This work has traditionally involved the administrative processing of enforcement-related applications, but in recent years a desire to improve the efficiency of the enforcement process – combined with the desire to facilitate access to information about debtor's assets – has encouraged the development of the role of this administrator. Thus, for example, in Spain, one area of specialization for an LAJ is within a *Servicio Comun de Ejecución* – a common enforcement service that supports the work of individual judges. Once a creditor has applied for enforcement and it has been authorized by a judge, in the absence of direction by the creditor an LAJ may be competent to take further enforcement-related decisions to retrieve information about assets and issue orders concerning the seizure of assets.¹⁰ There has been a similar

⁷ Increasingly, however, enforcement laws are granting court personnel a greater degree of competence to choose the appropriate method of enforcement for themselves – based on information to which they have privileged access – provided that the creditor authorizes this exercise of discretion.

⁸ It should be noted, however, that some of the areas where judicial involvement is required are also matters for the judiciary under other enforcement models (eg, decisions concerning rights in a home and evictions).

⁹ To complicate terminological issues, this administrator is sometimes described as a 'judicial officer' in English translation. The enforcement administrator may also be part of the same career stream as a court registrar.

¹⁰ See W Kennett, *Civil Enforcement in a Comparative Perspective* (Intersentia 2021) ch 13 at 4.

direction of travel in Austria, although within more restrictive limits on the competences of the senior administrator (*Rechtspfleger*).¹¹

- 9 Below the level of the senior administrator, various personnel are employed in the execution of any orders made, both within the court and externally. Such personnel will include the agents who make personal contact with the debtor and seize tangible assets.
- 10 Cao indicates that a similar approach has recently been developed in China.¹² There are special enforcement divisions in each of the local and intermediate Peoples' Courts that undertake adjudicatory and executive functions – with the possibility of several divisions existing within one court and each taking responsibility for different aspects of enforcement.¹³ The *Opinions of the SPC on Deepening the Enforcement Reform and Improving the Long-term Mechanism for Solving Enforcement Difficulties—the Outline of People's Courts' Enforcement Work (2019-2023)* provide for flexible configurations of judicial and administrative staff and field operatives to secure the most efficient arrangement of personnel.

2.3 Administrative/Executive Model

- 11 The particular impact of romano-canonical law on enforcement was influenced by the timing of its spread through Europe and the extent to which other mechanisms were already in place. The impact in Spain, for example, was early and long-lasting. Further north in Europe, a variegated picture emerges. Germanic customary laws in the early medieval period relied on sanctions, including the seizure of property and outlawry, as a way of compelling the defendant to obey court orders. Although these were initially self-help measures, eventually institutions came to play a greater role. Enforcement began to be entrusted to royal officials or authorities at the local level (sheriffs, *fogdar*, *huissiers*, *Grafen*, *Bote* and others).¹⁴ Some of these officials were powerful figures with broad executive functions. While the reception of roman law in Germany gradually led to the absorption of enforcement into the courts,¹⁵ the evolution of enforcement institutions has progressed quite differently elsewhere. In some countries, enforcement has remained an executive function, gradually incorporated into the state administration.
- 12 Swedish *fogdar*, for example, were medieval Crown agents who managed Crown property, kept the peace and collected taxes. They maintained their place as senior officials in a state structure that grouped together tax collection, prosecution and

¹¹ Ibid ch 14.

¹² See pt XIII ch 3 para 21-27.

¹³ Higher courts have a supervisory role.

¹⁴ For the development of German law, see, for example, A Deutsch, 'Zwangsvollstreckung zwischen Mittelalter und Neuzeit: Mobiliar- und Immobiliarpfändung nach dem Recht des Klagspiegels' (2005) 120 Deutsche Gerichtsvollzieher Zeitung 133.

¹⁵ But note the developments explained below at para.35.

policing functions at the local level until the middle of the 20th century.¹⁶ From the 17th century they were also responsible for the enforcement of civil judgments.¹⁷

- 13 In 1965 the police, prosecution and civil enforcement functions were centralized and three new nationalized organizations were created to perform these different functions. The nationalized enforcement authorities (*Kronofogdemyndigheterna*) initially remained divided into local districts, but technological and management changes meant that fewer and larger authorities were needed and eventually in 2008 the Swedish Enforcement Agency (*Kronofogden/SEA*) was created as an independent state agency, under the authority of the Ministry of Finance.
- 14 The Authority is headed by the *Rikskronofogden* and his senior management team. Below this team are several units of which the largest is concerned with the provision of the enforcement services for which the SEA is responsible. Other units are concerned with IT, finance and accounts, human resources, development, communication, and specialist legal advice. The SEA works very transparently, with an informative and accessible website and Annual Reports (*Årsredovisning*) that set the work of the SEA in the context of the broader economy and relationships with other agencies. The Annual Reports provide statistics on, for example, employees, numbers of cases processed and debtors subject to enforcement proceedings, amounts collected, productivity and customer satisfaction.
- 15 Within the enforcement unit, *kronofogdar* are now the legal experts whose role is to 'ensure the legal quality of procedures involving the recovery of public debts, enforcement and supervision of bankruptcy'.¹⁸ They thus play a key role but are part of a larger team, rather than at the top of a hierarchy.¹⁹ With good access to data about debtors, much of the work of the SEA is office-based. Moreover, as part of the state administration, the SEA operates in a 'court-like' way.²⁰ It can compel hearings of the debtor and third parties in the context of the determination of the debtor's assets and can adopt reasoned decisions that are immediately enforceable – or, in the case of the imposition of a penalty, are enforceable once they become final.²¹

¹⁶ A Ivarsson Westerberg, *Förändrad fogde: reformer och förändring i statens kärna* (SCORE Rapportserie 1999:6, Stockholm Centre for Organisational Research, Stockholm University 1999) 3.1.

¹⁷ The relevant *Exekutionsstadga* [Enforcement Statute] was adopted in 1669. See further, M Berglund, *Cross-border Enforcement of Claims in the EU: History, Present Time and Future* (vol 65, 2nd edn, Kluwer Law International 2014) 103.

¹⁸ §16, Förordning (2016:1333) med instruktion för Kronofogdemyndigheten [Ordinance 2016:1333 with instructions for the Swedish Enforcement Agency].

¹⁹ See Kennett (n 10) ch 5 at 3.2.1. for changes in management structure as a result of New Public Management reforms.

²⁰ S Ahlbäck Öberg and H Wockelberg, 'The public sector and the courts' in J Pierre (ed) *The Oxford Handbook of Swedish Politics* (OUP 2015), 133-134, 138.

²¹ Chapter 2 §§18-20 UB.

- 16 A similar approach to enforcement obtains in Finland as a result of its inclusion in the Swedish empire from the medieval period until the 19th century and the continued close links between the countries. Moreover, in some jurisdictions, reforms to systems that were originally court-centred have led to the development of ‘executive’ enforcement agencies. In Russia, for example, in Soviet times, the function of executing civil enforcement titles was given to bailiffs attached to the courts, but the transition to a capitalist economy led to a need for a more efficient system and Bailiff Department in the Ministry of Justice was created, which later became a separate federal agency (the Federal Bailiff Service: FSSP).²² The FSSP is divided into territorial units and organized hierarchically by reference to military ranks. It has wide powers and access to state data about debtors, including information about prior enforcement action.
- 17 In Vietnam a similar process took place. A civil enforcement agency (thi hành án dân sự: THADS) was created in the 1990s. Enforcement is no longer a matter for the courts, although THADS is still managed by the Ministry of Justice.²³
- 18 In Georgia, the process of change was precipitated by the 1999 Law on Enforcement Proceedings. The administration of enforcement was moved from individual courts to the Enforcement Department of the Ministry of Justice and a unified system was established in 2002. In 2008 the Enforcement Department was transformed into the National Bureau of Enforcement (NBE), which is a legal entity of public law.²⁴ However, in 2009 Georgia also introduced a system of licensed private enforcement agents, who have the same powers as NBE enforcement officers and can compete with the NBE.²⁵ A

²² DV Ruzaeva, ‘становление дознания в структуре федеральной службы судебных приставов’ Российский хороший журнал: 89. The change in structure was effected in 1997 through the Federal Law 21.07.97 N 118-FZ On the Federal Bailiff Service (федеральный закон 21.07.97 n 118-ФЗ об органах принудительного исполнения российской федерации) and Federal Law 21.07.97 N 119-FZ On Enforcement Proceedings (федеральный закон 21.07.97 n 119-ФЗ об исполнительном производстве)

²³ See eg, THADS, ‘Một số nét về lịch sử hình thành của ngành Thi hành án dân sự’ (Some features of the history of the formation of the Civil Judgment Enforcement sector): https://thads.moj.gov.vn/bacgiang/noidung/tintuc/lists/hoatdongcuacuc/view_detail.aspx?itemid=184 accessed 24 August 2023; TPT Pham, ‘Lịch sử hình thành và phát triển của pháp luật về ủy thác thi hành án dân sự tại Việt Nam?’ (What is the history of the formation and development of the law on organisation of civil judgment enforcement in Vietnam?): <https://luatminhkhue.vn/lich-su-hinh-than-ha-va-phat-trien-cua-phap-luat-ve-uy-thac-thi-hanh-an-dan-su-tai-viet-nam.aspx> (accessed 24 August 2023).

²⁴ National Bureau of Enforcement, ‘History’: available at https://nbe.gov.ge/index.php?lang_id=ENG&id=20 accessed 24 August 2023. At about this time, Georgia sought the help of the SEA to implement improvements in its enforcement system: K Markensten and M Alavidze, *Review of the partnership cooperation between the National Bureau of Enforcement of Georgia and the Swedish Enforcement Agency*, SIDA Decentralised Evaluation 2012:4 (Citat 2012).

²⁵ Private enforcement agents are regulated by საქართველოს კანონი სააღსრულებო წარმოებათა შესახებ [Law on Enforcement Proceedings] Art 14⁶ – 14¹⁹ and licensed by the NBE. They can undertake enforcement in civil cases (but not criminal or administrative ones) for debts less than GEL 500,000 (c. €175,000). They must have a law degree, have passed a judge or enforcement agent qualification test, and have a suitable place of business.

cooperation project between the SEA and the NBE has helped to shape the development of the NBE.

2.4 Judicial Officer Model

- 19 Whereas in Sweden the medieval *fogden* was a local executive agent of the Crown, in France and the Low Countries the officials concerned with enforcement in the medieval period were more closely linked to court proceedings and not necessarily involved in tax and administrative matters. The French *huissier de justice* maintained order in the courtroom and summoned parties and witnesses and their enforcement role evolved from this. *Huissiers* were self-employed and paid out of fees and charges. The character of their office was deeply impacted by the French system of *venalité des charges*: the office was made available for sale by medieval French kings. Initially, the licenses offered were held at the king's pleasure, but over time the system evolved to the point where the office holder acquired a patrimonial right that could be passed on to their heir. An entrenched privatized system of enforcement of judgments thus emerged, supported by a professional organization of significant influence. Although the *venalité des charges* was abolished during the French Revolution and *huissiers* were in principle selected and appointed by the state, in practice the pre-existing system remained substantially in place. In the absence of an agreement with the previous office holder, the professional chambers refused to issue the certificate of capacity and morality that was legally required for appointment to office.²⁶
- 20 Under Napoleon, legislation regulating the profession was adopted which has continued to shape the civil enforcement system in France and other countries to which this 'Judicial Officer' model has been transplanted. The Napoleonic legislation was introduced in the Low Countries as a result of the annexation of those countries in 1794-5 and continued in force in Luxembourg and Belgium after the Napoleonic regime ended. In each of these jurisdictions, the regulatory legislation has been modernized in recent decades, though still building on the foundations of the Napoleonic system. In the Netherlands, much less detailed legal regulation was introduced in 1838 and it was not until 2001 that a professional structure comparable to that in France or Belgium emerged. The colonization of West Africa by France also led to the introduction of the Judicial Officer system in many African states. Indeed, the Judicial Officer model has influenced the development of enforcement laws in many countries as a result of the efforts of the international NGO that represents the interests of Judicial Officers (the International Union of Judicial Officers: UIHJ).²⁷ In particular, as a 'lean, flat, small, specialized (disaggregated) organizational form'²⁸ that could be subject to contractual

²⁶ J-Y Borel, 'Les Peripéties d'une Institution ou la Venalité des Charges de Philippe le Bel à Clemenceau' in CNHJ (ed), *Hostarii* (Editions Juridiques et Techniques 1995) 215.

²⁷ See <https://www.uhj.com/> The NGO is a member of a number of international organizations, or has observer status, and its officers regularly provide advice on enforcement reform to national governments.

²⁸ C Pollitt and G Bouckaert, *Public Management Reform: A Comparative Analysis* (OUP 2017) 10.

regulation and competitive tendering, the Judicial Officer system had a strong appeal for public managers seeking appropriate mechanisms to aid economic transition in Central and Eastern Europe in the post-Communist era. It has been introduced in the majority of CEE countries and some SEE countries.²⁹ An analogous system has also been introduced in Portugal as part of a series of judicial reforms, commencing in 2003 with the conferral of enforcement responsibilities on *solicitadores* under the instruction of the court, and progressing to the establishment of an independent enforcement profession, with a new status created by legislation in 2015.³⁰ And, retreating further back in time, the Scottish enforcement system appears to have been influenced by French law as a result of historical ties between the two countries – although Scotland’s position within the United Kingdom has also had an impact.³¹

- 21 In modern times, Judicial Officers can be defined as regulated legal professionals who specialize in civil enforcement, and indeed have a monopoly of that function. Traditionally, Judicial Officers also had a monopoly on the service of documents in civil proceedings, but this monopoly has been eroded in various ways and has not always survived the process of transplant. As legal professionals who exercise state authority, they have a distinct status. In France they are *officiers public et ministériels* (OPM) and a similar recognition of the public dimension of their office and the need for appointment by the Minister of Justice is found in other countries employing Judicial Officers. Regulation of the profession is detailed and covers such matters as qualifications and training, access to the profession, forms of organization, competences (functional and territorial), professional organization, management of files, oversight, and discipline and fees, each of which is covered in further detail below.
- 22 Judicial Officers may also have a number of non-exclusive competences, which vary from one jurisdiction to another but are usually linked to their monopoly functions (eg, debt recovery, authentic acts, property management). In some jurisdictions, Judicial Officers are responsible solely for the enforcement of enforcement titles in civil and commercial matters. In others, they are also responsible – but to varying extents – for the recovery of public law debts. The fees for the monopoly functions of Judicial Officers are regulated,³² but where officers also have non-monopoly functions, they have more freedom to negotiate a price.

²⁹ See further, Kennett (n 10) ch 11.

³⁰ See especially, Decreto-Lei n.º 88/2003 de 26 de Abril, Estatuto da Câmara dos Solicitadores [Decree-Law no 88/2003 of 26 April, Statute of the Chamber of Solicitors]; Portaria n.º 282/2013 de 29 de Agosto regulamenta vários aspetos das ações executivas cíveis [Ordinance no 282/2013 of 29 August regulating various aspects of civil enforcement actions]; Lei n.º 154/2015 de 14 de setembro, Estatuto da Ordem dos Solicitadores e dos Agentes de Execução [Law no 154/2015 of 14 September, Statute of the Order of Solicitors and Enforcement Agents].

³¹ For the ancient origins of the profession and its probable connections to the French system see R Macpherson, ‘A History of Scotland’s Officers of Court’ published at the XVIII Congress of UIHJ, Tunis, 6 May 2003 and available via <http://www.arandem.co.uk/messenger-at-arms/> (accessed 8 April 2024).

³² See below at para 143 f.

- 23 Traditional barriers to entry to the profession and restrictions on competition between members of the profession, have come under pressure in recent years in Europe. While this has had beneficial results in terms of, for example, investment in technology and the efficiency of processes, it has also had detrimental consequences.³³

2.5 Hybrid Systems

- 24 The enforcement institutions in Sweden, France and the Benelux countries can be traced back to their medieval origins, and they have retained a central role in the enforcement process and a high status. Elsewhere in Europe, a more fragmented approach has developed. Thus, while reference to court-centred, administrative/executive and Judicial Officer models is useful, it does not capture the variety of enforcement systems, many of which have a hybrid character. This is notably true in common law jurisdictions but can also be observed elsewhere.

2.5.1 Common law jurisdictions

- 25 The medieval English sheriff was a powerful figure, not dissimilar to the Swedish *fogden* – and indeed with greater competences. During the 11th and 12th centuries he presided over the local court and was responsible for related executive action, he had police powers, collected taxes and levies for the Crown and managed Crown property in his shire. In the succeeding centuries, however, the sheriff began to shed powers as new institutions were introduced.

Under Henry I their tax collection powers went to the Exchequer.... Henry II introduced the system of Itinerant Justices from which evolved the Assizes and the present day system of High Court Judges going out on Circuit. The Sheriff remained responsible for issuing Writs, for having ready the Court, prisoners and juries, and then executing the sentences once they were pronounced. ... In the middle of the 13th century, more powers went to the newly created offices of Coroners and Justices of the Peace. Under the Tudors, Lord-Lieutenants were created as personal representatives of the Sovereign. ... By Acts of 1856 and 1865 all of the Sheriffs' powers concerning police and prisons passed to the Prison Commissioners and local Constabulary and under an Act of 1883 the care of Crown Property was transferred to the Crown Commissioners.³⁴

- 26 By the 17th century, the main duties of the sheriff arose from his role as the executive official of the courts, as an important means of communication between the central government and the county and as an assistant to justices of the peace. It was in his role as the executive official of the courts that the sheriff, through his under-sheriff and

³³ Considered further below at para 68.

³⁴ 'History of High Sheriffs' on the website of the High Sheriffs' Association <https://highsheriffs.com/about/history-of-high-sheriffs/> accessed 4 January 2023.

bailiffs, enforced civil court orders (writs of execution) seizing movable property belonging to the judgment debtor and realizing its value, or by seizing the rents and profits of the judgment debtor's land. He was also the executive official for criminal courts and – in addition to organizational matters – was responsible for the arrest and imprisonment of felons in accordance with court orders and for the maintenance of the county jail. As an assistant to the justices of the peace, he further exercised wide police powers to ensure public safety and security.³⁵

- 27 At the same time, while the English sheriff was gradually divested of responsibilities, new procedures for judgment enforcement were developed. Writs of arrest and sequestration with the possibility of appointment of receivers, were introduced in the Chancery Court.³⁶ In the 19th century, new court enforcement procedures were introduced by legislation, including oral examination of the debtor,³⁷ garnishment (attachment) of debts,³⁸ and registration of charging orders over immovables and securities.³⁹ These new procedures were not part of the writ system and did not require the involvement of the sheriff or his officers. Attachment of earnings was much later added to the range of available court-ordered enforcement measures.⁴⁰ The county courts, established in 1846, also gradually brought their enforcement officers (county court bailiffs) more closely under the control of the court manager, until the bailiffs eventually achieved civil servant status.⁴¹
- 28 By the mid-19th century, the role of the sheriff was largely ceremonial. Enforcement of High Court writs of execution was the work of under-sheriffs, who were usually solicitors, and sheriff's officers. In 2003, these agents were replaced by their legal successor, the High Court Enforcement Officer (HCEO), who is no longer restricted to the former shrievalty jurisdictional boundaries but can compete for business throughout England and Wales. HCEOs retain an important enforcement role in commercial cases. They can be approached directly by the judgment creditor and obtain the issue of a writ of execution from the High Court on their behalf. They operate private businesses, funded

³⁵ C Harreld Karraker, *The Seventeenth Century Sheriff: A Comparative Study of the Sheriff in England and in the Chesapeake Colonies, 1607-1689* (Chapel Hill, 1930) 15.

³⁶ These writs and orders would sometimes be addressed to the sheriff, but often could also be addressed to the parties and circumvent the involvement of the sheriff: see eg, G Spence, *The Equitable Jurisdiction of the Court of Chancery* (Lea and Blanchard 1846) 369, 377; P Nightingale, 'The intervention of the crown and the effectiveness of the sheriff in the execution of judicial writs, c. 1355–1530' (2008) 123 *The English Historical Review* 1-34; DW Raack, 'A History of Injunctions in England before 1700' (1985) 61 *Ind. LJ* 539.

³⁷ Common Law Procedure Act 1854, s.60.

³⁸ Common Law Procedure Act 1854, ss 61-63 and 65.

³⁹ Judgments Acts 1838 and 1840.

⁴⁰ Attachment of Earnings Act 1975. Garnishment could not reach future earnings since it applied only to debts that had already accrued

⁴¹ P Polden, *A History of the County Court, 1846–1971* (CUP 1999).

from enforcement fees, and in that respect are similar to Judicial Officers – although with a very different history and a commercial rather than professional profile.

- 29 Furthermore, the companies that provide High Court enforcement services may also be involved in public sector debt recovery and provide investigation and tracing services. In recent years the largest companies have diversified (or become part of diversified groups of companies), building on experience in logistics, IT, data processing and customer service to offer a wider range of services, including assisting local authorities in the planning and implementation of low-emission zones.
- 30 The changes in the jurisdiction of sheriff's officers in England and the development of the business of HCEOs are quite distinct from the changes in enforcement institutions in former British colonies, however. The extent of hybridity and status and title of any external enforcement agent varies enormously between jurisdictions, depending on such factors as the period of influence of the English legal system, the extent of initial transplant, and the influence exerted by any other legal or administrative system. Each transplant has developed differently in its unique 'new soil'. Enforcement using court mechanisms – and reflecting familiarity with romano-canonical procedures – were developed to combat some of the deficiencies of that system.
- 31 The export of the 'sheriff' to British colonies has resulted in widely varying systems – which have followed their own path alongside the decline of the power of the sheriff in England itself.
- 32 In the United States, for example, following the transplantation of the institution in the 17th century, the functions of the sheriff have coalesced around the idea of ensuring public safety and security – although sheriffs may have a widely varying range of duties in different states. Thus, Harris County, Texas, has one of the largest sheriff's offices in the United States. The sheriff has an important role in tackling crime, operating jails and dealing with emergencies (eg, terrorist threats, natural disasters).⁴² Enforcement of civil judgments is in practice handled by constables, who have sub-county areas of jurisdiction.⁴³ By contrast, in Montgomery County, Pennsylvania, enforcement of civil judgments is an important function of the sheriff. The sheriff has other responsibilities that relate to preserving public safety and security and support the departments concerned with police and criminal justice matters, including patrol duties, transport of prisoners and arrest of wanted persons.⁴⁴
- 33 To take another example, in India, British colonial administrators originally made extensive use of existing local power structures to recover public and private law debts,

⁴² For details see <https://www.harriscountytso.org> (accessed 4 January 2023)

⁴³ See, by way of example, for Precinct 1 of Harris County, <https://pct1constable.net/divisions/civil-process/> accessed 4 January 2023.

⁴⁴ See *Sheriff's Office* <https://www.montcopa.org/397/Sheriffs-Office> accessed 4 January 2023.

but over time court staff became integrated into a civil service structure. Although there are some differences in structure between states there are also mechanisms to promote coordination, including coordination as to the place of bailiffs within the court staff hierarchy.⁴⁵ Sheriffs were introduced in Madras, Bombay and Calcutta in the 18th century and initially had responsibility for (inter alia) seizure of goods, but the role of sheriff rapidly became purely titular. A Sheriff's Office, acting through the Deputy Sheriff, remains a government office and part of the High Court in Mumbai and Kolkata. The office has responsibility for the seizure of goods, notably in admiralty cases.⁴⁶

- 34 The Canadian provinces – each with their own enforcement laws – manifest further variations in the development of the sheriff system they received by way of transplant. To take one example, the Office of the Sheriff in Alberta is in fact the regulator for the enforcement industry. It authorizes persons wanting to operate a civil enforcement agency, establishes the terms under which they can operate and terminates operation if appropriate, monitors their operation, deals with complaints and works to improve training and procedures.

2.5.2 Germany

- 35 Fragmentation can also be seen in Germany. The range of activities of the various enforcement personnel in the German states was reduced over the period from the end of the Middle Ages up until the start of the 19th century. This was a direct result of the gradual reception of romano-canonical law and the increased role of the courts.⁵² Judges acquired greater competences. They eventually became responsible for the enforcement of judgments which led to their use of court officers (*Exekutor*⁴⁷) – rather than independent agents – for enforcement.⁴⁸ Court-centred enforcement became common in the German states and across the Austro-Hungarian empire. At the beginning of the 19th century, however, the occupation of several states west of the Rhine by Napoleon led to the introduction of the Judicial Officer system in those states, while enforcement continued to be undertaken by an *Exekutor* in other German states. Following the unification of Germany, debates about the enforcement system led to a compromise position and a hybrid enforcement system. The German enforcement officer (*Gerichtsvollzieher*) is a civil servant with a restricted range of competences – mainly involving the service of documents, the seizure of tangible movable property and evictions – who nevertheless maintains an office external to the court and has a degree of business independence. Meanwhile, other methods of enforcement are actioned

⁴⁵ First National Judicial Pay Commission Report (submitted 11 November 1999), chaired by Justice K J Shetty, available at <https://ajopn.nic.in/> accessed 4 January 2023.

⁴⁶ Chief Justice C Mookerjee et al (eds) *The High Court at Calcutta: 150 Years: An Overview* (Indian Law Institute 2012).

⁴⁷ Terminology varied, but the term *Exekutor* is used here to identify a court official with limited functions and discretion.

⁴⁸ T Seip, 'Der Versuch einer Änderung des Gerichtsvollzieher systems: Dokumentation des "Neuberger Modells"' (1997) 112 Deutsche Gerichtsvollzieher Zeitung 103.

within the court system under the supervision of enforcement judges and senior administrators (*Rechtspfleger*).

2.5.3 Other examples of hybridity

- 36 In Slovenia local debates about the desirability of importing the Judicial Officer model, as part of the transition to a capitalist economy, led to the introduction of a new Slovenian independent enforcement officer (*izvršitelj*). Unlike the German *Gerichtsvollzieher*, Slovenian enforcement officers operate in a privatized and competitive system. But they have a similarly restricted role. The courts have retained control of enforcement and enforcement law has been reformed to give them greater access to information about debtors and more efficient procedures.⁴⁹
- 37 Other examples of a hybrid approach to civil enforcement – where an external agent acts under the direction of the courts and is remunerated through standard fees charged for the various actions undertaken – can also be found. In South America, for example, colonization by Spain led to the introduction of the *escribano* as part of the system of administration of justice.⁵⁰ An *escribano* was a public notary but historically played an important role as a judicial secretary providing an authentic record of proceedings. The *escribano* acted as an independent professional rather than a part of any court administration⁵¹ until they were later absorbed into a growing and more formalized court structure as *secretarios judiciales*.⁵² In Chile, the *escribano* worked with *receptores judiciales* who were responsible for actions requiring field contact with the parties, such as the service of documents and the seizure of assets.⁵³ The latter continues to maintain offices external to the courts and to be paid on a fee basis.⁵⁴

⁴⁹ Kennett (n 10) ch 14 and 15; W Rose, 'Gerichtsvollzieher in Deutschland 1800-1933' in M Görtemaker and K Hübener (eds), *Schwert der Justiz: Das Gerichtsvollzieherwesen in Deutschland von 1800 bis zur Gegenwart* (be.bra wissenschaft verlag 2019).

⁵⁰ See for the development of the role in Spain, Kennett (n 10) ch 13 at 3.1.

⁵¹ Indeed the contours of the justice system and the extent to which an *escribano* played a role in dispute resolution are uncertain prior to the reforms of the 19th century: see A Argouse, 'Prueba, información y papeles. Hacia una plena inclusión del escribano y de sus agencias en la historia de la justicia en Hispanoamérica (Chile, siglos XVII-XVIII)' (2017) 8 *Revista Historia y Justicia* 97.

⁵² For this development in Chile, see B Bravo Lira, 'La institución notarial en Chile. Notas sobre su origen y configuración jurídica' (2010) *Revista de Derecho de la Pontificia Universidad Católica de Valparaíso* 2.

⁵³ *Receptores judiciales* also play a role in recording witness testimony. For an account of their competences see Art390 CPC (Chile).

⁵⁴ For their regulation and functions, see the *Manual Examen de Conocimientos Receptores Judiciales* (Poder Judicial, Republica de Chile 2016).

3 ALLOCATION OF ENFORCEMENT RESPONSIBILITIES

3.1 Variety of Actors

- 38 To facilitate comparison, the various tasks involved in civil enforcement are explained in the following paragraphs. These tasks may be performed by the principal enforcement institution in a country, but they may be performed by other actors. In particular, as noted in paras 2-3, even if the enforcement institution is not a court, important functions will be performed by the courts. Some enforcement-related responsibilities will fall on the creditor, in some jurisdictions notaries play a significant role in enforcement, and in some jurisdictions, banks may have enforcement powers in relation to debts owed to them. Other institutions may also be significant to the enforcement process. Property registries, for example, enable the priority of interests of judgment creditors to be recorded. Access to information about debtors has become increasingly central to successful enforcement and so institutions that hold such information, while not necessarily part of the enforcement process as such, play an important role. Institutions from which information may often be obtained include the tax office, social insurance institutions and vehicle licensing institutions.

3.2 Issue of an Enforcement Title (*Titre Exécutoire*)

- 39 This is the starting point for civil enforcement. In civil and commercial matters an enforcement title is typically the judgment or order of a court, or an authentic instrument issued by a notary.⁵⁵ A variety of other titles nevertheless exist.⁵⁶ In the present context, it should be noted that the task of issuing an enforcement title may sometimes be performed by an enforcement institution. Thus, for example, a French Judicial Officer (*Commissaire de justice*) can issue an enforcement title in proceedings relating to a dishonoured cheque,⁵⁷ and the Swedish Enforcement Authority (SEA) can issue enforcement titles via a payment order procedure (Supro).⁵⁸ An enforcement institution may thus perform a dual role in the issue and the enforcement of titles.

3.3 Authorization for Enforcement

- 40 Before an enforcement title can be enforced a check must be made that it is indeed enforceable (for example, many jurisdictions require the period allowed for an ordinary appeal to elapse before a judgment can be enforced and different approaches obtain in

⁵⁵ In the public law context, public authorities are often authorized to issue an enforcement title without the involvement of a court (although the enforcement title may be open to subsequent challenge).

⁵⁶ Kennett, *Enforcement of Judgments in Europe* (Oxford University Press 2000) 63.

⁵⁷ See Art L. 131-73 Code monétaire et financier (Monetary and Financial Code)

⁵⁸ Again, in the public law context a public authority may be competent to enforce the title that it has issued, with a greater or lesser degree of separation between issuing and enforcing entities.

relation to the enforceability of a judgment subject to appeal).⁵⁹ Formal confirmation of enforceability typically takes the form of a seal or endorsement on the face of the judgment itself, although it may be contained in a separate document. The formal confirmation is provided by the court that issued the decision. It is regulated in national laws with varying degrees of formality and may involve administrative or judicial personnel.

- 41 In court-centred systems, authorization of enforcement by the enforcement is one of the first stages in the enforcement process.⁶⁰ In Austria, for example, the requirements for enforceability are checked at two different procedural stages. Initial certification of enforceability (*Vollstreckbarkeitsbestätigung*) by the court that issued the judgment is confined to checking the formal requirements for enforceability under §7 EO.⁶¹ A *Rechtspfleger* is usually responsible for certifying enforceability.
- 42 For enforcement to take place, an application must then be made to the competent enforcement court. That court, again acting through a *Rechtspfleger*, relies on the *Vollstreckbarkeitsbestätigung* as proof that the formal requirements for enforcement are satisfied. But in accordance with §7(1) EO, it must check that the material requirements for enforcement are met before issuing an enforcement order (*Exekutionsbewilligung*) as the first stage in the enforcement process.⁶² These requirements include certainty as to the identity of the person entitled to enforcement, and the person against whom enforcement is to take place, as well as the object, nature, scope and time of the performance owed.
- 43 In Judicial Officer enforcement systems, authorization typically involves the application of a certification of enforceability to a judgment or other title. For example, in France, *greffier* (court registrar) is responsible for checking whether a judgment is enforceable and applying the *formule exécutoire*. The creditor can then deliver the enforcement title to the Judicial Officer for enforcement. In some jurisdictions, further checks are necessary. For example, in the Czech Republic, although the authority that issues an

⁵⁹ See W Kennett, 'Different national enforcement structures and their consequences for cross-border enforcement' in V Rijavec and others (eds), *Remedies concerning enforcement of foreign judgements: Brussels I Recast* (Kluwer Law International 2018). In some circumstances, protective measures may be taken where there is no judgment or authentic instrument to enforce. See for example, Art L511-2 of the French Code des procédures civiles d'exécution (CPCE)[Code of civil enforcement procedures]

⁶⁰ See further W Kennett, 'Brussels I Recast: General Context of Enforcement Systems' in V Rijavec and others (eds), *Remedies Concerning Enforcement of Foreign Judgments: Brussels I Recast* (Kluwer Law International 2018) 273. See also for the situation in Germany, C Wolf and L Volkhausen, 'National Enforcement Titles: A Comparative German Perspective', *ibid.* 81.

⁶¹ These are: the enforcement title must have been properly served on the debtor; time limits for appeals with suspensive effect must have expired; the time allowed for performance (which is usually 14 days from the judgment) must have expired; where performance is due at a point in time later than the issue of the judgment, the due date must have passed; the enforcement title must not have expired due to the passage of time.

⁶² The identity of the person entitled to enforcement, and the person against whom enforcement is to take place, must be certain as well as the object, nature, scope and time of the performance owed

enforcement title provides a confirmation of enforceability, the Judicial Officer must also seek authorization from the enforcement court. Once an application for enforcement has been made to the Judicial Officer, the officer will check whether it is formally correct and must then submit the application to the court electronically for approval before taking further steps.

- 44 Disputes over substantive issues are then referred to the enforcement court. In France, the competence of the *juge d'exécution* (JEX)⁶³ extends to 'the reality of the executory character of the title, or its correct notification, the possibility that it no longer produces effects, or its nullity or to judge its regularity if the enforcement title is one other than a judgment'.⁶⁴ They can rule on disputes relating to the debt owed – including the amount and whether it is due as well as questions of the interest payable. They can also determine questions relating to the identity of the debtor or creditor.⁶⁵
- 45 A distinctive approach to certifying that a judgment is enforceable is adopted in Germany. Enforcement takes place on the basis of an enforceable execution copy of the judgment. Both the formal and substantive requirements for enforcement are checked in one distinct, formal civil procedure (*Klauselerteilungsverfahren*) with its own competent authority and specific remedies (§§724 ff ZPO). In the most straightforward cases, the clerk of the court office for the court that issued the enforcement title (*Prozessgericht*) can issue the certificate if a judgment is immediately enforceable (*einfache Klausel*). But in cases where there are further issues to be considered – as in cases of succession in title or assignment of rights, or where enforcement is subject to proof that a condition has been satisfied by the creditor (§§26–29 ZPO) – it is the *Rechtspfleger* at the *Prozessgericht* who is competent to issue the *Vollstreckungsklausel* and the debtor is entitled to be heard.⁶⁶
- 46 The approach adopted by German law is the consequence of its bifurcated system of enforcement. Depending on the enforcement measure sought, an application may be made to the competent enforcement court (*Vollstreckungsgericht*⁶⁷) or to the *Gerichtsvollzieher*. As explained below⁶⁸ the educational standard required for a *Gerichtsvollzieher* is lower than that for a Judicial Officer. Moreover, a *Gerichtsvollzieher* maintains their own office and is not integrated into the court.⁶⁹ Taking these factors into account, the procedure for obtaining a *Vollstreckungsklausel* is intended to provide as much clarity as possible as to the parties to the enforcement procedure and the

⁶³ Art L213-6 Code de l'organisation judiciaire [Code of judicial organisation]

⁶⁴ N Fricero, *Procedures civiles d'exécution* (11th ed, Gualino, Lextenso 2022) 69 ff. The JEX cannot modify a judgment or stay its enforcement, but they can grant a '*delai de grâce*'.

⁶⁵ *ibid*.

⁶⁶ In more complex cases, where there is no official document to prove the creditor's right to bring enforcement proceedings and further proof-taking is necessary, §731 ZPO provides for an action for the issue of a *Vollstreckungsklausel*.

⁶⁷ A section of the lowest level first instance court (*Amtsgericht*).

⁶⁸ See below at para 106.

⁶⁹ See above at para 35.

obligation owed by the debtor. Moreover, the fact that a formal procedure exists for the issue of a certificate of enforceability is reflected in the remedies available to both creditor and debtor.⁷⁰

3.4 Service of Documents Relating to Enforcement

- 47 Service on the debtor of documents relating to the various steps in the proceedings is an essential part of enforcement action. In the jurisdictions in which the Judicial Officer model originated, a distinction is made between *signification* and *notification*. Documents requiring *signification* are formally served by a Judicial Officer, whereas notification may be by less formal methods such as the post. *Signification* is required, as a general rule, for many procedural acts, including, notably, the document instituting the proceedings for the issue of an enforcement title (*assignation*), the judgment and enforcement measures.⁷¹ In jurisdictions that have more recently imported the Judicial Officer model, service of the document instituting the original proceedings is typically undertaken via post or with the assistance of public functionaries,⁷² but Judicial Officers are responsible for the service of the documents involved in the enforcement process. Electronic methods of service, including email and specialized electronic platforms are nevertheless becoming increasingly important and this is having an impact on the role of Judicial Officers.⁷³ Nevertheless, in some jurisdictions, Judicial Officers remain the conduit for e-service.⁷⁴

3.5 Attempt to Achieve Settlement of Debt or Instalment Arrangement

- 48 Although the seizure of assets of the debtor might be seen as the central task of an enforcement institution, naturally the main objective is to secure payment by the debtor. The threat of seizure will often therefore prompt payment. Alternatively, if the debtor is not in a position to pay the debt immediately, it is common for enforcement institutions to make instalment arrangements. Indeed, they may be under an obligation to seek to do so.⁷⁵ It should, however, be noted that attempts to achieve an amicable settlement of the underlying dispute and/or amicable arrangements for payment of the debt may well have been undertaken by the creditor and/or enforcement institution

⁷⁰ §§567, 573, 731, 767, 771 ZPO, §11 I RPflG.

⁷¹ See for France Art L54-L55; L675 CPC; Art L221-1, R211-1, R221-1 and 221-4, R222-2, R222-7, R222-13, R222-22, R232-5, R232-6, R311-6, R311-7, R321-1 CPCE.

⁷² See the detailed comparisons in A Simoni and G Pailli, *Study on the Service of Documents. Comparative legal analysis of the relevant laws and practices of the Member States. Final Report. No JUST/2014/JCOO/PR/CIVI/0049* (European Commission 5 October 2016).

⁷³ See *ibid*, especially at 32, 50 and 97 f. Enhanced use of electronic service was accelerated by the COVID pandemic.

⁷⁴ Eg, France, see Kennett (n 10) 261.

⁷⁵ Under German law it is clear that a *Gerichtsvollzieher* should at all stages of proceedings seek to secure settlement of the debt, rather than forced execution: §802b ZPO. For Sweden, see the discussion in SOU 2016-81 *Ett modernare utsökningsförfarende (A modernised enforcement procedure)* ch 5.

before proceeding to forced execution.⁷⁶ A complication here is that in some jurisdictions with a Judicial Officer model, officers may also undertake amicable debt collection on behalf of creditors.⁷⁷ They thus operate both as an enforcement institution and as a business offering amicable recovery services. This has been criticized from two perspectives: on the one hand, it can create confusion in the minds of debtors as to the level of threat to their assets posed by the intervention of the Judicial Officer; on the other hand, the fact that Judicial Officers can offer a 'seamless service' from initial amicable recovery through to enforcement may be viewed as unfair competition with debt collection agencies.⁷⁸

3.6 Creditor Application for Enforcement

- 49 Enforcement is not automatic. It is subject to the principle of party initiative. There must therefore be an initial application for enforcement by the creditor. The extent to which the enforcement proceedings must be driven forward by the creditor and the scope for the creditor to choose a specific method of enforcement, nevertheless varies between systems.⁷⁹

3.7 Obtaining Information about a Debtor and their Assets

- 50 In the era of electronic access to information, some jurisdictions have created systems allowing extensive access to debtor information. This may include information from tax authorities, social insurance organizations, banks, vehicle licensing bodies and/or local councils, as well as easy access to registers of securities and other registered movable and immovable property. Access is available to the competent enforcement institution. This thus includes executive agencies, Judicial Officers, or court officers in the case of court-centred enforcement. In Germany, it is the *Gerichtsvollzieher* who has access to certain databases. The relevant databases may also include registers of judgments,⁸⁰ or of debtors subject to enforcement action,⁸¹ or of statements of assets,⁸² or of debtors

⁷⁶ While this will be standard practice in some jurisdictions, it is not embedded in others. For example, the lack of notice to debtors of the possibility of pending enforcement has been criticized in the Czech Republic.

⁷⁷ This is an important part of the work of Judicial Officers in Belgium, France and the Netherlands.

⁷⁸ See the discussion in Kennett (n 10) ch 10 at 4.2.1.

⁷⁹ See further at para.49.

⁸⁰ See eg, England: Register of Judgments, Orders and Fines Regulations 2005, and see <https://registry-trust.org.uk/>. Registry Trust also contains data for other part of the United Kingdom.

⁸¹ Central registers of enforcement proceedings exist in eg, the Czech Republic, Hungary, and Estonia (see further Kennett (n 10) ch 12 at 3.3). Some information may be publicly available on payment of a fee, to facilitate the assessment of creditworthiness. Other information is intended to help co-ordinate action between enforcement agents. See also Austria, §§427-431 EO; Russia, Art6¹, федеральный закон 'об исполнительном производстве' от 02.10.2007 n 229-ФЗ [Federal Law 2.10.2007 N 229-FZ On Enforcement Proceedings].

⁸² See eg, for Germany §802f and k ZPO. Statements of assets can be accessed by *Gerichtsvollzieher* and by enforcement agents working for public authorities.

who have failed to provide a satisfactory statement of assets⁸³ or of dishonest debtors,⁸⁴ or of seizures of assets.⁸⁵

- 51 Another source of information that may be of importance is a statement of assets obtained from the debtor. Debtors are required to provide the information to the competent enforcement institution⁸⁶ and are faced with sanctions for failure to comply with this obligation. For example, they may be arrested and imprisoned for a short period of time,⁸⁷ or their failure to provide information may be entered in a register.⁸⁸
- 52 More generally, creditors may have useful information about the debtor and their assets as a result of their relationship with them. In some jurisdictions, there may be a general obligation on third parties to offer their cooperation to the enforcement institution and this may include provision of information.⁸⁹ Elsewhere, third party obligations to provide information are typically owed by those who are in possession of property belonging to the debtor or owe a financial obligation to the debtor.
- 53 The availability of information for use in the enforcement process is discussed in more detail in pt XIV ch 2.

3.8 Choice of Enforcement Method

- 54 Creditors and their legal representatives continue to play an important role in enforcement. Indeed, in jurisdictions with a court-centred or hybrid model, the enforcement process is typically driven forward by the applications made by the

⁸³ See eg, Germany §882b-h ZPO

⁸⁴ Eg, for China see Cao, [Part XIII ch 3 para 99 ff] The position in China is similar to that in Germany (fn 82) but the list of dishonest debtors is more generally for those believed to be able to pay their debts but refusing to do so. Inclusion on the list can lead to a wide range of sanctions such as restrictions on credit, employment in the public sector and travel.

⁸⁵ In Belgium, for example, the National Chamber of Judicial Officers has established a central register of notices of seizures and other solvency related data (Fichier Central des Avis) as authorised by Loi du 29 Mai 2000 portant création d'un fichier central des avis de saisie, de délégation, de cession et de règlement collectif de dettes et modifiant certaines dispositions du Code judiciaire [Law of 29 May 2000 establishing a central registry of notices of seizure, delegation, assignment and collective settlement of debts and modifying certain provisions of the Judicial Code] as brought into effect by an arrêté royale of 7 December 2010. A similar provision exists in the Netherlands (Gerechtsdeurwaardersverordening [Judicial Officers Regulation] Art 6.2-6.4)

⁸⁶ The competent enforcement institution will typically be the principal institution – court, executive agency or Judicial Officer – but court involvement may be part of the mechanism for fulfilling this obligation (see eg, for Estonia §§61 TMS).

⁸⁷ Eg, Estonia, §62 TMS, Germany, §802g ZPO and §§143 ff GVGA. For China see Cao [part XIII, ch 3 para 95-98]

⁸⁸ Eg, Germany §882c ZPO.

⁸⁹ Eg, Sweden ch 4 §15-16, ch 2 §11-12, 15-16 UB.

creditor, who is thus forced to take control of the process to a certain extent.⁹⁰ However, some systems allow creditors to exercise greater control than others.

- 55 A choice must be made from the various enforcement methods available, based on available information. In some jurisdictions, this choice is conferred on the creditor as a matter of principle or practice.⁹¹ Creditors may be aware of assets of the debtor that could be seized, either because of their general business dealings or perhaps because the asset in question originated with the creditor. However, the choice of methods of enforcement is increasingly being made subject to considerations of proportionality, such as limiting the extent of seizure to what is necessary to enforce the obligation or requiring the enforcement method adopted to be the least onerous for the debtor.⁹² And in a number of jurisdictions there is a hierarchy of enforcement methods and the order in which they are attempted is prescribed by law (*gradus executionis*).⁹³ Such regulation concentrates enforcement decision-making into the hands of the enforcement institution. Often a creditor may anyway rely on the experience and superior access to information available to the enforcement institution, and may leave the choice of enforcement methods in their hands.⁹⁴ Nevertheless, in certain cases – notably those where the creditor has extensive, or at least significant, information about the debtor, where large sums of money are at stake, or where the creditor is a public

⁹⁰ But cf the role of senior court administrators in some jurisdictions, such as the LAJ in Spain (for the development of the role of the LAJ in Spain see further Kennett (n 10) ch 13 at 4.

⁹¹ Bruns argues that the creditor/claimant has the right to control the proceedings (*Dispositionsmaxime*) and that it is a right of constitutional value (see A Bruns, F Baur and R Stürner, *Zwangsvollstreckungsrecht* (CF Müller GmbH 2006) at 61; A Bruns, 'Vom Forderungseinzug zum Forderungsmanagement - Neue Aufgaben für den Gerichtsvollzieher?' (2010) 125 Deutsche Gerichtsvollzieher Zeitung 24 and S Mroß, 'Zwangsvollstreckung im 21. Jahrhundert - Vom Forderungseinzug zum Forderungsmanagement? Symposium an der Ruprecht-Karls-Universität Heidelberg' (2010) 125 Deutsche Gerichtsvollzieher Zeitung 21) but see the discussion by J Stamm, *Die Prinzipien und Grundstrukturen des Zwangsvollstreckungsrechts: ein Beitrag zur Rechtsvereinheitlichung auf europäischer Ebene*, vol 126 (Mohr Siebeck 2007). See also above at 46.

⁹² This approach is also advocated in Council of Europe Recommendation Rec (2003) 17 of the Committee of Ministers to member states on enforcement, Guiding Principle III 4. For a general obligation to deal with civil proceedings in a proportionate way eg, England, CPR Rule 1(1). For alternative formulations see eg, France, Art L111-7 CPCE; Spain, Art 592.1 LEC; Poland, §799(1) KPC; Romania, Art 702(1) and 813(5) CPC; Estonia, §53 TMS; Austria, §14, 27(2), 41(2) EO; Slovenia, Art 34, 84 and 105 ZIZ; England, Tribunals, Courts and Enforcement Act, Sch.12 para 12; Brazil, Art 805 Código de Processo Civil.

⁹³ This may be true to a limited extent (eg, French law restricts the use of seizure of goods Art L221.1, R221.2 CPCE) or there may be a more detailed hierarchy (see eg, Spain, Art 592.2 LEC; Hungary §7 Vht; Czech Republic §58(2) ER). Nevertheless, the *gradus executionis* can only play a significant role where there is sufficient information about the debtor's assets for choices to be made. See further K D Kerameus, 'Chapter 10: Enforcement Proceedings' in M Cappelletti (ed), *International Encyclopedia of Comparative Law, Vol XVI: Civil Procedure* (Mohr Siebeck 2002) 61; J Stamm, *Die Prinzipien und Grundstrukturen des Zwangsvollstreckungsrechts: ein Beitrag zur Rechtsvereinheitlichung auf europäischer Ebene* (Mohr Siebeck 2007) 88 ff.

⁹⁴ See for example the discussion in A Mathieu-Fritz, *Les huissiers de justice* (Sciences sociales et sociétés, 1. éd. edn, Presses Universitaires de France 2005) 166-171.

body that seeks to maintain a good ‘public service’ relationship with debtors – creditors may be particularly concerned to exercise control over enforcement.

3.9 Seizure of Assets

- 56 Where it does not prove possible to obtain payment from a debtor, the seizure of (some of) their assets or claims is a core function attributed to enforcement institutions. Third parties may also be required to assist the enforcement institution in the conduct of this task. For example, the assistance of a locksmith may be required to gain access to premises, or police assistance may be necessary. Arrangements for storage of seized goods are also necessary.

3.10 Realization of the Value of Assets

- 57 A range of institutions may be competent, depending on the type of goods or other assets and the degree of specialization relevant. Judicial Officers generally have specific responsibility in relation to enforcement out of moveable assets, whereas court involvement is common for enforcement out of immovable property because of the greater complexity of the interests involved – although Judicial Officers may play an important role in the service of documents, entry to premises and evictions as part of the enforcement process.⁹⁵ Alternatively a notary may be responsible for the sale of immovable property. The sale of seized assets may also be the responsibility of a distinct professional or commercial auctioneer service.⁹⁶ E-auctions are increasingly used for the sale of both movable and immovable property. These are often organized via a specific digital platform created for enforcement purposes, but in some jurisdictions commercial sites are also an option.

3.11 Dealing with Competing Creditor Claims

- 58 Different approaches are adopted towards the competing claims of different creditors in relation to one debtor. Putting aside the question of secured claims, three principal approaches may be adopted – although there may be a difference in approach as between movable and immovable property and exceptions to the general approach.⁹⁷ In some jurisdictions a priority principle applies: the order in which debtors are satisfied out of the seizure of a particular asset depends on their priority by reference to the time of seizure. If one asset has been seized, therefore, unless it is of sufficiently high value to cover more than one debt subsequent creditors will seek alternative assets to seize.

⁹⁵ See eg, for France, the roles ascribed to court, Judicial Officer and other parties under Art L321-1 ff and R311-1 ff. CPCE.

⁹⁶ The French *commissaire-priseur judiciaire* who had exclusive competence to undertake valuations and conduct judicial public auctions of movable property has recently merged with the *huissier de justice* to form the new profession of *Commissaire de justice* whose work now includes the conduct of auctions of seized assets.

⁹⁷ See generally Kerameus (n 93) 84 ff.

In other jurisdictions creditors are either treated equally, or there may statutory provision for a priority as between creditors.⁹⁸ In such cases there will be a procedure for the division of the money realized.⁹⁹ In jurisdictions where enforcement is done by a Judicial Officer, the officer will deal with the division of the proceeds of sale of goods or of the payments made by a third party on the basis of the seizure of a claim.¹⁰⁰ A Judicial Officer may also be responsible for distribution of the proceeds of sale or administration where immovable property is concerned, but the involvement of a court or a notary may alternatively be necessary.¹⁰¹

3.12 Challenges to enforcement

- 59 Enforcement may be challenged – either with respect to the seizure of a particular asset or in its entirety. For example, a third party may claim ownership of the asset seized, or it may be alleged that the enforcement agent has acted unlawfully in some respect and the unlawful action should be set aside. In certain circumstances, the entire enforcement process may be challenged as illegal or irregular for a reason relating to the validity and enforceability of the enforcement title.¹⁰² In such cases, proceedings may be brought in the court that deals with enforcement issues (the enforcement court).¹⁰³

3.13 Complaints about Enforcement

- 60 Finally, enforcement will often occur in a highly charged atmosphere. There may be complaints about the conduct of those responsible for enforcement by the debtor. Creditors also complain that the handling of their case has been unsatisfactory. Responsibility for dealing with complaints may be allocated to several different authorities, whether in tiered or parallel procedures. For example, there may be an initial complaints procedure directed to the enforcement authority that undertook the action of which complaint is made. There may be an ombudsman who can review cases. In the case of Judicial Officers, complaint may be made to the professional organization, which can undertake disciplinary action if required, or there may be an independent disciplinary tribunal.
- 61 More generally, to ensure that a high standard of enforcement service is provided and that ethical standards are observed, enforcement agents are subject to ongoing regulation. Where a court is responsible for enforcement, supervision is provided by the

⁹⁸ See eg, Poland, Art 1025 KPC.

⁹⁹ See for Belgium, Q Debray and M de Frésart, *Créances and Recouvrements: Guide Pratiques des Procédures d'Ordre et de Distribution par Contribution* (La Charte 2013). See also Kerameus (n 93) 91 f. This seems to oversimplify the position.

¹⁰⁰ For France, see eg, Art R221-33 ff. and R251-1 ff. CPCE.

¹⁰¹ For France, see Art R-331-1 ff. CPCE.

¹⁰² See generally Kerameus (n 93) 45 ff.

¹⁰³ An enforcement court is normally a section of the lowest court in the hierarchy of courts that specialises in enforcement issues.

judiciary and court administrators. In the case of Judicial Officers, supervision and discipline may be exercised by the professional body, but also by other authorities. Complaints may also be directed to such supervisory authorities and may trigger an investigation.

- 62 These various mechanisms for supervision and discipline are discussed further below at section 8.

4 FUNCTIONAL COMPETENCES OF ENFORCEMENT INSTITUTIONS

4.1 Public and Private Debt Recovery

- 63 The enforcement institutions falling within the scope of this chapter are mainly those responsible for the recovery of debts and other pecuniary obligations and for the recovery of movable and immovable property, so these are central functional competences. But in fact, the range of obligations that may be enforced and the range of ancillary activities that may be undertaken by enforcement institutions varies markedly from one jurisdiction to another.
- 64 An important distinction has to be made between institutions responsible for the recovery of both public and private law debts and those that are responsible solely for the recovery of private law debts, since this has a substantial impact on the volume and size of the debts to be recovered and so also on the way that enforcement is organized.
- 65 The Swedish Enforcement Agency, for example, is responsible for the recovery of all public and private law debts. Indeed, the recovery of judgment debts was added to the work of the officer responsible for the recovery of taxes and other duties as long ago as 1669.¹⁰⁴ This degree of integration of the recovery of all public and private law debts is unusual.¹⁰⁵ It is far more common for enforcement powers to be dispersed among several different institutions.
- 66 As a starting point, different institutions are likely to be responsible for the enforcement of public law debts and private law ones. And even with respect to the recovery of public law debts, a wide range of administrative bodies may be involved. Nevertheless, in recent years there have been some trends towards rationalization. For example, public

¹⁰⁴ See above at para.11.

¹⁰⁵ But see eg, Russia, Art 12 федеральный закон 02.10.2007 n 229-фз об исполнительном производстве; Estonia, §2 TMS.

law debts incurred in different contexts may be channelled through a single agency,¹⁰⁶ or at least a single portal.¹⁰⁷

- 67 Some legal systems that have traditionally employed Judicial Officers for the recovery of private law debts have also begun to use their services for the recovery of public law debts.¹⁰⁸ This is particularly the case where the decision is made to pursue the seizure of tangible movable property or where face to face contact with the debtor is otherwise required. An emerging arrangement in this context is for public bodies to have the power to seize bank accounts and salaries, and to use the services of Judicial Officers in more intractable cases. The immediate impact of this has been an ‘industrialisation’ of Judicial Officer businesses in order to deal with the higher volume of cases. Public sector organizations, as powerful clients, have been able to drive down fees through tendering arrangements and the resulting fierce competition between officers.
- 68 The extent to which competition has been beneficial or detrimental is a matter of controversy. On the one hand, it is argued that it prevents enforcement institutions making excessive profits at the expense of debtors and maintains or enhances operating standards through contractual regulation. On the other hand, it is maintained that unrestrained competition has led to a lowering of standards and the unfair treatment of debtors – who may also be faced with competing demands from a larger number of enforcement agents in the competitive environment. Thus, the expansion of the work of enforcement institutions and the introduction of competition has inexorably led to debates about the appropriate level of competition and regulation, and ways of co-ordinating the work of enforcement agents to enable them to approach debtors with a holistic view of their situation. This has typically led to a tightening of regulation and to measures to provide a centralized source of information about enforcement action against individual debtors to which Judicial Officers may have access.¹⁰⁹
- 69 In England and Wales, the Crown Commercial Service has established a Debt Resolution Services framework agreement with a number of suppliers, including enforcement agencies, and is encouraging public sector creditors to make use of this agreement.¹¹⁰

¹⁰⁶ This trend – or an expressed preference to work towards this objective – can be observed in eg, Spain (Agencia Tributaria), the Netherlands (Centraal Justitieel Incassobureau: CJIB).

¹⁰⁷ For France, see Décret n° 2019-949 du 10 Septembre 2019 portant création d’une mission interministérielle, dénommée « France Recouvrement », chargée du pilotage de la réforme du recouvrement fiscal et social [Decree no 2019-949 of 10 September 2019 creating an interministerial mission, called ‘France Recouvrement’, responsible for steering the reform of tax and social security debt collection] bringing together tax, customs and social security payments through a single portal – portailpro.gouv.fr. For the thinking behind this approach, see A Gardette, Rapport aux Ministres: réforme du recouvrement fiscal et social (2019).

¹⁰⁸ Eg, Estonia, Czech Republic, Netherlands, France, Belgium. This is generally the case for debts owed to local governments and/or specific public sector agencies. Judicial Officers have a very limited role in assisting the Tax Office in some jurisdictions.

¹⁰⁹ See Kennett (n 10) ch 8, 9, 10 and 12 for further details.

¹¹⁰ See *Debt Resolution Services* <https://www.crowncommercial.gov.uk/agreements/RM6226> accessed 17 June 2024.

This thus leads to the concentration of services in the hands of a limited number of suppliers meeting prescribed standards, although it has not yet led to significant centralization of information.

- 70 Court-centred enforcement is typically concerned with civil judgments and related civil enforcement titles, rather than public law debts. Nevertheless, courts are sometimes involved in the recovery of public law debts. In Austria, for example, court-centred enforcement is perceived as efficient as a result of digitalization and connected reforms. Public law creditors often have the option to use the court system for public law debt recovery and many elect to do so.¹¹¹ In England, a bulk processing centre has been established to issue enforcement titles in relation to a variety of traffic offences: the Traffic Enforcement Centre (TEC) at Northampton County Court. The enforcement title can then be enforced in the same way as a County Court judgment, but for the seizure of tangible moveable assets commercially contracted ‘certificated’ enforcement agents are used.¹¹²
- 71 In the private law context, further fragmentation of enforcement responsibilities may occur based on various criteria. Distinctions may be drawn between movable and immovable property or tangible and intangible property. Different institutions may be responsible for the seizure and the sale of assets.¹¹³ In England and Wales different mechanisms exist for High Court and County Court enforcement. These different patterns reflect the complex historical development of the institutions concerned.

4.2 Other Functions

- 72 Organisations involved in civil enforcement may also undertake a wide range of functions that are not directly related to debt recovery. The current evaluation scheme used by the CEPEJ to compare enforcement institutions lists a range of functions potentially performed by enforcement agents – although there is generally some relationship to financial management and debt collection. These are:

- Voluntary sale of moveable or immoveable property at public auction
- Seizure of goods
- Recording and reporting of evidence
- Court hearings service
- Provision of legal advice
- Bankruptcy procedures
- Performing tasks assigned by judges
- Representing parties in courts

¹¹¹ §1 EO identifies the enforcement titles that may be enforced through the courts and these include a range of decisions of administrative authorities.

¹¹² For certification, see the Tribunals, Courts and Enforcement Act 2007, s.64 and Certification of Enforcement Agents Regulations 2014.

¹¹³ See above at para.57.

- Drawing up private deeds and documents
- Building manager
- Other

- 73 This list has been shaped by the functions that have historically been performed by Judicial Officers in Belgium, Luxembourg, France and the Netherlands.¹¹⁴ But in recent years the range of functions performed by such officers has diversified. For example, Belgian and Dutch Judicial Officers have sought to position themselves as trusted third parties with privileged access to debtor information and to develop a co-ordinating role in the management of overindebtedness.¹¹⁵
- 74 By contrast, where the Judicial Officer model has been transplanted to new soil – as in the case of the adoption of the model in CEE jurisdictions – officers may have a narrower range of functions, since the model has had to adapt to an existing legal and business environment.¹¹⁶
- 75 Although the list refers to bankruptcy procedures, the role of Judicial Officers in this context is not well developed (except in so far as they play their core role in the recovery of assets). French law, for example, allows a Judicial Officer to be designated as a liquidator, but only for debtors whose annual pre-tax turnover is less than or equal to 100,000 EUR and who have no employees.¹¹⁷ In Estonia, the professional regulator for Judicial Officers also oversees trustees in bankruptcy, but very few professionals undertake both these roles since they require different skills and approaches.¹¹⁸
- 76 Looking beyond the Judicial Officer model, a wide range of quite different tasks may in fact be performed by institutions that include civil enforcement within their purview. The Swedish Enforcement Authority, for example, includes payment order proceedings, the supervision of bankruptcy, debt relief proceedings and financial education within its competences. The Georgian NBE also has responsibility for payment order proceedings as well as insolvency matters and the protection of vulnerable debtors. It thus has a range of tasks that are similar to, but distinct from, those of the SEA. In particular, it has

¹¹⁴ The court hearings service was a function of Judicial Officers from medieval times but is not consistent with their modern role and has gradually been marginalised and either removed or made capable of delegation (see for France Art 14 of Décret n°56-222 du 29 février 1956 pris pour l'application de l'ordonnance du 2 novembre 1945 relative au statut des huissiers de justice [Decree no 56-222 of 29 February 1956 implementing the ordinance of 2 November 1945 on the status of Judicial Officers]).

¹¹⁵ See further W Kennett, *Civil Enforcement in a Comparative Perspective: a Public Management Challenge* (Intersentia 2021) ch 8-10.

¹¹⁶ The legislation governing the profession may allow other functions, and in particular the service of documents and the recording and reporting of evidence, but this option is not necessarily operational in practice. See further Kennett (n 10) ch 12.

¹¹⁷ Ordonnance n° 2016-728 du 2 juin 2016 relative au statut de commissaire de justice [Ordinance no 2016-728 of 2 June 2016 concerning the status of Commissaire de Justice], Art 1 II 3° and Code de commerce [Commercial Code] Art L812-2 III. For Belgium see Art 519 §1 CJ. There is no provision for Judicial Officers to act in insolvency proceedings in the Netherlands.

¹¹⁸ See <https://kpkoda.ee> and see also Kennett (n 10) ch 12.

wider responsibilities in insolvency cases.¹¹⁹ As noted above,¹²⁰ United States sheriffs may have a wide range of functions in the context of tackling crime, operating jails and dealing with emergencies. Civil enforcement businesses in the United Kingdom may combine High Court enforcement with the recovery of public law debts and may also offer services that involve some of the same knowledge and skills including tracing and investigation, or property inspections. Recovery of parking and traffic fines forms part of their work and one of the large businesses has extended its operations into helping to design and establish systems for parking, traffic and emissions management with the associated investment in automated number plate recognition and emissions detection technologies.

- 77 Where civil enforcement is court-centred, there is a degree of specialization within the court system – and the agents responsible for visiting debtor premises may have a sole focus on civil enforcement – but the personnel involved in management and decision-making are integrated into the wider system of administration of justice and so, depending on the legal system concerned, may have functions extending well beyond civil enforcement. Nevertheless, the specialization of the functions of senior court administrators in some countries means that, for example, the LAJ in Spain may sit within an enforcement unit that provides its services to all the local courts,¹²¹ and the *Rechtspfleger* in Austria and Germany will choose an area of specialization in which to train, one such area being civil litigation, enforcement and insolvency matters.
- 78 Drawing together the information from this section and the previous one, kaleidoscopic approaches to civil enforcement obtain. The specific tasks essential to enforcement (section 4) may be distributed among a variety of different actors. Meanwhile, the institution with the main responsibility for enforcement may also undertake a wide range of tasks that are not closely or directly related to enforcement.

5 TERRITORIAL COMPETENCE AND FORMS OF ORGANIZATION

- 79 Historically, the knowledge of local terrain and local residents was essential to an enforcement agent. Until the 20th century, methods of transport also limited the territorial area within which an enforcement agent could operate effectively. In recent years, however, digitalization and changes in the territorial competence of enforcement institutions have led to the development of larger organizations with a more diversified workforce and greater functional specialization.

¹¹⁹ The SEA's role is limited to supervision of bankruptcy, while the NBE may act as a trustee in bankruptcy.

¹²⁰ At para 32, and taking into account para 26.

¹²¹ Traditionally, each *Juzgado* (single-judge court) had its own supporting administrative service. Reforms are seeking to create central service units that service all local *Juzgados* (which may be located in the same court building).

5.1 Administrative/Executive Enforcement Institutions

- 80 The SEA demonstrates the scope for flexibility in an administrative environment. Although *Fogdar* were based in local administrative areas until the early 20th century,¹²² subsequent reorganizations have led to the current position where the SEA is a unitary authority but has 32 local offices. The offices are distributed throughout Sweden so that its services are accessible – although increasingly services are provided online. A case can be submitted at any office and will be forwarded to the appropriate office for further handling. For administrative efficiency, certain types of work are concentrated in teams in one location.
- 81 A similar process of reorganization from local agencies to a unitary authority¹²³ has taken place in Finland. Thus, most of the work of debt recovery is undertaken via electronic collection methods by the relevant team at national level. As in Sweden, the central administration is distributed throughout the country, although with its main concentration in Turku. Five regional units conduct enforcement operations where local engagement is required for eg, seizure and sale of assets, and there is also a special enforcement unit for more complex operations that may require cooperation with other agencies involved in combatting financial crime and the grey economy.¹²⁴
- 82 In Georgia, the NBE has 8 regional offices with responsibility for enforcement action in addition to its central administration. The regional offices are gradually being co-located with other public services to provide streamlined services to local residents and businesses.¹²⁵ The central administration manages a range of special services including insolvency, protection of the vulnerable and payment orders but also, inter alia, supervision and discipline, accounts and administration, legal services and an enforcement police service.¹²⁶
- 83 The influence of new public management ideas and customer orientation is evident in the way that the organization of enforcement has developed in Sweden, Finland and Georgia. By contrast, in Vietnam THADS are organized hierarchically at central, provincial and district levels in accordance with a more traditional bureaucratic form of

¹²² Some name changes took place, but the current term for a qualified enforcement agent is '*Kronofogde*' (Crown bailiff), so '*fogde/fogdar*' has been retained here for simplicity.

¹²³ But with 64 local offices.

¹²⁴ <https://www.ulosottolaitos.fi/fi/index/ulosottolaitos.html#> accessed 29 March 2024.

¹²⁵ Markensten and Alavidze (n 24) 14.

¹²⁶ <https://nbe.gov.ge/about/structure?locale=ka&id=24> accessed 2 April 2024.

organization.¹²⁷ And similarly in Russia the Bailiff Service has a very hierarchical form of organization.¹²⁸

5.2 Court-centred Enforcement Institutions

- 84 Traditionally, courts have acted within their area of local competence. Territorial competence in enforcement matters may variously be attributed to the court for the debtor's residence, the court for the place where enforcement action will take place, or in some jurisdictions, the court that heard the original proceedings.¹²⁹ The latter approach prevails in, for example, Spain,¹³⁰ Bolivia,¹³¹ Argentina,¹³² Chile,¹³³ Mexico¹³⁴ and Uruguay.¹³⁵ It is also an option in China, although if the person or property subject to execution is in another place, the case can be entrusted to the local People's Court.¹³⁶
- 85 The allocation of competence in enforcement matters to the court that heard the original proceedings has led to cumbersome processes whereby the help of the court local to the residence of the debtor, or to property owned by the debtor, is sought by way of judicial assistance.¹³⁷ In some jurisdictions, however, the development of digital enforcement tools has enabled the national seizure of assets. Thus, in Spain an agreement between the *Consejo General del Poder Judicial* (General Council of the Judiciary) and banking and credit associations has made possible the electronic seizure of money standing to the account of the debtor in current accounts at banks signed up to this process. Since priority under the *gradus executionis* (Art.592.2 LEC) is given to the

¹²⁷ Quyết Định Số: 61/2014/QĐ-TTg, 30 tháng 10 năm 2014, Quy Định Chức Năng, Nhiệm Vụ, Quyền Hạn Và Cơ Cấu Tổ Chức Của Tổng Cục Thi Hành Án Dân Sự Trực Thuộc Bộ Tư Pháp (Decision No 61/2014/QĐ-TTg of 30 October 2014, Regulations on the Functions, Duties, Powers and Organizational Structure of the General Department of Civil Judgment Enforcement under the Ministry of Justice).

¹²⁸ See федеральный закон 21.07.97 n 118-фз об органах принудительного исполнения российской федерации and федеральный закон 01.10.2019 n 328-фз о службе в органах принудительного исполнения российской федерации и внесении изменений в отдельные законодательные акты российской федерации.

¹²⁹ In some countries, and particularly those influenced by Spanish law, a form of civil proceedings exists that enables a claimant to commence the enforcement procedure if the action is based on certain types of document (*juicio ejecutivo*). In Spain itself, this procedure has been replaced by a payment order procedure.

¹³⁰ Art 545 LEC with exceptions where enforcement is only out of specially mortgaged or pledged property.

¹³¹ Art 397 CPC.

¹³² In Argentina the court that heard the original proceedings is the enforcement court, but Art 501(2) CPCCN provides that 'a court elsewhere may be competent if the object of the execution so requires, wholly or in part'.

¹³³ Art 231 CPC.

¹³⁴ Art 983 ff CNPCF.

¹³⁵ Art 372 (1) CPG.

¹³⁶ Art 235 (1), 240 中华人民共和国民事诉讼法 [Civil Procedure Law of the People's Republic of China]

¹³⁷ See the explanation for Spain in Kennett (n 10) ch 13.

seizure of money or current accounts, in fact this represents a common method of enforcement.

- 86 Where local action is needed – as, for example, in relation to the seizure of tangible moveable property – it may be possible in some jurisdictions to approach the local court directly, or judicial assistance may be needed. In Austria, for example, the court competent to authorize enforcement and pursue enforcement action is the court for the general jurisdiction of the debtor. Where it is not possible to assert general jurisdiction over the debtor in Austria, the court for the place where movable property is situated is competent instead.¹³⁸ An enforcement agent is not confined to operating within the territorial competence of the court to which they are attached, but where it is more appropriate to do so, they may seek the assistance of a colleague at the foreseeable place of enforcement.¹³⁹
- 87 At the local level, work allocation will vary. It may be that one enforcement agent is competent for a specified area, or there may be deployment of several agents within a larger area – which reflects trends towards larger court districts and the more efficient utilization of resources.

5.3 Judicial Officers

- 88 The allocation of territorial competence and the degree of competition between Judicial Officers varies considerably from one jurisdiction to another. Traditionally they have had restricted areas of territorial competence, linked to local courts. But in recent decades the use of technological innovations and changes in functional competences have led to the enlargement of territorial competence in some countries. This has taken place variously as a result of changes in the judicial map and the enlargement of the territorial competence of first instance courts,¹⁴⁰ as a result of a shift to allow Judicial Officers to operate within the jurisdiction of Courts of Appeal,¹⁴¹ and as a result of the introduction of national competition.¹⁴²

¹³⁸ §4 EO.

¹³⁹ §25b EO.

¹⁴⁰ Eg, Belgium where the judicial map was altered by the Loi du 1er décembre 2013 portant réforme des arrondissement judiciaires et modifiant le code judiciaire en vue de renforcer la mobilité des membres de l'ordre judiciaire [Law of 1 December 2013 reforming judicial districts and amending the Judicial Code with a view to enhancing the mobility of members of the judiciary].

¹⁴¹ Eg, France, Romania and Poland. See further Kennett (n 10) ch 9 at 2.3.2 and ch 12 at 3.2.

¹⁴² Eg, Netherlands, Czech Republic. This also applies in France for some of the activities of enforcement institutions. See further Kennett (n 10) ch 9 at 2.3.2, ch 10 at 2.2 and ch 12 at 3.2.

- 89 The expansion of areas of territorial competence has led to more intense competition between Judicial Officers, with the consequent growth of some businesses and decline of others, further fuelling debates about the appropriate level of competition.¹⁴³
- 90 The changes observed with respect to territorial competence in various European jurisdictions have also led to changes in organizational structure. Historically, Judicial Officers were required to operate as sole practitioners, rather than adopting any corporate form. The argument to support this approach is that it is one of the mechanisms to ensure compliance with legal and ethical rules, since each Judicial Officer is individually responsible for their actions. There have long been organizational arrangements allowing Judicial Officers to delegate some of their work,¹⁴⁴ but in more recent years the potential for business expansion and the increase in the volume and complexity of cases has created pressure for corporate forms of practice. Although most Judicial Officers continue to operate as sole practitioners or in small partnerships, in a few jurisdictions (in particular France and the Netherlands) corporate forms have been permitted. This occurred in the Netherlands in the absence of any contrary regulation.¹⁴⁵ In France, change has gradually been facilitated by a series of legislative reforms that have created different corporate structures.¹⁴⁶ French law now allows a corporate body to hold office if certain conditions are met and in particular a requirement of a majority holding¹⁴⁷ by natural or legal persons exercising a regulated legal profession. In these larger practices the Judicial Officer performs the function of a manager, or part of the management team and/or a legal expert. Financial management and management of other business areas such as IT and human resources can then be delegated to other specialists. Elsewhere in the world, however, the traditional Judicial Officer model continues to operate.¹⁴⁸

5.4 Hybrid Institutions

- 91 In the case of hybrid enforcement institutions, the agent external to the court may operate within a specific area of territorial jurisdiction or on a national scale. They may be an individual or small business or may work within a much larger entity – as in the

¹⁴³ See in particular the debates about territorial competence in the Czech Republic and Poland, and the legislative changes proposed or implemented: Kennett (n 10) ch 12. See *ibid.* ch 10 for the development of policy in the Netherlands in response to the introduction of national competition.

¹⁴⁴ Notably the delegation of service of documents to certified clerks: see for France, Art 6, Loi du 27 décembre 1923 relative à la suppléance des huissiers blessés et à la création des clerks assermentés [Law of 27 December 1923 on substitutes for injured Judicial Officers and the creation of sworn clerks].

¹⁴⁵ See Kennett (n 10) ch 10 at 3.2.1. and 4.2.1.

¹⁴⁶ See Kennett (n 10) ch 9 at 2.4. and Ordonnance n° 2023-77 du 8 février 2023 relative à l'exercice en société des professions libérales réglementées [Ordinance no 2023-77 of 8 February 2023 on the practice of regulated liberal professions within a partnership or joint-stock company].

¹⁴⁷ Defined as 'plus de la moitié du capital social et des droits de vote de la société'.

¹⁴⁸ The UIHJ website provides information about the structure of enforcement practices around the world. The information should, however, be handled with care since it is becoming dated and is based on questionnaire responses and that can give a misleading picture.

case of a US sheriff's office, or in the UK an enforcement firm that employs a number of enforcement agents and a significant administrative staff and may have diversified into other areas of business. In the United Kingdom and some other common law countries, civil enforcement is regarded as an 'industry' rather than a profession.

6 QUALIFICATIONS, TRAINING AND ACCESS TO THE PROFESSION

- 92 Diversity in the organizational form of enforcement institutions and in their size complicates comparison of qualifications and access to a career in civil enforcement. For certain types of case, and notably those involving the disposition of immovable property, judicial involvement remains strong irrespective of the general institutional organization of enforcement. Going beyond this, it is common to find an enforcement specialist with a high standard of professional legal training in a key role in enforcement institutions. But in larger businesses or agencies a wide diversity of supporting professional, technical and administrative staff may be employed. For example, the SEA has approximately 2300 employees, who include *kronofogdar* – the enforcement law specialists – but also a range of other professional and support services staff. Some of these are involved in debt recovery (eg, seizure of assets, service of documents, data processing) but the operation of the SEA also requires the performance of many other functions (eg, financial management, IT, project management, communications).
- 93 For ease of comparison, the main focus in the following paragraphs is on the qualifications and career path of Judicial Officers, senior administrators responsible for directing enforcement within a court system and legal specialists in administrative agencies.

6.1 Judicial Officers

- 94 As professionals who exercise state authority, Judicial Officers are appointed to office by the Minister of Justice. They need to satisfy certain requirements in order to be eligible for appointment, but they also need to find a vacancy or establish a new office: access to the profession is thus highly regulated.

6.1.1 Qualifications and training

- 95 Legal systems that use the Judicial Officer model usually require a Judicial Officer to have a law degree and to have undertaken further professional training. In France, for example, the basic qualifications and other 'aptitude conditions' that must be satisfied to become a Judicial Officer are established by Décret n° 2019-1185 du 15 novembre 2019. Candidates must normally possess a *maîtrise* in law¹⁴⁹ and pass an entrance examination before they can be admitted to training as a Judicial Officer. They then complete a two-year training period (*stage*) and take a professional exam, although

¹⁴⁹ A *maîtrise* in another discipline such as economics or accountancy is now permitted

there are dispensations for those already qualified in another profession.¹⁵⁰ Candidates must also be of good moral and financial standing.

- 96 Countries to which the Judicial Officer model has been transplanted – whether through colonization or choice¹⁵¹ – have introduced similar requirements.¹⁵² The Netherlands, however, as a result of a very different process of historical evolution of the profession, is unusual in not requiring a law degree before it is possible to seek access to the profession. A tailored HBO Law diploma is available (at Hogeschool Utrecht), but a one-year internship as a candidate Judicial Officer is an essential requirement for the diploma, and so many applicants for the programme have already secured such a position. To undertake the HBO Law diploma, a school or college leaving certificate suffices.¹⁵³

6.1.2 Access to the profession

- 97 In some countries, access to the profession following the *stage* is dependent on taking a professional examination.¹⁵⁴ In others a further period as a candidate Judicial Officer, via a competitive process organized by the Ministry of Justice, may be necessary before becoming eligible for office.¹⁵⁵ In France, as a result of the sale of the office of *huissier de justice* under the Ancien Régime, not only was the number of offices fixed (*numerus clausus*), but also each office had a monetary value. It was normally necessary to purchase an office on the death or retirement of the previous incumbent. Such offices have significant goodwill attached to them and so can be a large investment. This has made access to the profession difficult. The professional body may provide assistance with business loans, but government policy has also been to widen access by creating new offices. The process for doing so has conferred an important role on the French competition authority and has involved detailed planning and consultation to create maps identifying areas where new offices may be established.¹⁵⁶
- 98 Since in France the office can take a corporate form,¹⁵⁷ it is possible for aspiring Judicial Officers to purchase a share in the office, rather than the entire office, and thus obtain a foothold in the profession more easily. Recent legislative reforms have also introduced

¹⁵⁰ Candidates may be nationals of any EU or EEA state and dispensations therefore also exist as to the qualifications required

¹⁵¹ Choice may nevertheless be somewhat constrained. See Kennett (n 10) ch 11.

¹⁵² See Kennett (n 115) ch.12 for the position in several CEE countries. Information about the qualifications required for Judicial Officers around the world can be found at https://uihj.com/archive-uihj/en/africa_2165103.html accessed 22 Feb 2024.

¹⁵³ For further detail see Kennett (n 10) ch 10.

¹⁵⁴ This is the position in France as indicated in para 95. It is also a common position in many non-European jurisdictions according to the information at https://uihj.com/archive-uihj/en/africa_2165103.html (accessed 22 Feb 2024).

¹⁵⁵ For example, in Belgium it is necessary to work as a candidate Judicial Officer for three years before becoming eligible to apply for a vacant office (Art 515 CJ).

¹⁵⁶ See further Kennett (n 10) ch 9 at 2.2.2.

¹⁵⁷ See above at para.90.

the possibility of practicing the profession as an employee to ease access for those who cannot afford to purchase an office or a share in an office, or do not want the responsibilities involved in such ownership.¹⁵⁸ Thus, in France there are now four ways of accessing the profession: the agreed transfer of an existing office; acquiring a share in an existing office; being appointed to a newly created or vacant office; or being an employee. In each case the general criteria for appointment to office apply.

- 99 Not all of these options exist elsewhere. The transfer of an existing office remains the most common route. The nearest comparator is the Netherlands: prospective Judicial Officers can make the case for a new office to be created;¹⁵⁹ there are no particular constraints on corporate form; and Judicial Officers can also be employees.¹⁶⁰

6.2 Administrative/Executive Agencies

- 100 A law degree is also a requirement to become a Swedish *kronofogde* – a requirement introduced as far back as 1819. Indeed, *Förordning (2016:1333) med instruktion för Kronofogdemyndigheten* specifies that an applicant for the office must satisfy the same tests as a candidate for judicial office, or have completed the academic and practical stages of qualification for notarial office.¹⁶¹ The Finnish National Enforcement Agency has less stringent requirements, but nevertheless requires applicants for the position of *Kihlakunnanvoud* – the legal specialist and manager for enforcement units in the agency – to have a law master's degree 'other than a master's degree in international and comparative law', familiarity with enforcement proceedings and appropriate management experience.¹⁶² A law degree is also specified as a requirement for the position of enforcement officer in Georgia and in Vietnam.
- 101 The Law on Employment in the Federal Bailiff Service covers a wide range of ranks within the Russian enforcement service, and the principle of the 'unity of the public service system' ensures a degree of correlation across different civil and military services.¹⁶³ Positions in middle and senior management require higher education qualifications 'according to the field of activity'. There are also medical and fitness tests.¹⁶⁴ Continued employment is conditional on compliance with detailed rules on appropriate conduct, including, for example, political neutrality, compliance with anti-corruption obligations,

¹⁵⁸ Originally introduced in 2010. See now Ordonnance n° 2016-728 du 2 juin 2016 relative au statut de commissaire de justice, Art 6.

¹⁵⁹ Art 5-7 GDW

¹⁶⁰ Art 27-28 GDW (as amended in 2016)

¹⁶¹ For further detail see Kennett (n 10) ch.5 at 3.1.2.2.

¹⁶² Valtioneuvoston asetus ulosottoitoimen hallinnosta 285/2020 [Government Decree on the Administration of Enforcement Proceedings 285/202] §2.

¹⁶³ Art 5 (1).

¹⁶⁴ Art 9.

submitting to regular fitness, drug and firearms tests and avoidance of conflicts of interest.¹⁶⁵

6.3 Court-centred Systems

- 102 It will be apparent that court-centred enforcement also involves the contributions of a range of personnel, from judges and court managers to those responsible for contact with debtors in the field.
- 103 As noted in para 8, a senior legal administrator – such as a *Secretario Judicial*, LAJ or *Rechtspfleger* – may exercise a significant degree of control over the enforcement process. In the traditional Spanish court system transplanted to South America the single-judge court (*Juzgado*) is supported by a *Secretario Judicial* who oversees for all aspects of administration and organization, including administration of the enforcement of the judgments of the *Juzgado*. An aspect of the role of the *Secretario Judicial* is to ensure that there is an authentic record of proceedings. Historically, this was done by a trained notary who was not integrated into the court hierarchy, and as role of the *Secretario Judicial* within the court system has developed it has continued to bear traces of its origins. In particular, a *Secretario Judicial* is required to have a law degree and may need to be a member of the legal profession,¹⁶⁶ or meet the same requirements as for appointment as a judge.¹⁶⁷ There are also typically requirements as to nationality and conduct. A LAJ in Spain must be Spanish, have a degree in Law, not be affected by a disability or incompatibility, and succeed in the competitive process for appointment.¹⁶⁸
- 104 By contrast, the role of the *Rechtspfleger* in Austria has developed within the court administration. From the late 19th century increases in the workload of judges in these countries has led to a gradual transfer of responsibilities to senior court administrators. These historical origins explain the fact that access to the profession has been through promotion and training within the court service. Currently school leavers who want a career as a *Rechtspfleger* need a high school certificate and must first spend a preparatory period in a court office and pass the basic assessments for court administration.¹⁶⁹

¹⁶⁵ Art 12-14.

¹⁶⁶ See eg, Ley 7421 Código Orgánico de Tribunales [Organic Courts Code], Art466 (Chile); Ley 7452 de 5 junio 2007 Secretarios y Prosecretarios Letrados del Poder Judicial [Law 7452 of 5 June 2007, Secretaries and Assistant Secretaries to the Judiciary](Salta Province, Argentina), Ley 15750 Ley Orgánica de la Judicatura y de Organización de los Tribunales (LOT) de 24 junio 1985 [Law 15750 Organic Law on the Judiciary and Court Organisation of 24 June 1985], Art124 (Uruguay).

¹⁶⁷ See eg, Ley 7341/2013 Ley Orgánica de Justicia de Paz y Faltas [Organic Law on Justice of the Peace and Misdemeanours](Chaco Province, Argentina).

¹⁶⁸ Ley Orgánica 6/1985, de 1 de julio, del Poder Judicial [Organic Law 6/1985 of 1 July 1985 on the Judiciary], Art442.

¹⁶⁹ §§23 ff RPfLG (Austria), with a preparatory period in the court administration before progressing to *Rechtspfleger* training.

- 105 The field agents responsible for contact with debtors, including in particular the service of documents and seizure of goods, are typically also civil servants appointed at lower grades.

6.4 Hybrid Systems

- 106 Section 2.4 above identified a wide variety of hybrid systems and the required qualifications and training are also very variable. In Germany, as in Austria, the *Rechtspfleger* has traditionally been recruited from the court administrative service, but a common route is now to study for a degree apprenticeship.¹⁷⁰ The German *Gerichtsvollzieher*, has also traditionally been recruited from the lower ranking civil servants in the court administration. Training was practical rather than including a programme of legal studies, but the trend in recent years has been towards more formal training with periods of block release for study at a *Fachhochschule*.¹⁷¹
- 107 The Chilean *receptor*, as a *ministro de fe pública* has competences that extend beyond enforcement to taking witness testimony in non-contentious proceedings and litigation. Although it is not necessary to have a law degree for this role, access to the profession is via a competitive examination.
- 108 Meanwhile in the English legal system, although enforcement out of intangible assets and immovable property is undertaken via court processes, the seizure of tangible movables – which is by far the most common method of enforcement in practice – is often undertaken by an HCEO, acting on a court order.¹⁷² These officers also undertake evictions, and are particularly prominent in complex public or commercial cases. A small number of HCEO training places exist and training is largely on the job with distance learning provided by the Chartered Institute of Credit Management to EQF Level 4. Qualification requires evidence of both theoretical knowledge and practical experience. Access to the training requires a level 3 qualification in law, enforcement or credit management, and the time period for training is flexible between 2 and 5 years.¹⁷³

7 PROFESSIONAL ORGANIZATION

- 109 While professional organizations exist for a wide range of enforcement professionals,¹⁷⁴ their role is particularly noteworthy in the case of Judicial Officers. Traditionally the

¹⁷⁰ §2 RPfIG.

¹⁷¹ See further Kennett (n 10) ch.15 at 3.2.4.3. In Baden-Württemberg a law degree programme has been instituted for trainee *Gerichtsvollzieher*.

¹⁷² County court enforcement agents, who are civil servants, also undertake seizure of tangible movables and evictions, but it is possible to transfer a judgment above a certain financial value up to the High Court in order to employ an HCEO.

¹⁷³ HCEOs also employ certificated enforcement agents, who typically take a EQF level 2 qualification in Taking Control of Goods.

¹⁷⁴ The activism of the Deutsche Gerichtsvollzieher Bund and the Colegio Nacional de Secretarios Judiciales has, for example, been significant in shaping enforcement in Germany and Spain.

professional organisation has also been responsible for the regulation and discipline of the profession.¹⁷⁵

- 110 French law has led the way for other jurisdictions adopting a Judicial Officer model and the legislation adopted in 1945 – which provides the starting point for the modern development of the profession – delegated much of the regulation of training for the profession, professional practices, disciplinary procedures, disputes between Judicial Officers, complaints against officers and financial supervision to the profession itself.¹⁷⁶ Any regulations adopted were, however, subject to the approval of the Minister of Justice. In the mid-1950s the detailed regulation of the profession with respect to qualifications, territorial and subject-matter competence, access to the profession and the organization and functions of the professional chambers was revised. It nevertheless continued to build on a Napoleonic framework of local, regional and national chambers, each with their specific functions and with the local chambers playing the major role in matters of supervision and discipline.
- 111 More recently, the rise of regulation and markets as governance mechanisms has had implications for the profession. Theories of professionalization in the latter part of the twentieth century have emphasized the rent-seeking potential of professions and self-regulation is gradually being replaced by more publicly accountable state control.¹⁷⁷ The self-regulation of the profession is receding. Where the Judicial Officer model has been transplanted to new countries, elements of external regulation may have been included from the start. Elsewhere the fledgling professions have proved vulnerable to corruption and mismanagement, with the result that an initial framework of self-regulation has had to be modified.¹⁷⁸ Even in France and Belgium there has been increased pressure to increase state control of what is in fact part of the justice system and part of the machinery for recovering debt owed to the public sector. These changes are reflected in the discussion of the supervision and discipline of enforcement agents in the next section.
- 112 Although the state has increased its role in the supervision and discipline of enforcement agents, the professional bodies continue to have significant regulatory and other functions that go beyond mere professional representation. In France, in addition to a continuing role in supervision and discipline of members of the profession, the professional body is responsible for, *inter alia*, drafting a deontological code, resolving intra-professional disputes, maintaining a ‘economic observatory’ to keep track of the data that is useful for monitoring the profession, organizing training and continuing

¹⁷⁵ See Kennett (n 10) ch.6 at 2.2.

¹⁷⁶ Ordonance no 45-2592 du 2 novembre 1945 relative au statut des huissiers [Ordonance no 45-2592 of 2 November 1945 on the status of Judicial Officers].

¹⁷⁷ See further Kennett (n 10) ch 6 at 2.2 and *passim* in chs 7-12.

¹⁷⁸ See further Kennett (n 10) ch 12 at 3.4.

education, and maintaining funds that support members of the profession (including by means of loans and the redistribution of transport costs).¹⁷⁹

8 SUPERVISION AND DISCIPLINE

- 113 Supervision of enforcement agents is essential because of the nature of the work and the large sums of money passing through the hands of the enforcement agent or agency. Moreover, the opportunities to make money in a privatized enforcement system mean that the system of appointment of enforcement agents must be closely scrutinized.¹⁸⁰ Globally, claims of corruption, and cases involving corruption, are not uncommon – although some jurisdictions have much more transparent and well-regulated enforcement systems than others.¹⁸¹
- 114 As noted above,¹⁸² enforcement may give rise to a number of different types of challenge or complaint. The debtor, or a third party whose rights are affected, may bring court proceedings to challenge a procedural step as being invalid or an infringement of their rights, but other mechanisms for supervising enforcement also exist.¹⁸³ In particular, complaints mechanisms may provide for redress, while regular auditing of the work of enforcement agents can both identify failings and provide the data for improvements in practice via new rules or guidelines.

8.1 Court-centred and Hybrid Enforcement Institutions

- 115 In jurisdictions where civil enforcement is court-centred, the arrangements for supervision and discipline of enforcement administrators and field agents fall within the general system of supervision and discipline in the context of judicial administration,¹⁸⁴ or civil service administration.¹⁸⁵ Such supervision is typically internal to the organization and operates hierarchically.

¹⁷⁹ Ordonnance n° 2016-728 du 2 juin 2016 relative au statut de commissaire de justice; Décret n° 2022-729 du 28 avril 2022 relatif à l'organisation de la profession de commissaires de justice [Decree no 2022-729 of 28 April 2022 on the organisation of the profession of Commissaire de Justice (Judicial Officer)]

¹⁸⁰ An indication of the scope for misconduct can be found in the criminal proceedings commenced in 2021 against the former President of the Faculty of Judicial Officers and the Deputy Minister of Justice, based on allegations that some Judicial Officers obtained their qualifications and offices as a result of bribery.

¹⁸¹ See Transparency International, Corruption Perceptions Index: <https://www.transparency.org/en/cpi/2023> (accessed 21 June 2024)

¹⁸² At para 60 ff.

¹⁸³ For example, the procuracy system in Vietnam.

¹⁸⁴ See for example §14 (2) RPfIG (Austria).

¹⁸⁵ See for Spain, Real Decreto 1608/2005, de 30 de diciembre, por el que se aprueba el Reglamento Orgánico del Cuerpo de Secretarios Judiciales [Royal Decree 1608/2005 of 30 December 2005, approving the Organic Regulations of the Corps of Judicial Secretaries], Art 13 ff and 167.

116 Court oversight may also be exercised in relation to an external enforcement agent. This is, for example, the case in relation to the German *Gerichtsvollzieher*¹⁸⁶ and the Chilean *receptor*.¹⁸⁷ Although the English HCEO is in principle subject to the oversight of the Lord Chancellor acting through the Senior Master of the Royal Courts of Justice,¹⁸⁸ regular supervision is now a matter for the Enforcement Conduct Board (ECB), an independent regulatory body established as a result of collaboration between the enforcement and the debt advice sectors.¹⁸⁹ It is anticipated that the ECB will develop a role in handling complaints, but it is the Lord Chancellor who may terminate the authorization of an individual to act as an HCEO.¹⁹⁰

8.2 Administrative/Executive Enforcement Institutions

117 Supervision exercised from within the enforcement institution may also be observed where civil enforcement is the responsibility of an administrative organization, but regulatory choices vary depending on the size of the organization and the public management ethos of the country concerned.

118 Russia, for example, has a population of approximately 145 million and the Federal Bailiff Service is highly bureaucratic (with approximately 82,000 staff). There is detailed legislation regulating the obligations of employees and the system for incentives and discipline.¹⁹¹ Supervision and discipline are organized hierarchically. It is thus the immediate supervisor of an employee who is responsible for monitoring conduct.¹⁹² In the case of an alleged offence, the supervisor must ‘identify the perpetrators, identify the reasons and conditions that contributed to the commission of the disciplinary offence’,¹⁹³ but written submissions are only required in the case of a ‘gross violation of official discipline’.¹⁹⁴ An internal audit may be carried out by decision of the Director of

¹⁸⁶ §§70 ff Gerichtsvollzieherordnung [Court Enforcement Officer Regulations] and see further Kennett (n 10) ch.15 at 3.2.1.

¹⁸⁷ See Ley 7421 Código Orgánico de Tribunales, Art 539.

¹⁸⁸ High Court Enforcement Officers Regulations 2004 (HCEO Regs 2004)

¹⁸⁹ <https://enforcementconductboard.org/>. The ECB was established in 2022 and in 2024 was still in the process of drawing up standards and establishing procedures.

¹⁹⁰ HCEO Regs 2004, reg.12. This may be for failure to meet certain specified requirements of the regulation (such as maintaining the required insurance) or for unacceptable or unprofessional conduct. Certificated enforcement agents are mainly involved in the recovery of public law debts but may assist an HCEO. A certificate is granted and withdrawn by a county court judge (Certification of Enforcement Agents Regulations 2014).

¹⁹¹ Федеральный закон от 01.10.2019 N 328-ФЗ О службе в органах принудительного исполнения Российской Федерации [Federal Law 01.10.2019 N 328-FZ on Employment in the Federal Bailiff Service: hereafter, Law on Employment in the Federal Bailiff Service] and Приказ Министерства юстиции РФ от 18 марта 2020 г. N 47 ‘Об утверждении Дисциплинарного устава органов принудительного исполнения Российской Федерации’ [Order of the Ministry of Justice of the Russian Federation dated March 18, 2020 N 47 ‘On approval of the Disciplinary Charter of the Federal Bailiff Service’: hereafter, Disciplinary Charter].

¹⁹² Art 45 and 50 of the Law on Employment in the Federal Bailiff Service.

¹⁹³ Art27 of the Disciplinary Charter.

¹⁹⁴ As enumerated in Art 47 (2) of the Law on Employment in the Federal Bailiff Service.

the Federal Bailiff Service or an authorized manager, or at the request of an employee if this proves necessary to clarify the situation,¹⁹⁵ and sanctions include a reprimand, warning or dismissal.¹⁹⁶ An explanation by the employee is requested before any imposition of sanctions,¹⁹⁷ and an appeal is possible to the Director of the Federal Bailiff Service or an authorized manager.¹⁹⁸

119 Similarly, Vietnam (population approaching 100 million) also has a large hierarchically organized civil enforcement organization.¹⁹⁹ Public administration reforms have been progressing slowly over a long period,²⁰⁰ and there is regular expression of concerns about corruption in the public sector, and the need to combat corruption in the context of civil judgments enforcement.

120 Sweden on the other hand is a much smaller jurisdiction with completely different constitutional, political and public management arrangements.²⁰¹ The SEA is a ‘flat’ organization that co-operates with other agencies and authorities in a non-hierarchical manner.²⁰² It has a very good reputation with the public and moreover Sweden has always ranked highly in the Transparency International Corruption Perceptions Index.²⁰³ In fact, the SEA has a quasi-judicial status.²⁰⁴ It makes many legal determinations on enforcement matters, but legal challenges to a decision on enforcement can be submitted to the SEA by those who are directly affected by the decision, and the SEA will then pass the case to a court for judicial review. As to complaints about the handling of a case, there are several bodies competent to deal with this. In the first instance, the section of the SEA responsible for the case or the customer service department can be contacted. Additionally, the Justice Ombudsman can accept complaints about the Authority, and this has given rise to a number of decisions – concerning delays, mispayments, breaches of confidentiality, seizures and deprivation of liberty – which are

¹⁹⁵ Art 52 of the Law on Employment in the Federal Bailiff Service.

¹⁹⁶ Art 48 of the Law on Employment in the Federal Bailiff Service.

¹⁹⁷ Art 50 (8) of the Law on Employment in the Federal Bailiff Service.

¹⁹⁸ Chapter 7 of the Law on Employment in the Federal Bailiff Service, and Articles 20-42 of the Disciplinary Charter. More detailed regulation of dismissal is contained in ch 12 of the Law on Employment in the Federal Bailiff Service.

¹⁹⁹ Chapter II of the საქართველოს კანონი სააღსრულებო წარმოებათა შესახებ [Law of Georgia on Enforcement Proceedings] specifies the obligations of the judgment enforcement agencies at different territorial levels, which include the inspection of enforcement work and settling complaints and denunciations about civil judgment enforcement. Chapter VI then sets out the procedures for dealing with complaints and denunciations, which indicate hierarchical organization. The chapter also specifies who is responsible for dealing with ‘procuracy protests’ (the Soviet inspired system for supervising the legitimacy of administrative action) which relate to enforcement acts. This similarly demonstrates a hierarchical approach.

²⁰⁰ See the Provincial Governance and Public Administration Performance Index in Vietnam (PAPI) (‘About PAPI’, <https://papi.org.vn/eng/ve-papi/?lang=en> accessed 29 August 2023).

²⁰¹ Population c 10 million.

²⁰² See Kennett (n 10) ch 5 at 3.1 and 3.2.

²⁰³ See (n 180).

²⁰⁴ S Ahlbäck Öberg and H Wockelberg, ‘The public sector and the courts’ in J Pierre (ed), *The Oxford Handbook of Swedish Politics* (Oxford University Press 2015) 130–146, 132–133.

published on the Ombudsman's website.²⁰⁵ There is also an arrangement for external supervision of the SEA. The *Justitiekanslern* (Justice Chancellor) has a supervisory role in relation to all public authorities, but with rather limited competences.²⁰⁶ The Chancellor's office undertakes periodic inspections of authorities and also hears claims for compensation on the basis that damage has been suffered because of the actions of an authority.²⁰⁷

- 121 Smaller still is Georgia, with a population of c. 4 million. The Statute of the National Bureau of Enforcement (NBE) provides for a single structural unit within the NBE – the Internal Inspection Bureau – to take responsibility for conducting audits and investigations and dealing with complaints.²⁰⁸

8.3 Judicial Officers

- 122 The supervision and discipline of Judicial Officers involves varying combinations of professional self-regulation and independent oversight. External monitoring processes have gradually been strengthened in European countries utilizing this enforcement model. These include systems for regular financial audits, auditing or closer inspection of files and processes, and systems for complaints handling by one or more bodies with competence to impose disciplinary measures.

8.3.1 General and financial oversight

- 123 The OPM status of Judicial Officers in the countries in which the model originated,²⁰⁹ indicates that they exercise state power and can issue authentic instruments; they are appointed by the Minister of Justice and are holders of a permanent office conferred by the state. In this capacity, Judicial Officers have traditionally been subject to regulation by the Ministry of Justice and operational monitoring by the *procureur de la République*, as the entity with responsibility for ensuring respect for the public interest. The legislation that was introduced in France in the middle of the 20th century confirmed this approach. The *procureur de la République* had to be notified of new applicants to office, and of any disciplinary proceedings, could initiate the investigation of an office and could

²⁰⁵ Decisions are published at <https://www.jo.se/sv/JO-beslut/> accessed 28 June 2024. The earliest date back to 1996, but some decisions relate to a large number of complaints about the same problem. For example, many complaints have been received about delays in the order for payment procedure.

²⁰⁶ Supervision is limited for resource reasons. Details are available on the website of the *Justitiekanslern* at <https://www.jk.se/> accessed 28 June 2024.

²⁰⁷ Records of the decisions and opinions of the Chancellor are available on the website.

²⁰⁸ საქართველოს იუსტიციის მინისტრის ბრძანება №24 2014 წლის 6 მაისი, საჯარო სამართლის იურიდიული პირის – აღსრულების ეროვნული ბიუროს დებულება (Minister of Justice of Georgia, Order No24, 6 May 2014, approving the 'Statute of the National Bureau of Enforcement') Art 9 and 22.

²⁰⁹ See above at para 21.

bring legal proceedings against an officer.²¹⁰ In practice, however, much of the supervision has been undertaken by the profession, including the auditing of files and accounts. The degree of supervision that it has been possible for the *procureur de la République* to exercise has been limited, in part because of their many competing responsibilities.

- 124 The French *Inspection générale de la justice*, in a report in 2020, highlighted concerns about the erosion of the power of the Ministry of Justice to regulate OPM effectively in the light of increasing responsibilities and limited resources. It also noted the importance of strengthened regulation as a response to the challenge to professional ethics posed by increased levels of competition. Legislation in 2021-22 has introduced a new framework for deontology, supervision and discipline.²¹¹ The *procureur général* has been given responsibility for monitoring compliance with deontological rules and disciplinary matters within the territorial competence of the Court of Appeal where the Judicial Officer has their office, and a new investigative service has been established to assist in this duty. The profession nevertheless retains concurrent powers to initiate investigations, so the degree of change remains to be seen.
- 125 With respect to oversight of the profession by the professional body in France, regular supervision of the profession is largely shared between the regional chambers and the national chamber (the CNCJ).¹⁹⁰ The regional chambers are responsible for organizing annual inspections. Particular attention is paid to the maintenance of correct accounts, and organization and operation of the office and the proper application of the anti-money laundering rules, using specified accounting standards. Inspectors have wide rights of access to information and documentation and failure to give the required access leads to disciplinary proceedings. Any serious irregularities or risks to funds entrusted to the Judicial Officer are immediately notified to the regional chamber and the *procureur de la République*.¹⁹⁷ The CNCJ,¹⁹⁸ the regional chambers, *procureur général* and Minister of Justice may also order unscheduled inspections, which follow similar rules.¹⁹⁹ Over time, and in particular between 2005 and 2007,²⁰⁰ the rigour of supervision has been raised, for example by the use of national accounting standards and financial management software, more specific directions on client accounts, new inspection rules and the use of external auditors.²⁰¹
- 126 The picture varies in other countries. In Belgium, the profession retains substantial responsibility for oversight, including financial oversight.²¹² But a different approach to

²¹⁰ Both the *procureur de la République* and the president of the *chambre de discipline* might refer a disciplinary matter to the local civil court under Ordonnance n° 45-1428 du 28 juin 1945.

²¹¹ Notably, Ordonnance n° 2022-544 du 13 avril 2022 relative à la déontologie et à la discipline des officiers ministériels [Ordonance no 2022-544 of 13 April 2022 on the ethics and discipline of ministerial officers]; Décret n° 2022-900 du 17 juin 2022 relatif à la déontologie et à la discipline des officiers ministériels [Decree no 2022-900 of 17 June 2022 on the ethics and discipline of ministerial officers].

²¹² See further Kennett (n 10) ch. 8.

regulation was adopted in Netherlands on the occasion of the professionalisation of *gerechtsdeurwaarders* through reforms in 2001.²¹³ Financial oversight and supervision of compliance with regulatory legislation have been entrusted to a Financial Supervision Office (*Bureau Financien Toezicht*: BFT).²¹⁴ Judicial Officers are required to submit an audited report to the BFT each year. The BFT will make further investigations where indicated, including company visits, and it can impose a fine for violations of regulations related to the duties of Judicial Officers to maintain and submit proper administrative records.²¹⁵

- 127 In addition, however, in the process of professionalization, the professional chamber was constituted as a regulatory body and has developed rules and practices to govern its members.²¹⁶
- 128 As the profession has been transplanted to new jurisdictions it has become embedded in different legal frameworks with alternative approaches to supervision. A significant oversight role for the public prosecutor's office at local or Court of Appeal level remains important in former French colonies in West Africa, whereas this is not a feature of the supervision of Judicial Officers in CEE countries. The latter have adopted varying approaches and gone through a period of experimentation as the shape of the profession and the requirements of supervision have emerged.
- 129 The professional body may play a significant supervisory role. For example, it is responsible for organizing regular office inspections in Poland and Romania. Nevertheless, in CEE countries oversight by the Ministry or Justice or another designated authority is usual,²¹⁷ Indeed initial experiments with the delegation of responsibility for oversight to the national professional chamber proved unsuccessful in the Czech Republic and Hungary. In the Czech Republic inspections are now undertaken by the Ministry of Justice. In Hungary, in the wake of a major corruption scandal in 2021, responsibility for regulation of the profession has been conferred on the Supervisory

²¹³ *Gerechtsdeurwaarderswet 2001* [Judicial Officers Act] (GDW).

²¹⁴ Art 30 GDW. This office has responsibilities for the monitoring of several professions in relation to combatting money-laundering and the financing of terrorism.

²¹⁵ Art 17, 19, 30b and 31 GDW.

²¹⁶ See further Kennett (n 10) ch 10.

²¹⁷ In addition to the inspections overseen by the professional chamber, in Poland, the presidents of district courts arrange for the auditing of offices, while the Ministry of Justice organises financial audits with the help of the tax office; in Romania, the Ministry of Justice undertakes inspections when considered necessary. In Estonia, according to §54 (1) KTS, the Ministry of Justice and the professional Chamber shall exercise administrative supervision over the activities of Judicial Officers. The Chamber is particularly concerned with the implementation of its own rules and decisions but may also be represented in the exercise of supervision by the Ministry of Justice. For details, see Kennett (n 10) ch 12.

Authority for Regulated Activities (*Szabályozott Tevékenységek Felügyeleti Hatósága*: SZTFH), along with the introduction of new rules on financial management.²¹⁸

130 Several layers of supervision may exist.¹⁴³ For example, in the Czech Republic there are in principle four supervision bodies: the Czech Chamber, the Minister of Justice, the president of the enforcement court and the president of the district court where the Judicial Officer has their office¹⁴⁴ Similarly, in Poland, supervisory responsibilities are conferred on the presidents of district courts, the Minister of Justice and the National Chamber.¹⁴⁵

8.3.2 Disciplinary proceedings²¹⁹

131 A similar picture can be seen in relation to disciplinary proceedings. The original delegation to the professional chambers of responsibility for managing professional discipline has gradually been withdrawn and judicial involvement has increased, even with respect to relatively minor disciplinary matters.

132 In France, the *chambre de discipline* was until recently a section of the local chamber of Judicial Officers (at the departmental level), that was capable of issuing legal rulings. Minor disciplinary issues were dealt with by this chamber and more serious ones referred to the local civil court.²²⁰ An appeal against a decision of the *chambre de discipline* or the court then lay to the competent Court of Appeal. As a result of the changes in territorial competence of Judicial Officers in 2017, local chambers have been disbanded and the *chambre de discipline* is now located at regional level. Moreover, the legislation introduced in 2021-22 has overhauled the system of disciplinary proceedings.²²¹ The *chambre de discipline* is now composed of three members: a judge of the regional Court of Appeal, as president, and two members of the profession. Appeal lies to a national *chambre de discipline*, whose president is a judge of the Cour de Cassation, and whose other members are two Court of Appeal Judges and two members of the profession. Offsetting this more formal disciplinary arrangement, however, is the introduction of an obligation for the competent authority – the president of the competent regional chamber of Judicial Officers – to arrange for conciliation to deal with complaints where appropriate.²²² The competent authority may also use

²¹⁸ See 2021. évi XXXII. Törvény a Szabályozott Tevékenységek Felügyeleti Hatóságáról [Act XXXII of 2021 on the Supervisory Authority for Regulated Activities] and the website of the authority at <https://sztfh.hu/hatosag/jogforrasok/>.

²¹⁹ The disciplinary procedures are, of course, without prejudice to any criminal proceedings that may be brought.

²²⁰ Sanctions included a warning or censure, whereas serious sanctions extend to suspension or dismissal from office.

²²¹ Notably, Ordonnance n° 2022-544 du 13 avril 2022 relative à la déontologie et à la discipline des officiers ministériels.

²²² Ordonnance n° 2022-544 du 13 avril 2022 relative à la déontologie et à la discipline des officiers ministériels, Art 4.

administrative measures to deal with disciplinary matters where appropriate, in the form of a reprimand or an injunction.²²³ Appeal against an administrative measure lies to the *chambre de discipline*.

- 133 Traditionally sanctions for a Judicial Officer included a warning or censure for minor offences, with suspension or dismissal from office as potential sanctions for a serious offence. Surprisingly, fines did not commonly featured as available sanctions, although they have been introduced in some jurisdictions to which the Judicial Officer model has been transplanted.²²⁴ In France, the recent reform has added a fine to the penalties that may be imposed by the *chambre de discipline*.²²⁵ Financial incentives to comply with legal and ethical rules have also been introduced through the potential use of an *astreinte* to enforce an administrative injunction.
- 134 Judicial involvement in disciplinary proceedings was, in fact, already widespread elsewhere. For example, the legislation creating the *gerechtsdeurwaarder* profession in the Netherlands in 2001 established a *kamer voor gerechtsdeurwaarders* composed of five members, three of which (including the president) are members of the judiciary.²²⁶ Reforms to the law in Belgium in 2014 and 2022 have also created a disciplinary council presided over by a judge.²²⁷ In countries to which the Judicial Officer has been transplanted, a disciplinary chamber presided over by a judge, is also common. Other members of the chamber include representatives of the profession and may also include further members of the judiciary or other lay representatives.²²⁸ In some cases, this has

²²³ Ordonnance n° 2022-544 du 13 avril 2022 relative à la déontologie et à la discipline des officiers ministériels. Art 6.

²²⁴ Eg, Czech Republic (§116 ER), Hungary (§267 Vht), Estonia (§57, 60 TMS).

²²⁵ See now Ordonnance n° 2022-544 du 13 avril 2022 relative à la déontologie et à la discipline des officiers ministériels, Art 16.

²²⁶ Art 35 GDW.

²²⁷ See further Kennett (n 10) ch 8 at 2.3 and the Loi du 26 décembre 2022 portant des dispositions diverses en matière d'organisation judiciaire II [Law of 26 December 2022 containing various provisions on the organisation of the judiciary II]. As in France, however, serious disciplinary matters were referred to the local first instance court which could impose a temporary suspension from office, dismissal from office or a fine.

²²⁸ For West Africa, see Loi no 95-29 du 14 mars 1995, portant organisation de la profession des huissiers de justice [Law No 95-29 of 14 March 1995, on the organisation of the judicial officer profession], Art 45 (Tunisia: first president of the Court of Appeal, further judge of the Court of Appeal, representative of the Ministry of Finance, two representatives of the chamber of huissiers de justice); Loi n° 81-03 portant organisation de la profession d'huissier de justice [Law 81-03 organising the judicial officer profession] (Morocco: the *chambre du conseil* at the local first instance court on an action brought by the *procureur du Roi*). Elsewhere in West Africa, the relevant legislation confers competence on a committee of the chamber of Judicial Officers to impose sanctions (Algeria, Loi n° 06-03 portant organisation de la profession d'huissier de justice [Law 06-03 organising the judicial officer profession], Art 49 ff), or, in the case of more severe sanctions, to recommend sanctions that may be imposed by the Minister of Justice (Senegal, Décret n° 2020-1589 du 06 août 2020 portant Statut des huissiers de justice [Decree no 2020-1589 of 06 August 2020 on the status of judicial officers], Art 76 ff). For CEE states see eg, §121 ER (Czech Republic: disciplinary chamber of the Supreme Administrative Court); §270 ff Vht (Hungary: disciplinary chamber at the Budapest District Court, chaired by a member of the judiciary with two Judicial Officers as lay experts).

been because of unsatisfactory experiences with the delegation of disciplinary matters to the profession.²²⁹

- 135 Nevertheless, in Poland primary responsibility for dealing with disciplinary matters is assumed by the disciplinary committee of the National Chamber of Judicial Officers.²³⁰ The 33-member committee consists of representatives of the various regional chambers. It sits in panels of three members to adjudicate on disciplinary cases. In contrast to the situation in the transplanting states, the disciplinary body does not hear cases brought by individual complainants. Rather, an application for a disciplinary investigation may be made by one of the various institutions with supervisory responsibilities in respect of Judicial Officers.²³¹ Hearings in disciplinary matters are public and an appeal to the Court of Appeal is available against the resulting decision. There is a very limited further appeal to the Supreme Court.²³²
- 136 Similarly, in Romania the right to initiate disciplinary action may lie with the Ministry of Justice or the profession. In the latter case, it is the board of directors of a local chamber of Judicial Officers that has the right to initiate action in respect of members of that chamber. Preliminary investigations are undertaken by specialized inspectors of the Ministry of Justice or the board of directors of the chamber, and the case is heard by a three-member disciplinary council. Each disciplinary council is elected from among members of the local chamber by its general assembly. A right of appeal exists from the decision of the council to the Superior Disciplinary Commission of the UNEJ – a body composed of one representative from each of the 15 local chambers, but which sits in a formation of five members. And from the Superior Disciplinary Commission, an appeal lies to the competent Court of Appeal.²³³
- 137 In Estonia, disciplinary proceedings may be conducted by the Ministry of Justice or by the Court of Honour of the National Chamber. In general, the Ministry of Justice deals with more serious matters, and has sole power to order removal from office. The Court of Honour consists of four Judicial Officers and four trustees in bankruptcy, but a

²²⁹ See further Kennett (n 10) ch 12 at 3.4. In the Czech Republic, responsibility for disciplinary proceedings was transferred to the disciplinary tribunal of the Supreme Administrative Court. In Hungary, disciplinary proceedings have been presided over by a judge since the introduction of the Judicial Officer profession in 1994.

²³⁰ Art 230-234 uks.

²³¹ Art 228 uks. Individual complaints about the actions of Judicial Officers seem to be primarily directed to the competent district court under Art 767 ff KPC.

²³² Art 235 ff KPC.

²³³ Art 47-51 Lege nr 188/2000 din 1 octombrie 2000 privind executorii judecătorești [Law no188/2000 of 1 October 2000 on Judicial Officers] and Art 60-77 Regulament din 5 februarie 2001 din aplicare a Legii nr. 188/2000 privind executorii judecătorești [Regulation of February 5, 2001 implementing Law No 188/2000 on Judicial Officers].

representative of the Ministry of Justice may also be appointed as a member of the Court. An appeal lies to an administrative court.²³⁴

- 138 In addition to disciplinary proceedings, some countries have introduced an ombudsman with competence to hear complaints about Judicial Officers.²³⁵
- 139 National professional chambers nevertheless retain an important role in the disciplinary process. They may, for example, be responsible for drawing up a deontological code.²³⁶ They may be responsible for routine auditing of offices, with external inspection taking place on a less regular basis or in response to a complaint.²³⁷ And they may deal with minor complaints, acting as a filter so that only serious complaints are handled by an independent disciplinary body.²³⁸
- 140 A further way in which scrutiny manifests itself is in the specification of data to be collected as part of the enforcement process, so that a broad picture of the operation of the enforcement system can be obtained and comparisons drawn between individual Judicial Officers or their businesses.²³⁹ Enhanced data collection has been facilitated by digitalization of enforcement processes, and may be the initiative of the national chamber or a responsibility imposed on it, but such data is useful to the chamber in its general steering and representation of the profession as well as for the purposes of supervision.

9 FUNDING OF ENFORCEMENT

- 141 The extent to which the state funds civil enforcement is extremely variable. In the case of court-centred enforcement, or enforcement through an executive agency, any fee

²³⁴ §§56-66 and 99-103 KTS.

²³⁵ This is the case in Belgium and France (see Kennett (n 10) ch 8 at 3.5 and ch 9 at 3.1.1.).

²³⁶ See eg, France, Ordonnance n° 2022-544 du 13 avril 2022 relative à la déontologie et à la discipline des officiers ministériels, Décret n° 2023-1296 du 28 décembre 2023 relatif au code de déontologie des commissaires de justice [Decree no 2023-1296 of 28 December 2023 on the code of ethics for Commissaires de Justice (Judicial Officers)]; Poland, Art 202(1) no4 uks and Kodeks etyki zawodowej [Code of professional ethics] : https://www.komornik.pl/?page_id=187#menu accessed 22 June 2024;

²³⁷ See eg, Belgium, Art 552, 555/1 §1 CJ; France, Art 94-1 to 94-24 Décret no 56-222 du 29 février 1956; Romania, Art 21(20ş) Statut din 2010 al Uniunii Naţionale a Executorilor Judecătoreşti [Statute of the National Union of Judicial Officers 2010].

²³⁸ See eg, Belgium, Art 535 ff CJ; France, Ordonnance n° 2022-544 du 13 avril 2022 relative à la déontologie et à la discipline des officiers ministériels, Art 4.

²³⁹ In France, for example, standardisation of financial management software makes possible the submission of comparable information both to the national chamber for analysis and to the ADLC for its regular reviews of fees and consideration of the map of the profession to enable it to propose alterations (see further Kennett (n 10) ch 9 at 3.1.1). In addition, Décret n° 2022-729 du 28 avril 2022 relatif à l'organisation de la profession de commissaires de justice requires the national chamber to maintain an 'Economic Observatory' to collect information that is useful for understanding the situation of the profession and to submit an annual report to the Minister of Justice. In the Netherlands, financial and other data are submitted to the BFT: see further Kennett (n 10) ch 10 at 2.2.2.2, 4.1.3, 4.2.2 and 4.2.3.

charged may not be commensurate with the costs of pursuing enforcement action. In many jurisdictions where enforcement is court-centred access to the court system is either free of charge or low cost. Some costs of enforcement are therefore assumed by the state in the interests of the administration of justice,²⁴⁰ but the creditor will still be responsible for the fees of any lawyer employed by them and other expenses incurred as part of the enforcement process pending potential reimbursement by the debtor following successful enforcement.

- 142 Alternatively, the enforcement institution may bear the risk of unsuccessful enforcement. In Sweden, for example, the SEA charges a flat fee for enforcement, plus costs incurred in the process. This is ultimately paid by the debtor if enforcement is successful. However, if enforcement is unsuccessful, liability to pay the fee varies as between private and public law creditors. Only private law creditors are obliged to make the payment. Public law creditors are exempt. Any shortfall in the running costs of the agency is ultimately paid by the state.²⁴¹ This approach has a major impact on the way that enforcement is approached since it encourages an emphasis on the prevention of over-indebtedness and has fostered investment in data access. A particular focus on prioritizing recovery from debtors who appear in the system for the first time is intended to deter repeated defaults on payment.
- 143 On the other hand, enforcement agents in a privatized system such as the Judicial Officer system, or the similar but less professionalized systems operating in many common law jurisdictions, are fully funded by the services they provide. These may be limited to enforcement services but may also include a diverse portfolio of services (as discussed at 4.2 above).
- 144 Judicial Officers are typically funded through complex sets of tariffs for the various services provided or acts undertaken, and/or a recovery fee based on the amount of debt recovered. In the countries in which the Judicial Officer model originated, there has been an accumulation of different fee elements, such that in France the *Code de commerce* lists 205 acts undertaken by Judicial Officers that may incur a fee.²⁴² The tariffs for each act are specified in Arts A.444-10 to A.444-52 of the *Code de commerce*. Moreover, the fees listed are not final: the value of the claim or debt remains relevant. The fees listed in the fee tables apply in respect of tasks performed by Judicial Officers relating to ‘payment obligations’ within a certain value range (currently from 128 – 1,280

²⁴⁰ Eg, Spain (for example in the case of natural persons and for low claims), Art 119 Constitución Española [Spanish Constitution] and Ley 10/2012, de 20 de noviembre, por la que se regulan determinadas tasas en el ámbito de la Administración de Justicia [Law 10/2012, of 20 November 2012, regulating certain fees in the field of the Administration of Justice]. See also Cao [pt XIII ch 3 section 6] for a discussion of the costs of enforcement in China and the extent to which the court assumes those costs.

²⁴¹ Annual reports and budget information are available at <https://www.kronofogden.se/-arsredovisningochbudgetunderlag.html> accessed 30 December 2022.

²⁴² Tableaux 3-1 to 3-3 of Art Annexe 4-7 Code de commerce.

EUR).²⁴³ Below that range, the fee is halved; above it, the fee is doubled. In addition, Judicial Officers are entitled to certain proportional fees. There is, for example, a proportional fee (*droit d'engagement de poursuites*) due for the service of the initial procedural document relating to the recovery of a fixed amount and this remains payable by the creditor if the recovery attempt is unsuccessful. This fee can be charged only once, irrespective of the attempts made to achieve recovery of the debt. There is also a 'result' fee – a percentage of the amount recovered. This is recoverable in part from the creditor and in part from the debtor. To promote competition, however, the new fee regulation also allows Judicial Officers to offer a discount of up to 20 per cent on proportional fees. Traditionally, such discounting was prohibited. And there are further complexities, such as hourly rates for tasks that may occupy significant amounts of time and 'urgency' rates as well as expenses that may be claimed and taxes chargeable.

- 145 More recent regulation of Judicial Officer fees – in CEE countries, for example – has a simpler structure. Remuneration is typically based on two elements: a basic fee for a particular element of enforcement action – not broken down to the same level of detail as in France – and/or a proportionate fee based on the amount recovered for the creditor. Nevertheless, the combination of fees, costs, discounts (for example, for prompt payment), advances payable by creditors and other factors still renders the legislation complex.
- 146 Historically it was usual for a creditor to make an advance payment to cover preparatory investigation and administration. Judicial Officers could retain this payment even if the enforcement action was unsuccessful. More recently, however, the introduction of greater competition between Judicial Officers has limited this possibility. Judicial Officers are dependent on large creditors with significant bargaining power, such as banks and other lenders and public bodies. In some countries, granting discounts on the advance payable in order to secure contracts has led to a situation where no advance is claimed at all. Moreover, where the recovery of public law debts has been contracted out to Judicial Officers, this has been on terms that minimize any payments owed by the creditor public body.
- 147 While Judicial Officers in some jurisdictions have good access to data about debtors, others do not enjoy this privilege and depend to a greater extent on their personal interaction with debtors. Concerns about the impact of competition between Judicial Officers on the fair treatment of debtors has led to heightened regulation.²⁴⁴
- 148 In the case of hybrid systems of enforcement, it may be the case that the external enforcement agent or agency is funded from enforcement fees, but this is not

²⁴³ Art A.444-46 Code de commerce.

²⁴⁴ Kennett, *Civil Enforcement in a Comparative Perspective: a Public Management Challenge* ch. 7 and ch 8-10 and 12.

necessarily the case. For example, the German *Gerichtsvollzieher*, who maintains an office outside the enforcement court, is funded by a combination of salary and enforcement fees.²⁴⁵ Moreover, some enforcement agents working within a court-centred system may also receive incentive payments based on actions undertaken and/or the amount of debt recovered.²⁴⁶

²⁴⁵ The precise details of payment are regulated by the Länder, but most of the Länder follow national collective agreements with respect to civil service salary. For an example of the regulation of the fee element of remuneration, see for Baden-Württemberg §2 GVVerGVO.

²⁴⁶ This is, for example, the case in Austria, see §§457 ff EO.

ABBREVIATIONS AND ACRONYMS

BFT	Bureau Financieel Toezicht
CJ	Code Judiciaire (Judicial Code) (Belgium)
CNPCF	Código Nacional de Procedimientos Civiles e Familiares (National Code of Civil and Family Procedure) (Mexico)
CPC	Código Procesal Civil (Code of Civil Procedure) (Bolivia)
CPC	Code de procedure civil (Code of Civil Procedure) (France)
CPC	Código de Procedimiento Civil (Code of Civil Procedure) (Chile)
CPC	Código de Processo Civil (Code of Civil Procedure) (Brazil)
CPC	Codul de procedură civilă (Code of Civil Procedure) (Romania)
CPCE	Code des procédures civiles d'exécution (Code of Civil Enforcement Procedures) (France)
CPR	Civil Procedure Rules (England and Wales)
EO	Exekutionsordnung (Enforcement Order) (Austria)
ER	Exekuční řád (Enforcement Order) (Czech Republic)
CPG	Código General del Proceso (General Procedural Code) (Uruguay)
GDW	Gerechtsdeurwaarderswet 2001 (Judicial Officers Act 2001) (Netherlands)
GVGA	Geschäftsweisung für Gerichtsvollzieher (Rules of Procedure for Court Enforcement Officers (Germany)
GVVergVO	Gerichtsvollzieher-Vergütungsverordnung (Regulation on the Remuneration of Enforcement Officers)
KPC	Kodeks postępowania cywilnego (Code of Civil Procedure) (Poland)
KTS	Kohtutäituri seadus (Judicial Officers Act) (Estonia)
LEC	Ley de Enjuiciamiento Civil (Code of Civil Procedure) (Spain)
NPCCN	Codigo Procesal Civil y Comercial de la Nacion (National Code of Civil and Commercial Procedure) (Argentina)
RPfIG	Rechtspflegergesetz (Judicial Administrator Act) (Austria)
RPfIG	Rechtspflegergesetz (Judicial Administrator Act) (Germany)
Rv	Wetboek van Burgerlijke Rechtsvordering (Code of Civil Procedure) (Netherlands)
TMS	Täitemenetluse seadustik (Code of Enforcement Procedure) (Estonia)
UB	Utsökningsbalk (Enforcement Code) (Sweden)
uks	ustawy z dnia 22 marca 2018 r. o komornikach sądowych (Act on Judicial Officers 22 March 2018) (Poland)

Vht	1994. évi LIII. Törvény a bírósági végrehajtásról (Law LIII of 1994 on Court Enforcement) (Hungary)
ZIZ	Zakon o izvršbi in zavarovanju (Enforcement and Security Act) (Slovenia)
ZPO	Zivilprozessordnung (Code of Civil Procedure) (Germany)

LEGISLATION

International/Supranational

Council of Europe Recommendation Rec (2003)17 of the Committee of Ministers.

National

Algeria

Loi n° 06-03 portant organisation de la profession d'huissier de justice (Law no.06-03 on the organisation of the judicial officer profession).

Argentina

Codigo Procesal Civil y Comercial de la Nacion (Code of Civil and Commercial Procedure of the Nation).

Ley 7452 de 5 junio 2007 Secretarios y Prosecretarios Letrados del Poder Judicial (Law 7452 of 5 June 2007, Secretaries and Assistant Secretaries to the Judiciary) (Salta Province).

Ley 7341/2013 Ley Orgánica de Justicia de Paz y Faltas (Organic Law on Justice of the Peace and Misdemeanours) (Chaco Province).

Austria

Exekutionsordnung (Enforcement Order).

Rechtspflegergesetz (Judicial Administrator Act).

Belgium

Code Judiciaire (Judicial Code).

Loi du 29 mai 2000 portant création d'un fichier central des avis de saisie, de délégation, de cession et de règlement collectif de dettes et modifiant certaines dispositions du Code judiciaire (Law of 29 May 2000 establishing a central registry of notices of seizure, delegation, assignment and collective settlement of debts and modifying certain provisions of the Judicial Code).

Loi du 1er décembre 2013 portant réforme des arrondissement judiciaires et modifiant le code judiciaire en vue de renforcer la mobilité des membres de l'ordre judiciaire (Law of 1 December 2013 reforming judicial districts and amending the Judicial Code with a view to enhancing the mobility of members of the judiciary).

Loi du 26 décembre 2022 portant des dispositions diverses en matière d'organisation judiciaire II (Law of 26 December 2022 containing various provisions on the organisation of the judiciary II).

Bolivia

Código Procesal Civil (Code of Civil Procedure).

Brazil

Código de Processo Civil (Code of Civil Procedure).

Chile

Ley 1552 Código de Procedimiento Civil (Code of Civil Procedure).

Ley 7421 Código Orgánico de Tribunales (COT) (Organic Courts Code).

China

中华人民共和国民事诉讼法 (Civil Procedure Law of the People's Republic of China).

Czech Republic

Exekuční řád (Enforcement Order).

England and Wales

Attachment of Earnings Act 1975.

Common Law Procedure Act 1854.

Judgments Act 1838.

Judgments Act 1840.

Tribunals, Courts and Enforcement Act 2007.

Certification of Enforcement Agents Regulations 2014.

High Court Enforcement Officers Regulations 2004 (HCEO Regs 2004).

Register of Judgments, Orders and Fines Regulations 2005.

Civil Procedure Rules (<https://www.justice.gov.uk/courts/procedure-rules/civil/rules>).

Estonia

Täitemenetluse seadustik (Code of Enforcement Procedure).

Kohtutäituri seadus (Judicial Officers Act).

Finland

Valtioneuvoston asetus ulosottotoimen hallinnosta 285/2020 (Government Decree on the Administration of Enforcement Proceedings).

France

Code de commerce (Commercial Code).

Code de l'organisation judiciaire (Code of judicial organisation).

Code monétaire et financier (Monetary and Financial Code).

Code de procédure civil (Code of Civil Procedure).

Code des procédures civiles d'exécution (Code of Civil Enforcement Procedures).

Loi du 27 décembre 1923 relative à la suppléance des huissiers blessés et à la création des clerks assermentés (Law of 27 December 1923 on substitutes for injured Judicial Officers and the creation of sworn clerks).

Ordonnance n° 45-1428 du 28 juin 1945 relative à la discipline des notaires et de certains officiers ministériels (Ordinance no. 45-1428 of 28 June 1945 concerning the discipline of notaries and certain ministerial officers).

Ordonance no 45-2592 du 2 novembre 1945 relative au statut des huissiers (Ordinance no. 45-2592 of 2 November 1945 on the status of Judicial Officers).

Ordonnance n° 2016-728 du 2 juin 2016 relative au statut de commissaire de justice (Ordinance no. 2016-728 of 2 June 2016 concerning the status of Commissaire de Justice).

Ordonnance n° 2022-544 du 13 avril 2022 relative à la déontologie et à la discipline des officiers ministériels (Ordinance no. 2022-544 of 13 April 2022 on the ethics and discipline of ministerial officers).

Ordonnance n° 2023-77 du 8 février 2023 relative à l'exercice en société des professions libérales réglementées (Ordnance no. 2023-77 of 8 February 2023 on the practice of regulated liberal professions within a partnership or joint-stock company).

Décret n°56-222 du 29 février 1956 pris pour l'application de l'ordonnance du 2 novembre 1945 relative au statut des huissiers de justice (Decree no. 56-222 of 29 February 1956 implementing the ordinance of 2 November 1945 on the status of Judicial Officers).

Décret n° 2019-949 du 10 septembre 2019 portant création d'une mission interministérielle, dénommée « France Recouvrement », chargée du pilotage de la réforme du recouvrement fiscal et social (Decree no. 2019-949 of 10 September 2019 creating an interministerial mission, called 'France Recouvrement', responsible for steering the reform of tax and social security debt collection).

Décret n° 2022-729 du 28 avril 2022 relatif à l'organisation de la profession de commissaires de justice (Decree no. 2022-729 of 28 April 2022 on the organisation of the profession of Commissaire de Justice (Judicial Officer)).

Décret n° 2022-900 du 17 juin 2022 relatif à la déontologie et à la discipline des officiers ministériels (Decree no. 2022-900 of 17 June 2022 on the ethics and discipline of ministerial officers).

Décret n° 2023-1296 du 28 décembre 2023 relatif au code de déontologie des commissaires de justice (Decree no. 2023-1296 of 28 December 2023 on the code of ethics for Commissaires de Justice (Judicial Officers)).

Georgia

საქართველოს იუსტიციის მინისტრის ბრძანება №24 2014 წლის 6 მაისი, საჯარო სამართლის იურიდიული პირის – აღსრულების ეროვნული ბიუროს დებულება (Minister of Justice of Georgia, Order No.24, 6 May 2014, approving the 'Statute of the National Bureau of Enforcement') (Georgia).

საქართველოს კანონი სააღსრულებო წარმოებათა შესახებ (Law of Georgia on Enforcement Proceedings).

Germany

Zivilprozessordnung (Code of Civil Procedure).

Rechtspflegergesetz (Judicial Administrator Act).

Gerichtsvollzieherordnung (Enforcement Officer Regulations).

Geschäftsanweisung für Gerichtsvollzieher (Rules of Procedure for Court Enforcement Officers).

Gerichtsvollzieher-Vergütungsverordnung (Regulation on the Remuneration of Court Enforcement Officers) (Baden-Württemberg).

Hungary

1994. évi LIII. Törvény a bírósági végrehajtásról (Law LIII of 1994 on Court Enforcement).

2021. évi XXXII. Törvény a Szabályozott Tevékenységek Felügyeleti Hatóságáról (Act XXXII of 2021 on the Supervisory Authority for Regulated Activities).

Morocco

Loi n° 81-03 portant organisation de la profession d'huissier de justice (Law 81-03 organising the judicial officer profession).

Netherlands

Wetboek van Burgerlijke Rechtsvordering (Code of Civil Procedure).

Gerechtsdeurwaardersverordening (Judicial Officers Regulation).

Gerechtsdeurwaarderswet 2001 (Judicial Officers Act 2001).

Poland

Kodeks postępowania cywilnego (Code of Civil Procedure).

Ustawy z dnia 22 marca 2018 r. o komornikach sądowych (Act on Judicial Officers 22 March 2018).

Kodeks etyki zawodowej (Code of professional ethics).

Portugal

Decreto-Lei n.º 88/2003 de 26 de Abril, Estatuto da Câmara dos Solicitadores (Decree-Law no. 88/2003 of 26 April, Statute of the Chamber of Solicitors).

Portaria n.º 282/2013 de 29 de Agosto regulamenta vários aspetos das ações executivas cíveis (Ordinance no. 282/2013 of 29 August regulating various aspects of civil enforcement actions).

Lei n.º 154/2015 de 14 de setembro, Estatuto da Ordem dos Solicitadores e dos Agentes de Execução (Law no. 154/2015 of 14 September, Statute of the Order of Solicitors and Enforcement Agents).

Romania

Codul de procedură civilă (Code of Civil Procedure).

Lege nr 188/2000 din 1 octombrie 2000 privind executorii judecătorești (Law no.188/2000 of 1 October 2000 on Judicial Officers).

Regulament din 5 februarie 2001 din aplicare a Legii nr. 188/2000 privind executorii judecătorești (Regulation of February 5, 2001 implementing Law No 188/2000 on Judicial Officers).

Statut din 2010 al Uniunii Naționale a Executorilor Judecătorești (Statute of the National Union of Judicial Officers 2010).

Russia

федеральный закон 21.07.97 n 118-фз об органах принудительного исполнения российской федерации (Federal Law 21.07.97 N 118-FZ On the Federal Bailiff Service).

федеральный закон 21.07.97 n 119-фз об исполнительном производстве (Federal Law 21.07.97 N 119-FZ On Enforcement Proceedings).

федеральный закон 'об исполнительном производстве' от 02.10.2007 n 229-фз (Federal Law 2.10.2007 N 229-FZ On Enforcement Proceedings).

федеральный закон от 01.10.2019 n 328-фз о службе в органах принудительного исполнения российской федерации (Federal Law 01.10.2019 N 328-FZ on Employment in the Federal Bailiff Service).

Приказ Министерства юстиции РФ от 18 марта 2020 г. N 47 'Об утверждении Дисциплинарного устава органов принудительного исполнения Российской Федерации' (Order of the Ministry of Justice of the Russian Federation of March 18, 2020 N 47 'On approval of the Disciplinary Charter of the Federal Bailiff Service').

Senegal

Décret n° 2020-1589 du 06 août 2020 portant statut des huissiers de justice (Decree no. 2020-1589 of 06 August 2020 on the status of judicial officers).

Slovenia

Zakon o izvršbi in zavarovanju (Enforcement and Security Act).

Spain

Constitución Española (Spanish Constitution).

Ley Orgánica 6/1985, de 1 de julio, del Poder Judicial (Organic Law 6/1985 of 1 July 1985, on the Judiciary).

Ley de Enjuiciamiento Civil (Code of Civil Procedure).

Ley 10/2012, de 20 de noviembre, por la que se regulan determinadas tasas en el ámbito de la Administración de Justicia (Law 10/2012, of 20 November 2012, regulating certain fees in the field of the Administration of Justice).

Real Decreto 1608/2005, de 30 de diciembre, por el que se aprueba el Reglamento Orgánico del Cuerpo de Secretarios Judiciales (Royal Decree 1608/2005 of 30 December 2005, approving the Organic Regulations of the Corps of Judicial Secretaries).

Sweden

Utsökningsbalk (Enforcement Code).

Förordning (2016:1333) med instruktion för Kronofogdemyndigheten (Ordinance 2016:1333 with instructions for the Swedish Enforcement Agency).

Tunisia

Loi no 95-29 du 14 mars 1995, portant organisation de la profession des huissiers de justice (Law No. 95-29 of 14 March 1995, on the organisation of the judicial officer profession).

Uruguay

Código General del Proceso (General Procedural Code).

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Vietnam

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