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**Enforcement of European Court  
of Justice Judicial Decision**

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**Abstract:** The paper aims at highlighting the steps in enforcing European Courts of Justice judicial decisions. The enforcement of international courts judicial decisions is the most difficult and trapping stage for interstate jurisdiction. These courts do not have the opportunity to engage directly with their own bodies in the process of decisions enforcement, having to overcome the barrier of states sovereignty; neither the international community nor the public opinion have powers to lead to enforcement of international judgments. The case of European Court of Justice is different, as it has developed a role for the national judicial system in securing the enforcement of judicial decisions. According to article 244 (187) of the Treaty, European Community judicial decisions are enforceable. Thus they acquire the status of enforceable; however European Procedural Law provisions require amendments from the national legal order of Member States. Enforcement shall be governed by the rules of civil procedure of the State in question. Decisions are appended as binding (without fulfilling other formalities but verifying the authenticity of the title, i.e. that they are issued by ECJ) by the national authority designated for that purpose by the government of each Member State.

**Keywords:** enforceable title; time-limits; judicial periods

## 1. The Decisions' Enforcement

Obtaining a favorable judicial decision does not imply necessarily the fulfillment of the general purpose, because the adversary part may persist in its pretensions and behavior and may refuse to apply the judicial decision. When we speak about the internal law system, there is the execution procedure wherein the coercive force of the state is applied and the decision is enforced.

The international judicial decision enforcement poses different problems when coming to the interstate jurisdiction. The international courts cannot be directly implied in the enforcement process because of the state sovereignty; neither the public opinion nor the states assembly can contribute to the enforcement of international decisions.

Different is the situation of the European Court of Justice, in its quality of supra-national court, it benefits of an efficient execution system. According to the provisions of the article 244 (187) of the EC Treaty, the decisions of ECJ are enforceable along of the order of enforcement which is appended to the decision, without any further formality. Enforcement is governed by the rules of civil procedure in force in the State in the territory of which it must be carried out. The order for its enforcement is appended to the decision (without other formality than verification of the authenticity of the decision, as it must be issued by the ECJ).

When these formalities have been completed on application by the party concerned, the latter may proceed to enforcement in accordance with the national law, by bringing the matter directly before the competent authority.

Enforcement may be suspended only by a decision of the Court of Justice. However, the national jurisdictions have the authority over the legal measures undertaken when decisions are enforced. (Fabian, 19., 329) Though the article 244 (187) of the EC Treaty lay down the instant order of enforcement by appending it to the decision, by this order are appended as well any pecuniary obligation on persons, which must be enforced.

The institution of enforcement within European Union, by general rule, is appended to any decision, but it is limited to the nature of the litigation, to obligations set by the decision, according to the person that is to be enforced. Thus are enforceable the decisions that lay down the pecuniary obligation or the obligation to give, if the person is an individual or a legal entity of private law (for example a commercial society).

In principle, though, the member state cannot be enforced. The enforcement process ran against a state is stopped by the sovereignty of the state, in areas where the state has not denounced it to the privilege of UE. Any measure of enforcement which is not expressed explicitly in the European Law represents a violation of sovereignty of the member state, therefore the enforcement against the member state is very rare and in exceptional cases.

An exception is the order of enforcement of the judicial ordinance of ECJ according to the article 74 of Code of Procedure of ECJ in the area of pecuniary obligations in regards with the judicial expenses.

Another exception is laid down in the article 239 (182) of the EC Treaty. According to its provisions, the Court of Justice shall have jurisdiction in any dispute between Member States which relates to the subject-matter of this Treaty if the dispute is submitted to it under a special agreement between the parties.

Institutions and organs of European Union, from the European law point of view are assimilated to states, when decisions of ECJ are involved in cases of litigation between one of these institutions and organs and a member state.

On the contrary, the judicial decision that obliges EU organs and institutions to pay a special amount of money, as prejudices or judicial expenses, are appended by an order of enforcement. Up to date, there is no record of such cases, because EU institutions fulfilled the obligations of all decisions. Along with those mentioned above, there are also decisions based on arbitrage procedure regarding contracts of private and public law. The enforcement procedure in those cases must follow the provisions of the internal law, of the state where the institutions in cause have establishment.

There are two types of institutions when the process of enforcement of ECJ decisions is involved. On one hand there are institutions that verify the authenticity of the enforcement order, and on the other hand there are institutions which carry the out the enforcement. The institutions that verify the issuing entity vary from state to state: in Austria, for instance, this is of competence of the Ministry of External Affairs, while in Germany this is the attribution of the Federal Justice Ministry. Afterwards, a clause of enforcement is applied. Along with this procedure the decision is addressed to be enforced to the judicial courts.

In regard with the contestation of the enforcement order, though the person against whom it is addressed has the benefit of all means of contestations assured by the internal law, the ECJ and the national institution of enforcement share jurisdiction.

According to the article 256 (192) of EC Treaty enforcement is governed by the rules of civil procedure in force in the State in the territory of which it is carried out. Though the control of legality of enforcement measures is of national jurisdiction competence, in regard to the suspension, ceasement or alteration of enforcement, this is carried out only on an ECJ decision grounds.

The contestations to the enforcement according to the national law, referring to the European law issues and are based on order of enforcement are inadmissible. The procedural provisions in this area are settled by the article 89 that states that its provisions are applicable to the suspension action of European judicial decisions. The second paragraph states that the order granting the application shall fix, where appropriate, a date on which the interim measure is to lapse, so that this suspension may be without date.

## **2. Procedural Periods and Time-Limits**

To assure the celerity of the judicial process within the ECJ a large amount of actions may be introduced within period of time prescribed by the law. These dates are important to assure that cases brought to court in legal periods, according to the principle that the rapid right is the best.

The periods are divided in those prescribed by the president and those states in legal provisions. Legal periods and dates are stated in different acts of legislations and as a rule they may modified or prolonged by the president of the court.

Among these periods and dates, there are:

- two weeks after the delivery of a judgment, for rectifying clerical mistakes, errors in calculation and obvious slips in it – period mentioned in article 66 of Code of Procedure;
- six weeks to introduce an action of intervention in the procedure fast track;
- within one month of receiving the proposal made by the First Advocate General, the Court of Justice shall decide whether or not the decision should be reviewed;
- within one month after service on him of the application, the defendant shall lodge a defense, stating;
- the application to set aside the judgment must be made within one month from the date of service of the judgment and must be lodged.
- an application to intervene made to the Court in appeal proceedings shall be lodged before the expiry of a period of one month running from the publication. In preliminary ruling proceedings, the persons referred to in Article 23 of the Statute may, within a mandatory period of two months after notification of the order for reference, submit their written observations
- after receiving a copy from the Court Registry of the request for a preliminary ruling, the "interested parties" - the litigants before the national court, the Member States, the Commission and, if appropriate, the Council, the Parliament and the European Central Bank and, in some cases, the other EEA States and the EFTA Supervisory Authority – may submit a document, referred to as written observations, within a period of two months (extended on account of distance by a period of 10 days in all cases). This time limit is mandatory and cannot therefore be extended.

- within two months after service on him of the application, the defendant shall lodge a defense;
- where the written procedure before the Court of First Instance has been completed when the judgment referring the case back to it is delivered, the course of the procedure shall be as follows: within two months from the service upon him of the judgment of the Court of Justice the applicant may lodge a statement of written observations and in the month following the communication to him of that statement, the defendant may lodge a statement of written observations. The time allowed to the defendant for lodging it may in no case be less than two months from the service upon him of the judgment of the Court of Justice;
- three months for action of intervention from the date of service of the judgment;
- three months for action of intervention for EU clerks against the employers, according article 179 from the EC Treaty and article 91, paragraph 3 from the rules of personnel;
- three months of the date on which the matter was brought before the Commission to deliver an opinion whether a member state has failed to fulfil an obligation under the EC Treaty regarding another member state;
- four months to observe the action of unjustified abstinence of the EU institutions according the article 175, paragraph 2 of the EC Treaty;
- five years from occurrence for actions arose from non-contractual liability, according to article 46 of the Court Statute;
- the period of ten years for an application for revision of a judgment, but no longer than three months of the date on which the facts on which the application is based came to the applicant's knowledge.

These periods and dates are prescribed in normative acts that cannot be altered but by amending the act itself, but there are exceptions (in the case of the date prescribed by law and may prolonged by the president at the parties' request.)

Dates that may be postpone, prolonged or modified are called judicial periods, because though these dates have their sources in legal concrete texts they may be modified by the court. These periods must not be confused with the procedural periods laid down by the courts or by the registrar.

Any period of time prescribed by the EC and EAEC Treaties, the Statute of the Court of Justice for the taking of any procedural step shall be reckoned as follows:

- (a) Where a period expressed in days, weeks, months or years is to be calculated from the moment at which an event occurs or an action takes place, the day during which that event occurs or that action takes place shall not be counted as falling within the period in question;
- (b) A period expressed in weeks, months or in years shall end with the expiry of whichever day in the last week, month or year is the same day of the week, or falls on the same date, as the day during which the event or action from which the period is to be calculated occurred or took place. If, in a period expressed in months or in years, the day on which it should expire does not occur in the last month, the period shall end with the expiry of the last day of that month;
- (c) Where a period is expressed in months and days, it shall first be reckoned in whole months, then in days;
- (d) Periods shall include official holidays, Sundays and Saturdays;
- (e) Periods shall not be suspended during the judicial vacations.

The non-compliance with these time-limits invalidates the action. As it is stipulated in the internal law, there was a dispute in the European doctrine about the barring prescription in a material or procedural manner. In case of extra-contractual liability ruled by article 288, paragraph 2 of EC Treaty, and in the cases prescribed in article 130 (173) of the same treaty rules that any natural or legal person may institute proceedings within two months of the publication of the measure, while the article 43 of the statute shows that that the material right is barred within five years. Thus, any payment over two months, but earlier than five years is considered valid and cannot be revoked.