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**Government of the Federation of BiH
FBiH Ministry of Justice**

**Government of Republika Srpska
RS Ministry of Justice**

Judicial Commission of the Brcko District of Bosnia and Herzegovina

Subject: Enforcement Procedure Reform

Dear All,

The basic democratic principles of separation of powers clearly define the role of the legislative, executive and judicial branches in a social system. However, we often tend to ignore the fact that the division of powers implies the division of responsibilities. That is why there is a need to openly and argumentatively share facts that are extremely important for understanding certain problems in their entirety, with the representatives of the executive branch, but also with the general public.

At the beginning, we would like to emphasize that the High Judicial and Prosecutorial Council of BiH, speaking on behalf of the judicial system of Bosnia and Herzegovina, is ready to take its share of responsibility for the situation in the legal system of our society. However, as representatives of the judiciary, we have an obligation to clearly emphasize that the civilization achievements in law does not know something called "arbitrary liability", which is increasingly, it seems, assigned to the judiciary in Bosnia and Herzegovina. One of the fields in which the judiciary is labelled particularly inefficient is, without a doubt, the enforcement procedure, due to the objective inefficiency of the existing enforcement system.

In this context, English expression *the elephant in the room*, translated into local languages, is particularly vivid, as it is a metaphorical idiom for an important topic or issue that is obvious or that everyone knows about but no one mentions or wants to discuss. It is true that current concept of enforcement within the courts is an "*elephant in the room*" about which the executive and legislative branches have been persistently silent for years. There are currently almost 1,750,000 cases pending enforcement before the courts in Bosnia and Herzegovina, of which over 1,690,000 are utility cases and these are topics that, without any doubt, it is necessary to start talking about openly, argumentatively and without delay. It is obvious to those who know at least a little about work and functions of the judiciary in Bosnia and Herzegovina that these cases are the reason for the huge workload of the courts, which directly jeopardizes the right to a trial within a reasonable time for citizens in Bosnia and Herzegovina, but also creates some legal uncertainty, which directly affects the business climate and potential investors, whose potential investment would bring us one step closer to an economically sound and more prosperous society.

These problems are clearly identified in the EU's strategic documents on the BiH's stabilisation and association process with the European Union. Conclusions from the meetings of the Subcommittee on Justice, Freedom and Security, the annual Bosnia and Herzegovina Report of the European Commission and the Expert Report on Rule of Law issues in Bosnia and Herzegovina (so-called Priebe's report) focuses on recommendations for improving the enforcement procedure. All these documents clearly identify the need to relieve the courts of the burden of undisputed claims, i.e. to introduce a model of enforcement procedure in which the enforcement phase of cases will be conducted by professional enforcement agents. Also, the need to revise the legislative framework for enforcement procedure in the Entities and the Brcko District was emphasized, in order to reduce the huge number of pending enforcement cases for the collection of utility bills. These recommendations, we want to emphasize clearly, are not just expert advice and proposals, but the requirement for obtaining the candidate status of Bosnia and Herzegovina or accession to the European Union.

These strategic documents have identified the root cause of the problem, emphasizing the fact that obtaining court decisions on unpaid utility bills serves as a means to justify unsustainable debts of public utility companies, which are largely owned by Entity / cantonal governments and the Brcko District Government.

The essence of the problem is clear, and the message is unequivocal - undisputed claims based on the supply of utilities are not a matter that requires a court decision, and limited resources of courts are spent completely irrationally on conducting enforcement procedures that result in almost no collection of claims.

The efforts of the HJPC BiH over the years to make the enforcement procedure efficient and high quality, and to ensure the right of citizens and legal entities to stand trial within a reasonable time, remain limited due to insufficient and inadequate support from the executive branch.

Without intending to use this opportunity to present all the activities that the HJPC BiH has carried out over the years to address the existing problem, it is necessary to highlight the most important activities that testify to our sincere and continuous commitment:

- The HJPC BiH advocated the reform of the enforcement procedure, i.e. the introduction of a new model of the enforcement procedure in which the enforcement phase of cases will be conducted by professional enforcement agents. The initiative was sent to the competent ministries in 2015. Unfortunately, the readiness of line ministries to initiate and support the proposed reform processes has been lacking;
- A set of necessary amendments to the laws on enforcement procedure of the FBiH and BDBiH has been defined, and an initiative has been launched to consider their adoption, also within the Working Group for Improving Enforcement Procedure. In BDBiH, the amendments entered into force, while in the FBiH they are still in the legislative procedure;
- Through development of the SOKOP system (System for electronic processing of utility cases), the way of court processing of utility cases has been radically changed, in order to make the most efficient use of information technologies. As a result, a significantly higher number of utility cases was processed, and the increasing trend in the number of pending utility cases has now been reversed;
- The position and role of bailiffs has been improved by organizing bailiff trainings in cooperation with judicial and prosecutorial training centres, procuring vehicles for bailiffs in individual courts, enabling the exchange of good practices among bailiffs, as well as drafting and distributing Manuals for Bailiffs and practical examples;
- A system of advertising court auctions in enforcement procedure has been established on the courts' websites, as well as on the judicial portal. In this way, it was easier for the interested parties to inspect the objects of enforcement procedure and it provided conditions for a higher percentage of collection.

- Service of court documents on parties has been improved, thus speeding up enforcement procedure;
- Additional staff was engaged in a number of courts in order to improve the work of enforcement departments, in order to provide preconditions for more efficient work;
- A mobile application for bailiffs has been developed, with the help of which bailiffs in the field have the opportunity to photograph the listed and evaluated movables that are automatically published on the courts' websites, all with the aim of increasing transparency and interest of potential bidders in court auctions;
- The practice of sending notifications to judgement debtors about the debt and the consequences of future enforcement procedures has been established (in a number of courts), in order to encourage voluntary debt settlement;
- The work of the enforcement departments of the courts has been improved and reorganised, with the aim of increasing their effectiveness.

This represents only the framework of activities carried out and initiated by the HJPC BiH, in order to improve the existing system of enforcement procedure. It is very important to emphasize that for all of the above, the HJPC BiH independently, through bilateral cooperation with international donors, but also with the support of the European Union under the pre-accession assistance, provided significant funds, although these are obligations of the executive branch, i.e. the executive branch is required to provide the necessary funds for the adequate, efficient and optimal operations of the justice system.

The direct and decisive engagement of the Entity ministries of justice is necessary to solve numerous problems of the system when it comes to enforcement of court decisions and efficient resolution of utility cases before the courts, and particularly when it comes to enforcement procedure reform and introduction of professional enforcement agents. It is also up to the executive branch to provide the necessary resources to systematically support reforms. The commitment and endeavour of the executive branch to improve things has been lacking all the time.

Given the facts and details that we have tried to summarize in this way, in this open letter we address you with a sincere desire to find together the optimal modalities for improving the existing system.

Further activities should, inter alia, include:

1. **Fulfilment** of recommendations given in the EU strategic documents and establishment of a functional enforcement system in BiH by establishing a service of professional enforcement agents.
2. **Providing** electronic access to information about the judgement debtor and his property to the court, judgement creditors and the service of professional enforcement agents, in order to increase the collection of claims under enforcement procedure.

Since this is a reform process that requires significant time, it is necessary to implement a number of measures under the current legislative framework before the service of professional enforcement agents will be introduced, including:

1. **Improving** the legislative framework as to regulate the work of bailiffs by adopting bylaws that will regulate the status and role of bailiffs, their rights and responsibilities in the procedure;
2. **Providing** financial resources for the engagement of the optimal number of bailiffs and their adequate work as well as material and technical conditions necessary for efficient and quality work of the court on enforcement cases, especially through the reorganization of the work of non-judicial staff and
3. **Improving** the system of training for bailiffs and standardising their work.

We hereby emphasize once again that the judiciary is ready to be an active participant and take the lead in activities within its competence, strongly emphasizing the need for the executive branch to be clear about its readiness to take an active role in this reform process.

We want to believe that this initiative will raise awareness of the importance to address the accumulated problems in the enforcement procedure, which can be solved only by cooperation and mutual respect among the legislative, executive and judicial branches of power.

However, if we do not have sincere interlocutors in this process, we want to clearly and decisively emphasize that the judiciary cannot and will not take responsibility for systemic shortcomings that are beyond our competence, and which significantly affect the exercise of citizens' and businesses' rights.

Sincerely,

Stamp
President of the HJPC BiH
Halil Lagumdžija



Delivered to:

- addressee
- EU Delegation to BiH
- Embassy of Sweden in BiH
- Council of Ministers of BiH
- The Directorate for European Integration
- Ministry of Justice of BiH
- All cantonal governments
- media
- a/a