

Vienna JVI IMF 12 March 2015
Introductory Session: Challenges to Effective Enforcement; the
Italian expert's opinion¹

First of all, the enforcement of civil and commercial claims involves not quite and not only judicial activities, because they generally imply material activities and often the sale of assets and money allocation, that are different than pronouncing a judgment or stating the one, between two parties, who is right and the one who is wrong.

Yet, enforcement is a tool of effectiveness of law system and therefore of the modern democratic State itself, the only one that, if efficient, grants everybody's rights, regardless of class, race, wealth or level of education.

Here are some challenges that, in my humble opinion, Countries have to face in the effective enforcement of civil and commercial claims:

- first challenge: supply an appropriate information system on assets and situations, so as to let everyone have a clear understanding of the financial situation of his counterparty, either when he chooses whom he deals with or when he has no choice but compelling him to fulfill his obligations by enforcing the claim;

- second challenge: try to make enforcement residual and not fitting at once, but only as an absolute last resort, e.g. by introducing specific rules on indirect methods (promoting or facilitating spontaneous debtor's compliance with his obligations), such as French "astreintes" or similar ones;

- third challenge: regain the acceptance of the general public or the public esteem – and among the legal professionals as well (it's often misunderstood ineffectiveness and laziness as protection of the poor debtor, and sometimes even judges acting for a swift and effective procedure have been accused and tried for abuse of power) – about the enforcement itself, that is neither a persecution nor a bullying nor an abuse, but the only way, provided minimum rules are complied with, to ensure effectiveness to the system of each (democratic) State, granting even weaker people's rights;

- fourth challenge: regain the fluidity of the procedures, simplifying and reducing: i) the number of rules, proclaiming just few general principles, such as that the creditor has every right to recover his debt, at the best possible conditions and with as little damage as possible for his counterparty, who anyway cannot take that right into question any more, having just the right to be protected from abuses; ii) the number of agents involved, reducing the role of judge to that of a guarantor of last resort, to be involved only in serious new disputes, but at the same time by expanding the number of agents other than judges and civil servants, with the cooperation of several external private professionals to be delegated, obviously under judge's control and motivated (even economically), well-trained and supervised;

- fifth challenge: adapt the suitability of rules, or anyway adjust them, to the specific market's characteristics and conditions, so as to make enforcement fruitful or successful: e.g. revising the rules on securities (first of all mortgages), mitigating inequality and discrimination between creditors; providing specialized professional institutions that can buy attached assets in return of a proportionate share for the creditors; and so on.

¹ This session will focus on the key challenges faced by countries in the effective enforcement of commercial claims: 9:30-11:00 a.m. Participants will discuss the main challenges they face in effective enforcement of commercial claims and share their experiences in addressing these challenges. Experts will comment on recent developments and any identifiable trends.