

# Contemplating the Future of Extrajudicial Civil Enforcement in Brazil: Drawing Insights from the European Experience

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## Abstract

This article offers a forward-looking examination of extrajudicial civil enforcement in Brazil. It looks into the experiences of several European nations, including Sweden, Finland, Portugal, France, Spain, Italy, and Germany. Following this comparative analysis, the article reflects on the interpretations of extrajudicial civil enforcement in Brazil, with a particular focus on the Bill No. 6,204/2019.

## Keywords

Extrajudicial Civil Enforcement, Enforcement in Europe and Brazil, Bill No. 6,204/2019

## 1. Introduction

Currently, the enforcement process in Brazil, in all its stages and phases, is conducted primarily within the sphere of the Judiciary. This situation produces slowness and inefficiency in enforcement activity, as attested by the Brazilian National Council of Justice itself (Brasil, Brazilian National Council of Justice, 2023: pp. 143-164).

For this reason, the issue of *extrajudicial civil enforcement*, often termed the *dejudicialization of civil enforcement*, is increasingly prominent in the contemporary Brazilian legal landscape. Essentially, it entails exploring the boundaries and potentials of utilizing extrajudicial methods for the compelled satisfaction of debts and obligations or for asset seizure.

As example, on the legislative front, there are bills currently under review in the Brazilian National Congress, seeking to reformulate the enforcement procedure or to enhance the utilization of techniques for the collection and satisfaction of obligations outlined in judicial and extrajudicial executive titles. Among these bills is Bill No. 6,204/2019, authored by Senator Soraya Thronicke, a subject of discussion in this article.

In this perspective, broadening the enforcement procedure to authorize the use of extrajudicial methods, nowadays an unusual reality with a series of limitations, appears as a suitable alternative to unburden the Brazilian judicial system. Mirroring developments observed in numerous European nations could be positive, as intended to be done next.

## 2. Experiences of Some European Countries Regarding Civil Enforcement

### 2.1. Sweden

In Sweden, enforcement procedures are managed and executed by the Swedish Enforcement Authority (*Kronofogdemyndigheten*), an entity overseen by the Ministry of Finance and falling within the Executive Branch (Van Rhee & Uzelac, 2010: p. 48), (Jacobsson, 1997). Operating independently from the Judiciary, this administrative body comprises non-judicial officers (*Kronofogden*) vested with the power to determine asset seizures, conduct investigations into debtors' assets, oblige debtors to disclose asset information, levy fines for asset concealment, and issue verdicts and directives for debt repayment and obligation fulfillment.

Once the enforcement title is established, there is no requirement for any judicial decision to initiate its execution (European Justice, 2024a). Failure to comply with an injunction accompanied by a payment order issued by the *Kronofogdemyndigheten* leads to a verdict mandating debt payment or the fulfillment of obligations, possessing legal authority akin to a judicial ruling.

This implies that the debtor is compelled to either make payment or promptly execute the action outlined in the verdict.

Should the debtor persist in default, the administrative authority itself (*Kronofogden*) is empowered to undertake enforcement measures such as asset seizure and confiscation, along with expropriatory actions like the sale of the debtor's assets. Importantly, no judicial intervention is required for these proceedings (SWEDEN. Kronofogden, 2024).

### 2.2. Finland

In Finland, enforcement is similarly overseen by an administrative entity entirely separate from the Judiciary (Van Rhee & Uzelac, 2010: p. 48; Koulu, 1997: p. 537). There are local enforcement authorities, e.g., the Helsinki Enforcement Authority (*Helsingin ulosottovirasto*), whose jurisdiction for presenting the enforcement title is determined based on the debtor's place of residence.

When the enforcement process commences, the debtor is promptly notified and issued a payment demand. Should the debtor persist in default, the administrative authority will initiate an investigation into the debtor's assets and income, utilizing registration data for determination. Local enforcement agents are authorized to conduct bank inquiries and access pertinent information regarding the debtor's financial and asset status. Additionally, it is their responsibility to seize all types of movable and immovable property and rights belonging to the debtor, as well as proceed with their sale and liquidation.

In this context, the entire processing and handling of enforcement occurs without the intervention of the Judiciary (European Justice, 2024b).

### 2.3. Portugal

In Portugal, a comprehensive reform of the enforcement process was initiated with the enactment of several key legislative acts, including Decree-Law No. 38/2003, Decree-Law No. 226/2008, Law No. 41/2013, and Law No. 32/2014. This reform introduced significant changes. Firstly, it formalized the role of the enforcement agent (*agente de execução*), a legally trained private professional tasked with executing enforcement measures under judicial supervision. Secondly, it established the extrajudicial pre-execution procedure (PEPEX) (*procedimento extrajudicial pré-executivo (PEPEX)*) to streamline bureaucratic tasks, thereby alleviating judges from administrative burdens in the execution process (Rodrigues & Rangel, 2018).

In general, the judicial enforcement process commences within the Judiciary through the submission of an enforcement application. The judge assumes the crucial role of overseeing the validity of the enforcement procedure and engaging in cognitive activities such as adjudicating opposition to enforcement and seizure, as well as addressing complaints and objections filed against acts carried out by enforcement agents (European Justice, 2024c).

Enforcement agents, in their capacity as court assistants, undertake a range of enforcement measures. These include consulting computer records and electronic databases to identify the debtor's seizable assets (as outlined in Article 748° of Law No. 41/2013), serving summonses, notifications, and notices to the debtor, which may include directives to identify assets subject to seizure (as stipulated in Articles 231° and 750° of Law No. 41/2013), executing seizure, registration, and notification procedures concerning the debtor's assets (as prescribed by Article 753° of Law No. 41/2013), and carrying out liquidations and payments as necessary (as articulated in Article 719.1° of Law No. 41/2013).

Hence, there exists a clear delineation of enforcement responsibilities between the court and the enforcement agent. In addition to the judicial enforcement process, Portuguese legislation also provides for the possibility of the extrajudicial pre-execution procedure (PEPEX). This is an optional procedure that proceeds electronically, through which the creditor obtains relevant information within a few days regarding the real possibility of recovering their credit, or cer-

tification of the absence of seizable assets belonging to the debtor, without the need to initiate judicial activity. However, acts of seizure and confiscation of assets are not permissible in PEPEX, as in these cases, it will require their conversion into a judicial enforcement process (European Justice, 2024c).

Therefore, one of the objectives of PEPEX is to obtain, in the extrajudicial sphere, voluntary payment of the debt or the conclusion of an agreement between the creditor and the debtor. Judicial intervention occurs only when there is a conversion of PEPEX into a judicial enforcement process in the event of non-spontaneous settlement, or in the event that the respondent opposes the procedure.

#### 2.4. France

In France, *huissiers de justice* are public agents, licensed and appointed by the Ministry of Justice, who hold a monopoly on the enforcement of judicial decisions and executive titles (European Justice, 2024d). They are ministerial public officials (*officier public ministériel*) entrusted with executing the prerogatives of public authority on behalf of the State (République France, 2024a), (République France, 2024b). Despite fulfilling duties of a public nature and being licensed by the State, *huissiers de justice* are regarded as regulated liberal profession operating in a private environment of free competition (Commissaires De Justice, 2024).

The duties of *huissiers de justice* encompass a range of tasks, including enforcing judicial decisions, mediating agreements, providing factual descriptions in documents, and serving citations, summonses, and legal papers. Their enforcement actions are subject to judicial review. If an action directly pertains to an ongoing judicial proceeding, any challenge must be lodged with the court overseeing the case. Otherwise, challenges are directed to the enforcement judge (*juge de l'exécution*) (République France, 2024a).

#### 2.5. Spain

In Spain, Article 117.3 of the Spanish Constitution confers exclusive authority to judges and courts to exercise judicial power (*potestad jurisdiccional*), which entails adjudicating cases and enforcing judgments (Spain, Government of Spain, 2024).

Similarly, the *Ley de Enjuiciamiento Civil*, when dealing with enforcement (*ejecución*), provides in Articles 545.1 and 551.1 for the competence of the court of first instance to issue the judicial determination containing the general enforcement order (*orden general de ejecución*). Following the magistrate's issuance of the general enforcement order (*orden general de ejecución*), the responsibility shifts to the *Letrado de la Administración de Justicia*, formerly referred to as the *Secretario Judicial*, to issue a decree (*decreto*) detailing the specific enforcement measures to be implemented.

The *Letrados de la Administración de Justicia* are public servants who consti-

tute a Superior Legal Corps (*Cuerpo Superior Jurídico*), characterized by their distinct and national role in facilitating the administration of justice under the jurisdiction of the Ministry of Justice. Endowed with authority, they fulfill their duties by overseeing the judicial secretariat (*Oficina Judicial*) (Spain, Government of Spain, 2024).

Generally, the *Letrado de la Administración de Justicia* oversees the enforcement procedure and adopts relevant enforcement measures, such as issuing payment requests (*requerimiento de pago*), seizing the debtor's assets (*embargo de bienes*), measures to locate and investigate assets (*medidas de localización y averiguación de los bienes*), and imposing blocks on bank accounts (Article 551.3 of the *Ley de Enjuiciamiento Civil*) (Spain, Government of Spain, 2024; European Justice. *Procedimientos de ejecución de una sentencia - España*).

## 2.6. Italy

In Italy, the ordinary courts (*Tribunali ordinari*) have jurisdiction to order the compulsory fulfillment of a certain, liquid, and enforceable obligation contained in an executive title (Article 474 of the *Codice di Procedura Civile*) (European Justice, 2024e).

The execution process is initiated by the issuance of a summons (*precetto*) directed to the debtor for the fulfillment of the obligation, with a warning that, in case of default, forced execution will ensue (Article 480 of the *Codice di Procedura Civile*).

In the Italian legal system, the execution of executive acts is the responsibility of a public official affiliated with the Ministry of Justice. The judicial officer (*ufficiale giudiziario*) responsible for the implementation of executive measures, acting as an assistant to the administration of justice, performs functions such as executing judicial orders, serving summonses, citations, and notifications (Article 59 of the *Codice di Procedura Civile*), conducting seizures (Article 492 of the *Codice di Procedura Civile*), and receiving payments (Article 494 of the *Codice di Procedura Civile*) (Italy, 2024).

## 2.7. Germany

In Germany, the power of compulsory enforcement (*Zwangsvollstreckung*) is attributed to the state. The enforcement procedure depends on judicial authorization from the local court (*Amtsgericht*) of the debtor's residence. The seizure of assets, the implementation of coercive measures on the debtor's property (*Zwangmaßnahmen*), and the forced sale of rights (*Zwangsversteigerung*) are subject to the judge's order.

In the German system, when the enforcement procedure relates to a judicial judgment, it unfolds outside the judicial realm, with the judge intervening solely in the event of a dispute. Conversely, in cases involving extrajudicial titles, the judge assumes a preliminary control function by issuing the enforcement formula, a prerequisite for commencing the enforcement process.

The execution of executive acts is the responsibility of a “judicial officer paid by public funds, although the costs arising from their intervention are borne, ultimately, by the debtor when assets are found, and exceptionally by the creditor in case of unjust execution.” (Freitas, 2001: p. 80) The judicial officer responsible for conducting the enforcement measures (*Gerichtsvollzieher*) operates under the administrative supervision of the presiding judge of the local court.

The *Gerichtsvollzieher* is responsible for the execution of civil judgments according to Book 8 of the German Code of Civil Procedure (*Zivilprozessordnung - ZPO*). Their focus is not only on asset investigation but also on efficiently and effectively concluding the enforcement procedure. Thus, the judicial officer is granted powers and competencies to allow debt installment plans, receive sworn declarations of assets, and execute eviction orders, seizures, and arrest warrants.

The enforcement measures adopted by the judicial officer in the enforcement process can be judicially contested before the competent court by filing an objection (*Erinnerung*) (European Justice, 2024f).

### 3. Reflections on the Future of Extrajudicial Civil Enforcement in Brazil: Considerations on Bill No. 6,204/19

An examination of the European experience reveals diverse approaches to the enforcement procedure: in certain countries, enforcement techniques are primarily administered through administrative channels, without direct Judiciary involvement (e.g., Sweden and Finland); in others, enforcement activities are shared between judges and auxiliary agents of the justice system, who may be affiliated with the State (e.g., Spain, Italy, and Germany), or operate as independent professionals in the private sector, receiving designated compensation for executing enforcement actions (e.g., Portugal and France).

In Brazil, the current procedural system similarly involves the distribution of enforcement responsibilities between judges and judicial officers who serve as assistants to justice (Article 149 of the Brazilian Civil Procedure Code). In the Brazilian context, these judicial officers are public servants affiliated with the Judiciary framework.

It is the responsibility of judges to determine enforcement actions (Article 782 of the Brazilian Civil Procedure Code), such as including the name of the debtor in delinquency registries (Article 782, §4, of the Brazilian Civil Procedure Code), blocking bank accounts and freezing financial assets (Article 854 of the Brazilian Civil Procedure Code), and ordering the issuance of official letters to impose property restrictions on vehicles and real estate.

Moreover, it falls upon the judge, as the public authority, to authorize the utilization of police force for execution enforcement (Articles 782, §2 and 846, §2, of the Brazilian Civil Procedure Code), including entry into residential premises for seizure purposes (Article 846 of the Brazilian Civil Procedure Code). The judge is also responsible for overseeing other enforcement measures such as fine

collection, asset search and seizure, eviction, demolition of structures, and prevention of harmful activities (Article 536, §1, of the Brazilian Civil Procedure Code).

Besides, it is the judge who determines the notification of the debtor for payment of the debt requested by the creditor (Articles 523 and 827 to 830 of the Brazilian Civil Procedure Code), under penalty of issuance of a seizure and assessment order (Articles 523, §3 and 829, §1, of the Brazilian Civil Procedure Code). Moreover, the judicial body also oversees the determination of expropriation acts, including adjudication to the plaintiff, sale to third parties through private initiatives or electronic and face-to-face judicial auctions, and appropriation of fruits, earnings from a company or establishment, and other assets (Article 825 of the Brazilian Civil Procedure Code).

The judicial officer is responsible for executing the enforcement actions determined by the judge (Article 782 of the Brazilian Civil Procedure Code), carrying out measures such as serving summonses and notifications in enforcement proceedings, seizures, arrests, appraisals, and description of assets, and certification of self-composition proposals presented by any of the parties (Articles 154, 829, 830, 836, and 870 of the Brazilian Civil Procedure Code).

On the other hand, Bill No. 6,204/19, ([Brazil, Chamber of Deputies, 2019](#)) authored by Senator Soraya Thronicke, seeks to substantially modify the current landscape of Brazilian executive procedural legislation.

This is because the legislative proposal adds the function of enforcement agent to the court official, granting them competence, among other acts, to verify the regularity of the executive title; examine any occurrence of prescription and expiration; consult databases to locate the debtor and their assets; serve the debtor with a payment summons; carry out seizure and asset assessment; asset expropriation; payment to the creditor; and suspension and termination of the execution (Articles 3 and 4).

According to the legislative proposal, it would be the judge's role to conduct adversarial cognitive activity, by judging the debtor's opposition to execution (Article 18), and resolve doubts raised by the court official, parties, and third parties (Articles 4 and 21).

However, the legislative proposal is not immune to criticism.

One of the questionings is about its compatibility with the broad access to the Judiciary provided for in the Brazilian Constitution (Article 5º, XXXV). The answer to this would be the provision of a choice to seek the extrajudicial civil enforcement, thus, a not mandatory situation.

Furthermore, it is possible to foresee side effects if the enforcement acts are implemented by an agent other than the judge, considering that the compelled satisfaction procedure of debts and obligations can result in asset seizure. To prevent abuse, mitigate harm and ensure respect for fundamental rights, it is recommended that the enforcement agent, with the intervention of the judge, ensure compliance with the "due extrajudicial legal process" ([Hill, 2021: pp.](#)

379-408).

Another usual criticism refers to the question of who is qualified to act as an enforcement agent. To ensure maximum effectiveness to the compelled satisfaction procedure, it is important to assign executive functions to several categories of public officials geared towards enforcement practices (Faria, 2021: pp. 371-391).

Overcome these criticisms, it seems evident that Bill No. 6,204/19 seeks, to some extent, an approximation with some European executive models, reformulating the Brazilian enforcement procedure to allow the performance of executive acts by an agent other than the judge.

#### 4. Final Remarks

Traditionally, the execution of acts outside the judicial domain faces significant opposition in Brazil. Conversely, in several European nations, the implementation of measures for the compelled fulfillment of obligations outside the realm of the Judiciary is firmly established. In this comparative analysis and with an eye toward the future, it's conceivable to anticipate a potential legislative innovation in Brazil, akin to European models, which would permit the implementation of executive measures outside the judicial framework. Given the substantial and structural nature of the proposed changes to the executive system, an extensive debate surrounding the concepts outlined in Bill No. 6,204/2019 is imperative.

#### Conflicts of Interest

The authors declare no conflicts of interest regarding the publication of this paper.

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