



SPI Project:

“Improving Auction Procedures for Immovable Collateral under Foreclosure”

Questionnaire on the difficulties encountered by banks in dealing with bailiff offices

Prepared by
SPI Albania Secretariat

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I. Context

The procedures for the foreclosure of the collateral in Albania are regulated by the Civil Procedure Code, Chapter 3, Art.560-580 “The enforcement on immovable property, ships and airplanes”. The Bailiff Office is in charge with organizing the foreclosure procedures (Art. 527 CPC).

At present, the enforcement on immovable property is very rarely a success. In the World Bank’s Doing Business 2008 Report, Albania is ranked 74th on the Enforcing Contracts section. Despite the fact that there are no statistical data available on how many cases ended with the bidder paying the fixed price in an auction and became the new owner, bailiffs confirm that this number is extremely low¹. It happens very seldom that after the second auction the creditor takes the immovable against the price designated for the second auction. In case the immovable has been appraised by the experts contracted by the Bailiff Offices at a value higher than the debt (even after it was reduced by 20% in the second auction), the creditor has to pay to the debtor the difference between the appraised value and amount of the debt . Due to the ceiling in the fixed assets to total assets ratio, banks have to sell the immovable in a short time and sometimes in unfavorable conditions.

In addition to the above mentioned the successful enactment of the foreclosure procedures related to the bailiff service is hindered also by:

- Undefined time periods for the bailiff to notify the debtor;
- Subjectivity in determining the value of the collateral for the first auction and redefining the value of the collateral for re-auction, in the case that the first auction has failed, as there are no commonly set standards for real estate property valuation;

The above mentioned problems faced by the banks result in increased cost, wasted time in cumbersome procedures and impairment of the value of the collateral. According to EURALIUS 2006 assessment, the bailiff’s officers also criticize the process as they must follow a procedure which is likely to fail and they feel like doing something useless.

The non-execution of the foreclosure has negative ramification in the domestic economy as well, influencing the consumers’ access to loans. Due to the difficult process of recovering a debt, banks might be reluctant in approving some clients’ applications. The financial consequences of the foreclosure procedure for collaterals are reflected in the price of banks’ products and services and thus the ”good” clients are bearing the costs produced by the “bad” clients. In addition to financial effects, the non-execution of a court order influences negatively the image of the state institutions in general and of the legal system in particular.

¹ EURALIUS, Proposal for Improvements of the Civil Procedure Code (EURALIUS Activity 8.5), Part I: Enforcement on immovable assets, 2006.

The Ministry of Justice in close collaboration with EURALIUS has created a memorandum related to the liberalization of the Enforcement Service in Albania and a preliminary action plan on how to make the Enforcement of Ruling successful. The guiding principles of these documents are in line with EU recommendations on enforcement and EU best practices.

SPI Albania is running a project on improving the procedures for the foreclosure of the immovable collateral with three objectives:

1. To undertake analytical activities that would support the enactment of law amendment proposals.
2. **To support the improvement of the Bailiff Office activity.**
3. To improve the quality of the buildings evaluation.

PWG is currently drafting the proposals for amending the Civil Procedure Code which will be subject to consultations with the entire banking community.

PWG composition

Project Owner: Mr. Seyhan Pencapligil, General Director, BKT
Project Manager: Mrs. Veronika Prifti, Legal Department Manager, BKT
Deputy Project Manager: Mrs. Rudina Gorishti, Legal Department Deputy Director, Bank of Albania
Technical Anchor (TAN): Kimmo Vikman (peer reviewer)
Project Working Group Members: Andin Jakova, BNT (member)
Ermanl Dobi, Tirana Bank (member)
Yllka Majko, Tirana Bank (observer)
Altin Hysi, Emporiki, (member)
Arta Taipi , UBA (member)
Rudina Ziu, RZB (member)
Petrit Qarri, MoJ (member)
Odeta Hyseni, EURALIUS, (observer)
Dorina Mehmeti, IFC (member)

II. Purpose of the banking survey

Ministry of Justice, Enforcement Department, is currently working at improving the bailiff service in Albania.

In order to support MoJ efforts and to ensure that the future amendments in the respective legislation will ease the cooperation with this institution, the banking community should signal the difficulties encountered in dealing with the bailiff offices.

III. Procedures to run the banking survey

You are kindly requested to support the clarification of the negative aspects of the bailiff service by answering this questionnaire.

Please send your answers to SPI Secretariat who stands ready to offer you more details.

Your answers will be treated in strict confidentiality. The results of the banking survey will be disclosed only at aggregate level

Please send your answers by xx/xx/xx.

For eventual further clarification needs, please indicate below the contacts of the person who completed the questionnaire:

Name.....

Position.....

Bank.....

Email address:.....

Tel/Fax.....

Thank you for participating in this survey!

IV. Questions

Please tick the appropriate boxes in the “Encountered difficulties” column and provide details in the “Comments” column. Please add other items if you cannot identify them in the table.

No.	Encountered Difficulties	Comments
1.	Assignment of cases	
2.	High fee/tax	
3.	Long internal procedures in the bailiff office	
4.	Lack of uniform application of law in the bailiff offices	
5.	Misconduct	
6.	Quality of service	
7.	Conflict of interest	
8.	Unclear standards during the selection process of the professional experts.	
9.	Low level of professional expertise	
10.	Unclear territorial competence	
11.	Poor cooperation with other state institutions	
12.	Lack of confidentiality	
13.	Lack of proper information management on the files of the debtors	
14.	Unequal treatment of parties	

2. Additional general comments on the bailiff service:
