



SPI Albania Project: Improving auction procedures for immovable collateral under foreclosure

Main Findings of the Survey on Bank's Difficulties in Dealing with the Bailiff Offices

Total members of AAB (no.):	16 banks
Market Share (100%):	100%
Total respondent banks (no.):	15 banks
Respondent ratio:	93.7%
Market share of the respondent banks: (reference indicator: total loans)	99.8%
Size of the respondent banks:	small, medium, large

I. Main Conclusions

The relationship among among banks, debtors and bailif offices is very improtant for the normal evolvement of the enforcement process. Bailiff offices are the crucial contact point in this triangular relation as they should make possible an equal and fair treatment of the parties and their predisposition and effectiveness strongly affect the success of the whole process.

Banks have identified some difficulties that negatively affect the process of enforcement. The difficulties are grouped in two main blocks using two criteria. In the first block the the first block general difficulties are categorises according the origine of the problem: the regulatory framework; to internal organisation of the work; and ethical issues.

A. Categorization of the difficulties according to the origine of the problem.

Difficulties arising due to the ambiguity or incompleteness of the regulatory framework:

- High level of fees and commisions;
- Long internal procedures;

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- Lack of uniformity in the application of the law, due to some vague or missing provisions;
- Lack of criteria for the selection of the professional experts;
- Unequal treatment of the parties;
- Unclear territorial competences;
- Lack of confidentiality.

Difficulties arising due to the internal organisation and human resources management:

- The process of cases assignment to the bailiff officers;
- Quality of service;
- Low level of expertise from the professional experts;
- Lack of proper management of the information on the files of the debtors.

Difficulties arising due to ethical issues:

- Misconduct;
- Conflict of interest.

In the second block, the problems that are generated due to the identified difficulties are categorised according to the importance for a normal process: high importance; medium importance; and low importance. The classification is based on the response rate of the banks.

B. Categorization of the problems according to the importance

i) High importance problems:

The high level of fees and taxes

- The largest part of respondents claims that fees and taxes to be paid are high, especially when the debtor is a legal entity. When the auction is ended with the bank taking possession on the property, the creditor has to bear all the cost related to the process.
- The whole amount of the fee has to be paid by the creditor in the first phase of the process. This term of payment does not create incentives for the bailiff officers to finalize successfully the case by having a third party buying the property.

Long internal procedures in the bailiff office

- There are deficiencies in the legal framework regarding the time limits of most of the steps and procedures to be followed.
 - o The Civil Procedure Code does not define a general time frame of the entire enforcement process.
 - o There are no internal procedures providing time limits to be followed by the bailiff officers.

- In CCP or in any other regulation there are no provisions on the time limits governing the Bailiff offices' interaction with other institutions like the Immovable Property Registration Office, The General Directory of Roads etc.

Non uniform application of law in the bailiff offices

- The application of the law is different from one bailiff officer and/or officer to another; therefore, there is a lack of uniformity in the application of the law. This is noticed to be as a more common issue outside the district of Tirana.
- In different cases, due to the lack of experience or proper education in this field, bailiff officers make incorrect interpretation of the law.

Banks gave examples of non uniform application of the law:

- *The notification of the creditor.* Some of the bailiff offices do not notify the creditor on the status of the procedures, as the case is under the Bailiff's authority and they are accountable only to the law and/or to the Ministry of Justice.
- *The process of file transfer between bailiff offices.* When the debt is secured with collaterals lodged in more than one district, the practices vary in the of the file transfer from one district to another.
- *The auction on movables.* The rules for the auction on the movable property, especially for machinery and technological lines, are not understood and applied in the same manner.

Low quality of service

The quality of services offered by the bailiff in most of the cases is not satisfactory. In banks' opinion this is due to the lack of expertise and their professional inefficiency.

Lack of standards used in the process of professional experts' selection

- In banks' opinion, bailiff officers do not have an objective selection of the appraisers, but based on personal acquaintances or recommendations.
- Bailiff officers have such a power on this phase of the process due to the room created by the legislation - CCP. In the article of CCP related to the appraisal process there are no criteria to be followed for the selection of the experts. The lack of criteria in this regard generates different interpretations and accordingly leaves room for a "personalized" application of the law.
- The lack of uniformity in applying the law in this case can delay the process as parties can object the bailiff officer's actions.

Lack of cooperation with other state institutions

Bailiff Offices' interface with other institutions, important during the execution process, is not as effective and sound as it should be.

Some of the problematic areas are:

- lack of cooperation with the Immovable Property Registry Office.
- lack of state policy availability to assist during the process of freeing the objects and delivering them to the creditor.
- lack of collaboration with the Street Patrol Commissariats / Road Police to freeze the vehicles, in the cases when the bailiff has issued a sequester order on a vehicle.
- lack of collaboration with the office – gjendjes civile – to identify the proper address of the debtors.

Poor management of the information in the debtors' files

In general bailiff officers' efficiency in managing the information from the debtors' files is considered low. Banks claim that:

- The file of the debtor might circulate within the bailiff office to several bailiff officers without notifying the parties.
- Bailiff officer(s) do not use the information collected by the bank(s) to trace the debtor or to trace the debtors' sources of revenues.

Unequal Treatment of parties

Banks claim that in most cases the bailiff officers do not treat equally both parties. They tend to have a more favorable attitude towards the debtors despite the fact that in front of the law both parties are and should be treated equally and fairly.

ii) Medium importance problems:

The process of cases assignment

- In practice the file deposited in the Bailiff office might pass from one bailiff officer to the other, prolonging in this way the process.
- In some cases the work load is not distributed equally among the bailiff officers, resulting with some officers being overloaded.
- Lack of specialization among bailiff officers to deal with typical cases e.g. the collateral enforcement cases.
- The high rate of circulation of the staff working as bailiff officers creates confusion.

Ethic of conduct / Misconduct

The level of ethic of conduct of the bailiff officers is satisfactory. In general, misconduct is a sporadic phenomenon and is a common problem only for those bailiff officers without a proper level of expertise.

Level of professional expertise

The real estate appraisal experts are licensed by the Ministry of Public Affairs Transport and Telecommunication. In general the level of expertise is satisfactory. Anyhow in practice there have been cases of incompetence or cases of overpricing the appraising service

- the level of prices does not correspond (in some cases are significantly higher) to the commitment showed and the quality of the appraisal process.

Confidentiality

In general the confidentiality of the information is adequately preserved by the bailiff officers. Anyhow there are a few cases when the sale of the collateral in the auctions is corrupted due to the infringement of the confidentiality by the bailiff officer. In these cases the law and law enforcement has been very tolerant with the bailiff officers that have displayed such attitude.

iii) Low importance problems:

Conflict of interest

The law “On organizing the activity of the Bailiff Service”, no. 8730 date 18.01.2001 deals with the phenomenon of “conflict of interest” and according to the banks’ opinion this is not a problematic issue in the bailiff service. There are only rare occasions of politicians’ interventions (when large enterprises are involved in the execution process).

Territorial competences

In general banks consider that the territorial competences of the Bailiff Offices are correctly established in the legal framework and correctly applied by the bailiff officers. Anyhow in the cases that the debtor resides in one district while the movable properties are located in another district the territorial competences are considered as unclear. The Bailiff Offices have no clear rules on the competence in this case, and this could generate conflicts between offices or refusal to handle a request for executions as being outside a Bailiff Office territorial competences.

C. Summary of the recommendations

i) General recommendations:

- To apply correctly the spirit of the law and treat equally and fairly all parties involved in the execution process.
- To organize workshops with experts in the field of law enforcement in order to agree on common interpretations on primary and secondary law provisions.
- To organize long-term training seminars for the bailiff officers to enhance their level of professional expertise.
- To amend the legislative framework that regulates the enforcement process; in the primary legislation and in secondary legislation, with aim to define more correctly the procedures and the general time line of the process.
- To improve the human resources management, with special attention to the process of recruitment, motivation and reward.
- To formulate a Code of conduct for the bailiff officers.

ii) Recommendations on specific issues:

On the process of assignment of cases: The management team of each Bailiff Office might reorganize the process of assignment of cases and might specialize a certain number of bailiff officers in the cases related to the enforcements of orders on collateral execution or other orders related to the banking activity.

On the level of fees and taxes: To establish a fee proportional to the claimed amount, but preferably with an up limit.

- To set terms of payment. An option might be: 50% of the sum at the beginning of the process and 50% to be paid out of the proceedings from the collateral sale.
- The paid fees and taxes should be administrated by the respective Bailiff's offices in order to be more stimulated and effective in the Enforcement performance.

Conflict of interest: To follow strictly the provision of the law and the code of ethics.

- To work for building a strong professional and good reputation profile of the bailiff officers.

The standards used in the process of professional experts' selection: To set criteria and to regulate the selection process more adequately in the Code or in secondary legislation.

Some of the aspect under consideration might be:

- o To set professional criteria;
- o To set ethical criteria;
- o To select the experts randomly (each bailiff office can compile a list of the experts in the district and randomly (through lots) can select the expert of the case) and,
- o To rank the experts according to their performance based on the assessment of the debtors and creditors / the parties involved on the execution process.

Level of professional expertise: A more transparent and fair selection process of the appraisal experts might increase competition among the experts and, as a result, it might improve the quality and eliminate some of the problems identified.

Cooperation with other state institutions: To identify possible routes to enhance the collaboration among the institutions, such as a Memorandum of Understanding;

- To raise other institutions' awareness on the importance of their collaboration on law enforcement.
- To set in the law more strictly the cooperation framework of the involved institutions and penalties in cases of negligence.
- To define time frame for the Bailiff Offices' interactions with other institutions, whose contribution on the process is crucial.

Confidentiality: The internal control structures and supervisors to have a stronger attitude toward the bailiff officers who disservice the parties for personal advantage or due to their incompetence.

Management of the information in the debtors' files: The Bailiff Office's directory might put more pressure on the bailiff officers to take advantage and use the information already collected by the banks.

II. Detailed analysis of the identified difficulties

1. The process of cases assignment

i) Identified Problems:

- In practice the file deposited in the Bailiff office might pass from one bailiff officer to the other, prolonging in this way the process.
- In some cases the work load is not distributed equally among the bailiff officers, resulting with some officers being overloaded.
- Lack of specialization among bailiff officers to deal with typical cases e.g. the collateral enforcement cases.
- The high rate of circulation of the staff working as bailiff officers creates confusion.

ii) Response rate

	Number	Share (%)
Total respondents	5	36
Identified problem(s)	3	60
No problems	2	40

iii) Recommendation

- The banking activity is expanding rapidly and taking into account the fast developments in the credit activity, the management team of each Bailiff Office might reorganize the process of assignment of cases and might specialize a certain number of bailiff officers in the cases related to the enforcements of orders on collateral execution or other orders related to the banking activity.

2. The level of fees and taxes

i) Identified Problems

- The largest part of respondents claims that fees and taxes to be paid are high, especially when the debtor is a legal entity. When the auction is ended with the bank taking possession on the property, the creditor has to bear all the cost related to the process.
- The whole amount of the fee has to be paid by the creditor in the first phase of the process. This term of payment does not create incentives for the bailiff officers to finalize successfully the case by having a third party buying the property.

ii) Response rate

	Number	Share (%)
Total respondents	11	79

Identified problem(s)	8	73
No problems	2	18
No comment	1	9

iii) Recommendations

- The fee has to be proportionate with the claimed amount, but preferably with an up limit.
- The terms of payment might be: 50% of the sum at the beginning of the process and 50% to be paid out of the proceedings from the collateral sale.
- The paid fees and taxes should be administrated by the respective Bailiff's offices in order to be more stimulated and effective in the Enforcement performance.

3. Internal procedures in the bailiff office

i) Identified Problems

- There are deficiencies in the legal framework regarding the time limits of most of the steps and procedures to be followed.
 - o The Civil Procedure Code does not define a general time frame of the entire enforcement process.
 - o The gaps in the CCP are not properly covered by secondary legislation.
 - o In CCP or in any other regulation there are no provisions on the time limits governing the Bailiff offices' interaction with other institutions like the Immovable Property Registration Office, The General Directory of Roads etc.

ii) Response rate

	Number	Share (%)
Total respondents	10	71
Identified problem(s)	8	80
No problems	2	20

iii) Recommendations

- To establish a broad time frame of the enforcement process in CCP.
- To formulate a regulation on the internal procedures to be followed by the bailiffs.
- To define time frame for the Bailiff Offices' interactions with other institutions, whose contribution on the process is crucial.

4. Application of law in the bailiff offices

i) Identified Problems

- The application of the law is different from one bailiff office and/or officer to another; therefore, there is a lack of uniformity in the application of the law. This is noticed to be as a more common issue outside the district of Tirana.
- In different cases, due to the lack of experience or proper education in this field, bailiff officers have incorrect interpretation of the law.

Banks gave examples of non uniform application of the law:

- o *The notification of the creditor.* Some of the bailiff offices do not notify the creditor on the status of the procedures, as the case is under the Bailiff's authority and they are accountable only to the law and/or to the Ministry of Justice.
- o *The process of file transfer between bailiff offices.* When the debt is secured with collaterals lodged in more than one district, the practices vary in the of the file transfer from one district to another.
- o *The auction on movables.* The rules for the auction on the movable property, especially for machinery and technological lines, are not understood and applied in the same manner.

ii) Response rate

	Number	Share (%)
Total respondents	11	79
Identified problem(s)	10	91
No problems	1	9

iii) Recommendation

- To organize training seminars for the bailiff officers to gain a common understanding of law and regulations provisions to achieve unified and standardized application of law. A special attention should be paid to the regional district bailiff's offices because of the procedural differences from those of Tirana district court.

5. Ethic of conduct / Misconduct

i) Identified Problem

The level of ethic of conduct of the bailiff officers is satisfactory. In general, misconduct is a sporadic phenomenon and is a common problem only for those bailiff officers without a proper level of expertise.

ii) Response rate

	Number	Share (%)
Total respondents	10	71
Identified problem(s)	6	60
No problems	4	40

iii) Recommendations

- To improve the human resources management.
- To increase the level of expertise through training seminars.
- To formulate a Code of conduct for the bailiff officers.

6. Quality of service

i) Identified Problem

- The quality of services offered by the bailiff in most of the cases is not satisfactory. In banks' opinion this is due to the lack of expertise and their professional inefficiency.

ii) Response rate

	Number	Share (%)
Total respondents	11	79
Identified problem(s)	9	82
No problems	2	18

iii) Recommendations

- To improve the recruitment procedures of the bailiffs, to impose more professional criteria.
- To organize long-term training seminars.

7. Conflict of interest

i) Identified Problem

The law "On organizing the activity of the Bailiff Service", no. 8730 date 18.01.2001 deals with the phenomenon of "conflict of interest" and according to the banks' opinion this is not a problematic issue in the bailiff service. There are only rare occasions of politicians' interventions (when large enterprises are involved in the execution process).

ii) Response rate

	Number	Share (%)
Total respondents	6	43
Identified problem(s)	1	17
No problems	5	83

iii) Recommendations

- To follow strictly the provision of the law and the code of ethics.
- To work for building a strong professional and good reputation profile of the bailiff officers.

8. The standards used in the process of professional experts selection

i) Identified Problems

- In banks' opinion, bailiff officers do not have an objective selection of the appraisers, but based on personal acquaintances or recommendations.
- Bailiff officers have such a power on this phase of the process due to the room created by the legislation - CCP. In the article of CCP related to the appraisal process there are no criteria to be followed for the selection of the experts. The lack of criteria in this regard generates different interpretations and accordingly leaves room for a "personalized" application of the law.
- The lack of uniformity in applying the law in this case can delay the process as judges can object the bailiff officer's actions –

ii) Response rate

	Number	Share (%)
Total respondents	9	64
Identified problem(s)	7	78
No problems	2	22

iii) Recommendations

- To set criteria and to regulate the selection process more adequately in the Code or in secondary legislation. Some of the aspect under consideration might be:
 - o To set professional criteria;
 - o To set ethical criteria;
 - o To select the experts randomly (each bailiff office can compile a list of the experts in the district and randomly (through lots) can select the expert of the case) and,
 - o To rank the experts according to their performance based on the assessment of the debtors and creditors / the parties involved on the execution process.

9. Level of professional expertise

i) Identified Problem

- The real estate appraisal experts are licensed by the Ministry of Public Affairs Transport and Telecommunication. In general the level of expertise is satisfactory. Anyhow in practice there have been cases of incompetence or cases of overpricing the appraising service - the level of prices does not correspond (in some cases are significantly higher) to the commitment showed and the quality of the appraisal process.

ii) Response rate

	Number	Share (%)
Total respondents	10	71
Identified problem(s)	5	50
Occasional /No problems	5	50

iii) Recommendation

- A more transparent and fair selection process of the appraisal experts might increase competition among the experts and, as a result, it might improve the quality and eliminate some of the problems identified.

10. Territorial competences

i) Identified Problem

In general banks consider that the territorial competences of the Bailiff Offices are correctly established in the legal framework and correctly applied by the bailiff officers. Anyhow in the cases that the debtor resides in one district while the movable properties are located in another district the territorial competences are considered as unclear. The Bailiff Offices have no clear rules on the competence in this case, and this could generate conflicts between offices or refusal to handle a request for executions as being outside a Bailiff Office territorial competences.

ii) Response rate

	Number	Share (%)
Total respondents	6	43
Identified problem(s)	1	17
No problems	5	83

iii) Recommendations

- To revise the regulations or MoJ/General Directory of Enforcement to make interpretations on the ambiguous provisions.
- To organize training seminars.

11. Cooperation with other state institutions

i) Identified Problems

Bailiff Offices' interface with other institutions, important during the execution process, is not as effective and sound as it should be.

Some of the problematic areas are:

- lack of cooperation with the Immovable Property Registry Office.
- lack of state policy availability to assist during the process of freeing the objects and delivering them to the creditor.
- lack of collaboration with the Street Patrol Commissariats (Road Police) to freeze the vehicles, in the cases when the bailiff has issued a sequester order on a vehicle.
- lack of collaboration with the office – civil status – to identify the proper address of the debtors.

ii) Response rate

	Number	Share (%)
Total respondents	11	79

Identified problem(s)	10	91
No problems	1	9

iii) Recommendations

- To identify possible routes to enhance the collaboration among the institutions, such as a Memorandum of Understanding;
- To raise other institutions' awareness on the importance of their collaboration on law enforcement.
- To set in the law more strictly the cooperation framework of the involved institutions and penalties in cases of negligence.

12. Confidentiality

i) Identified Problem

In general the confidentiality of the information is adequately preserved by the bailiff officers. Anyhow there are a few cases when the sale of the collateral in the auctions is corrupted due to the infringement of the confidentiality by the bailiff officer. In these cases the law and law enforcement has been very tolerant with the bailiff officers that have displayed such attitude.

ii) Response rate

	Number	Share (%)
Total respondents	7	50
Identified problem(s)	2	29
No problems	5	71

iii) Recommendation

- The internal control structures and supervisors to have a stronger attitude toward the bailiff officers who disservice the parties for personal advantage or due to their incompetence.

13. Management of the information in the debtors' files

i) Identified Problems

In general bailiff officers' efficiency in managing the information from the debtors' files is considered low. Banks claim that:

- The file of the debtor might circulate within the bailiff office to several bailiff officers without notifying the parties.
- Bailiff officer(s) do not use the information collected by the bank(s) to trace the debtor or to trace the debtors' sources of revenues.

ii) Response rate

	Number	Share (%)
Total respondents	8	57
Identified problem(s)	7	88
No problems	1	12

- To reorganize the work through specialization of bailiff officers in typical cases.
- The Bailiff Office's director might put more pressure on the bailiff officers to take advantage and use the information already collected by the banks.

14. Treatment of parties

i) Identified Problem

Banks claim that in most cases the bailiff officers do not treat equally both parties. They tend to have a more favorable attitude towards the debtors despite the fact that in front of the law both parties are and should be treated equally and fairly.

ii) Response rate

	Number	Share (%)
Total respondents	8	57
Identified problem(s)	6	75
No problems	2	25

- To apply correctly the spirit of the law and treat equally and fairly all parties involved in the execution process.