



## **Atelier 1 - Une justice équitable et efficace : le développement économique mondial équitable, un droit pour tous les justiciables**

Panel 1 - Justice et exécution équitable et efficace

### **Workshop 1 – Fair and Efficient Justice: an Equitable Global Economic Development, a Right for Every Justiciable**

Panel 1 – Fair and Efficient Justice and Enforcement

## **Debtor in Estonian Enforcement Proceedings and Options for Debt Rescheduling**

### **Elin Vilippus**

*Judicial Officer and Trustee in Bankruptcy  
Estonia*

In Estonia, enforcement proceedings are carried out by freelance bailiffs, whose fee generally depends on the success of the enforcement proceedings. The state pays no support to bailiffs, which is why the success of a bailiff's management of their office depends on how many claims are successfully satisfied and how efficiently enforcement proceedings are carried out. It's certainly important how active a bailiff is and how many and which measures they employ, but the importance of the debtor's financial status can also not be underestimated. It's clear that satisfying a claim is considerably more difficult if the debtor has no assets, among other reasons for the fact that there are basically no tools that can be used to motivate the debtor to fulfil the claim.

Enforcement proceedings were carried out in Estonia in respect of 115,021 natural persons and 13,242 legal entities as at the end of 2014. This means that ca 9% of Estonian population are involved in executive proceedings. 26,389 enforcement files were being processed in my office as at the end of the previous year. 15,729 of the debtors were natural persons and 1097 were legal entities.

In this presentation, I will introduce to you the statistics collected in the course of my office's practice and paint you a picture of the average debtor. I will also speak briefly about the options of a debtor living in Estonia to reschedule their debt.

Based on the enforcement cases that I have processed, I can say that the average debtor in Estonia is a man aged 31-40. At the end of last year, as many as 70.65% of debtors were men and only 29.35% were women. The representatives of both sexes were the most numerous in the 31-40 age group. They were followed by persons aged 21-30 and then 41-50. We also carry out enforcement proceedings in respect of minors and seniors - the law establishes no age limitations. There have been cases in my office where the debtor was a child under the age of five.

The majority of debtors (ca 67%) don't work or have no income. Withholding can be applied to working debtors in just 16% of all cases, as the wages of the remaining debtors don't exceed the minimum means of subsistence that cannot be seized.



The financial status of debtors is not good as a rule. Only 2030 of all of the debtors whose cases were processed as at the end of last year had at least one property (this means ca 12% of debtors). 821 or ca 5% of debtors had at least one vehicle with a valid inspection certificate. Although considerably more vehicles are registered in the name of debtors, the majority of them (ca 75%) have invalid inspection certificates that expired in 2013 or even earlier. Older models that were built from 1998-2003 dominate among vehicles with valid inspection certificates. Only 2% of the vehicles were built later than in 2009.

In order to carry out enforcement proceedings successfully, I also seize other property of debtors, such as holdings in companies, securities, immovable not entered in the register, rights of claim and other assets that may be valuable.

Approximately 13% of debtors have holdings in companies and although the sale of a company at a compulsory auction may not always be successful, it is necessary and successful for the purpose of motivating the debtor. The debtor often wants to prevent the sale of the company that belongs to them and therefore finds the necessary funds to pay off the claim.

Ships have been seized in my practice, but it's rare. The share of small vessel owners among debtors is small - just 0.3%.

All in all, I can say that ca 45% of debtors have no income or registered property, which means that their debts cannot generally be collected by seizing their property. 7.5% of debtors who have no income own a property and ca 3% own a vehicle.

What makes this situation even more sad and complicated is that, as a rule, debtors have more than one pending enforcement procedure against them. Approximately 38% of debtors have two to five pending enforcement cases and ca 10% have 21 or more pending proceedings. The enforcement cases of ca 35% of debtors are processed by three to five bailiffs at the same time. The biggest number of debtors whose cases I was processing as at the end of last year were people whose debts ranged from 5 to 10,000 euros.

It's clear that getting to a debtor who has no registered property is difficult. The property of debtors who have any can be seized and sold, but a different approach has to be used with debtors who have no property and they must be motivated to pay the debt in another manner. In my next presentation, I will tell you about the developments in Estonian law aimed at making this process more effective. Right now, I have just enough time left to give you a brief introduction of the options of debtors living in Estonia to reschedule their debts in the situation where the case has already been referred to a bailiff.

Similar to most European countries, bailiffs in Estonia have to apply all measures to execute enforcement documents. The debtor's accounts, income and property must all be seized and as a rule, the enforcement proceedings end when the debt is paid. Enforcement proceedings restrict a person's rights significantly and can make their life rather uncomfortable. For example, some banks don't allow a person whose current account has been seized to use online banking, i.e. to make payments via the internet bank. Some banks also don't allow such people to use ATMs and debtors have to go to a branch during opening hours to withdraw cash.

This means that in a situation, where the claim has been given to a bailiff to process and the bailiff has started taking measures to execute the enforcement document, many a debtor may arrive at the



understanding that agreeing on the repayment of the debt might actually be the best thing to do. I must admit that in Estonia, the options for rescheduling debts in this stage are rather limited.

The bailiff as the organiser of the enforcement proceedings doesn't have the right to make a decision independently in this issue and he or she must proceed from the resolution written in the enforcement document. If the court order provides for rescheduling, the bailiff cannot meet the debtor halfway and prepare a payment schedule for the debtor even if this would be the most reasonable solution considering the financial status of the debtor.

The debtor must apply for debt rescheduling themselves and they have two options for doing this. Firstly, they may try to make an agreement with the claimant. Secondly, they have the right to file a petition for debt rescheduling with a court.

Making an agreement with the claimant actually means that the claimant can decide whether and on what conditions they will agree with the debtor's request. Since the bailiff has no right to influence the claimant's decision, the claimant can basically set the conditions of debt rescheduling for the debtor and demand their fulfilment. It's true that claimants often ask bailiffs for their opinion on the debtor's financial status and they also take account of the bailiff's advice when they make their decisions. After all, the claimant also wants their claim to be satisfied and demanding that the debtor pay the entire debt at once may not always be reasonable. This is a place for thought, where the final decision is made by the creditor.

If the conditions set by the claimant are not suitable for the debtor, they can go to court and request debt rescheduling. This option is prescribed for in § 45 of the Code of Enforcement Procedure (CEP) for cases where continuing the proceedings is unfair towards the debtor. When the court makes its decision, it must take into account the interests of the claimant and other facts, such as the family and financial status of the debtor. The results of resolving a petition are individual and depend on the debtor's person and their financial status. The provision does not obligate anyone to give the debtor more time to execute the claim or grant the debtor the right to demand rescheduling of enforcement proceedings. Debt rescheduling is a discretionary decision made by the court, whereby the court has to consider, in each case, whether or not there is any basis for rescheduling the debt. In order to request debt rescheduling, the debtor him- or herself must be active, go to court and justify their petition. The debtor must explain to the court the special circumstances that justify preferring the debtor to the claimant and giving the debtor extra time to pay the debt.

It is worth mentioning that § 45 of the CEP is an exceptional clause in Estonian law that must be interpreted in a restricting manner. In general, every debtor can claim that enforcement proceedings are unfair to them, because their property is being seized and sold. This means that only exceptional circumstances justify the implementation of § 45 of the CEP. Just losing one's home, which may happen in executing proceedings, is usually not such a circumstance. If there is the threat that a debtor may lose their home, the enforcement proceedings may be suspended or rescheduled if, for example, the debtor has small children, is seriously ill, at a very advanced age or if there are other similar circumstances and the debtor needs time to find a new home. Enforcement proceedings cannot be suspended or rescheduled for too long considering the exceptional nature of § 45 of the CEP. In general, debts can be rescheduled for months, not years.

In practice, Estonian courts have rarely considered it right to reschedule a debt on the basis of § 45 and as a rule, the relevant petitions of debts are rejected. As I already explained, this is an exceptional provision and its implementation calls for special circumstances. The court has to



consider the interests and rights of both the debtor and the claimant when a debt is rescheduled. It must be kept in mind that it's important to achieve optimal balance between two competing fundamental rights in enforcement proceedings - the creditor's right to efficient litigation and the debtor's right to efficient legal protection. This is why a court also has to consider the claimant's interests and financial situation in addition to the debtor's financial status and health. For example, there are cases where the court has decided that in a situation where both the debtor and the claimant are pensioners, both are on a very small income and the only home of the debtor (flat) is up for sale, then rescheduling and suspending the enforcement proceedings on the basis of § 45 of the CEP would not be justified if the claimant has been waiting for the execution of the claim for many years. The court has decided that the claimant's right to efficient satisfaction of their claim and the fact that the financial status of the retired claimant is not easy are the circumstances that must be taken into account.

It's clear that choosing to reschedule a debt may be a complicated and responsible decision, which will have an impact on both the claimant's and the debtor's future. Since bailiffs don't have the competency to administer justice in Estonia, then a bailiff is also unable to make an independent decision about debt rescheduling. This calls for consideration of circumstances covered by substantive law, which bailiffs in Estonia are not competent to do.

In conclusion, it can be said that if a debtor wants to reschedule a debt, the best thing for them to do is try to reach an agreement with the claimant, because the debtor's options of debt rescheduling are probably even smaller if they request this from a court. In Estonia, we've proceeded from the assumption that a debtor must make every reasonable effort to perform their obligation. This may be the reason behind the understanding that as a rule, debt rescheduling can only be justified in exceptional cases.

However, if a debtor still finds that they're unable to perform their obligations and their insolvency is not temporary, the debtor must go to court as required under the Bankruptcy Act and request the declaration of their bankruptcy.