



Atelier 2 - Le rôle de l'agent d'exécution mondial pour favoriser le développement économique

Panel 1 - Services juridiques en interne et en matière transfrontalière

Workshop 2 – The Role of the Global Enforcement Agent as an Answer on Economic Development

Panel 1 – Domestic and Cross Border Legal Services

Developments in Estonian Legislation of Enforcement Proceedings

Elin Vilippus

Judicial Officer and Trustee in Bankruptcy

Estonia

Statistics from the end of the previous year indicate that 45% of debtors in Estonia had no income or property. Since the enforcement proceedings carried out in respect of such debtors generally end in failure, the legislator in Estonia adopted a legal amendment that should make the enforcement proceedings in respect of debtors without any assets more effective and successful. The amendment is initially only aimed at persons who owe child maintenance.

In my presentation, I will speak about the major changes that will shortly be made in the area of enforcement proceedings in Estonia. I will talk about the stricter approach to the collection of maintenance and the changes in the fees of bailiffs.

The problems related to the payment of child maintenance have become increasingly more serious in Estonia in recent years, as there are 36,000 single parent households in Estonia and every fourth child is being raised by a single parent. Two-thirds of them grow up in poverty and the large number of maintenance debtors contributes to this. Enforcement proceedings have been initiated in over 12,000 maintenance claims and the total debt resulting from them exceeds 10 million euros. The number of processed maintenance claims has increased almost tenfold since 2006 and the total amount of the processed claims has increased ca 30 times in the same period.

As a result of this, the state of Estonia wanted to establish strong enforcement by the state in respect of the people who evade their obligation to pay child maintenance. In order to do this, a legal amendment was passed in the beginning of this year and this amendment should make the collection of maintenance more efficient also in respect of the debtors who have no official income and registered property.

One of the biggest changes in the Act that will enter into force in March 2016 is the right of a court to suspend the debtor's hunting right, the right to drive a motor vehicle or to operate a small ship or jet ski, and their fishing card, weapons permit and the permit to acquire a weapon in cases that the debtor fails to pay maintenance without good reason. 619,157 people or ca 50% of the population of Estonia have the right to drive, which suggests that suspension of the right to drive would affect a large number of maintenance debtors.

The purpose of the reform is to deprive the debtor of the possibility to enjoy the benefits that they like and that are accessible to them. For example, bailiffs are not allowed to seize vehicles belonging



to third parties in situations where the debtor does not own a vehicle. Yet it's highly likely that the debtor uses a friend's or relative's vehicle on a daily basis. The statistics of my office suggest that ca 7% of debtors have been entered in the register as the authorised user of a vehicle. The right and possibility of many people to use a vehicle may not be recorded in a register at all. The legal amendment will allow the court to decide on the suspension of the right to drive, which theoretically should deprive the debtor of the possibility to use a vehicle (i.e. the relevant benefit). The same also applies to weapons permits and fishing cards.

The idea to suspend the rights of maintenance debtors and to prohibit granting rights to them comes from other countries. For example, suspension of the right to drive has been used to discipline maintenance debtors in the United States, Canada, the Czech Republic and Slovakia. In Australia, maintenance debtors are not allowed to leave the country.

In the United States, all states are obliged to establish proceedings that make it possible to suspend or restrict the right to drive, professional and occupational licences, and hobby and sporting licences of child maintenance debtors after they have been cautioned about the suspension or restriction of the relevant right. The practice over there has demonstrated that restriction of rights is effective for establishing communication with the maintenance debtors who have otherwise avoided any contact with maintenance collection authorities. The experience of Washington also demonstrates the success of the measure. A comparison of the success of maintenance collection six months before and six months after the implementation of the measure of suspending the right to drive was compared there. The study indicated that 300% more money was collected in the case of maintenance claims where suspension of the right to drive was implemented as a measure.

The practices of other countries have also proven that suspension of the right to drive is an effective measure, especially in the case of debtors who run their own companies, are freelancers or hold other non-typical positions on the labour market. Since it's difficult for the state to ascertain how much such debtors earn, then the implementation of usual enforcement measures, such as seizure of salaries, bank accounts and other assets, is usually unsuccessful. Suspension of the right to drive or the warning that this may be done have managed to make such debtors pay maintenance.

The biggest difference between Estonia and other countries is that the right to restrict a debtor's rights has been given to courts, not to bailiffs. The reason why this right was not given to bailiffs was to guarantee better protection of the debtor's rights. The courts as the only administrators of justice can decide on the implementation of such measures.

Adding other rights to the list, such as various licences and activity permits, was initially considered in Estonia as well. However, when the licences and activity permits issued by the state were studied, it was found that they are mostly needed and applied for by legal entities and adding them to the list would therefore not produce any results in terms of maintenance collection. Adding the aviation licence was also considered, but an analysis revealed that the setting of additional conditions to the receipt or holding of an aviation licence by a Member State does not comply with European Union law.

The legal amendment will enter into force in Estonia in March 2016. The court will suspend the rights and licences of a debtor on the basis of a bailiff's petition. A precondition to the submission of a petition to a court is that the bailiff has cautioned the debtor and the debtor has still failed to perform their obligation. The debtor can avoid restriction of their rights if they start paying maintenance, agree on a maintenance payment schedule with the claimant or justify why the



suspension of the right or licence or refusal to grant them would be unfair to them. The legislator finds that it's unfair if the suspension of rights or refusal to grant rights would be a serious obstacle to the subsistence of the debtor and the persons dependent on the debtor.

In addition to this, the legal amendment assigns bailiffs the obligation to maintain regular contact with the debtor in order to discipline them and collect the maintenance and to ascertain why the debtor does not perform the obligation to maintain their child, what the income of the debtor is like and how they intend to settle their maintenance debt. The bailiff is also required to search the premises and land in the debtor's possession more regularly to find assets that can be seized and sell them if other enforcement actions have not allowed to collect the maintenance for a long time.

The legal amendment also gives bailiffs the right to seize amounts paid to third parties if they exceed the minimum not subject to seizure. For example, when it becomes evident that a third party is paying the debtor's obligations (e.g. bank loan, rent, lease), the bailiff has the right to seize the amounts for covering the maintenance debt.

Other acts will also be amended to make the execution of maintenance claims more effective. The limitation term of maintenance claims will also be increased from three to ten years.

In addition to the problems related to the satisfaction of maintenance claims, the size of the fees payable to bailiffs has also been in the spotlight in Estonia. Namely, it has been found that the bailiff's fee is sometimes disproportionately large, which is unfair to both the debtors who as a rule have to pay the bailiff's fee as well as the claimants, whose claims are therefore satisfied to a smaller extent. The bailiff's fee has been dependent on the size of the collected amounts in Estonia since 2001. It generally doesn't matter whether collecting the debt was easy or difficult, or which measures and how many the bailiff had to apply to collect the debt. The valid procedure is therefore built on cross-subsidising, as bailiffs also finance the costs of failed proceedings on the account of successful ones. A bailiff's fee consists of three components - the fee for initiation of enforcement proceedings, the main fee of the bailiff and the additional fee for certain enforcement actions. The fee for initiation of enforcement procedure is always a definite amount irrespective of the circumstances and the amount of the bailiff's main fee depends on the size of the amount to be collected. The purpose of such a regulation was to motivate bailiffs to collect debts quickly and efficiently, and to make being in debt expensive and therefore undesirable for people. The state pays no support to bailiffs and the latter must therefore be able to manage by themselves.

However, the legislator in Estonia has now come to the conclusion that this system allows bailiffs to earn a disproportionately large income and it's therefore time to change the fee system again. Unlike the reform of 2006, the legislator's objective this time is to make the enforcement proceedings less costly for the debtor and to motivate debtors to execute claims during the period of voluntary execution.

The minimal period of voluntary execution is extended from 10 to 30 days and it will be stipulated that if the debtor pays the debt during this time, they only have to pay the fee for initiation of the enforcement proceedings. According to the former regulation, the debtor would've had to pay the fee for initiation of the enforcement proceedings and half of the bailiff's main fee, which is why the new regulation will be more favourable for the debtor. Execution of claims during the voluntary execution has so far been rather low in Estonia (ca 10% of claims) and the reform is aimed at promoting voluntary payment of debts.



In the future, the fee for initiation of enforcement proceedings will depend on the size of the collected amount and the correctness of the debtor's address or contact details in the Population Register. If a person's address in the Population Register is correct, then the bailiff's fee for delivering the enforcement notice to them is two times smaller than the fee charged in cases where the details are incorrect or missing altogether. According to the legal amendment, the fee for initiation of enforcement proceedings is 15 euros in the case of non-proprietary claims; 15 euros in the case of claims of up to 51 euros; 30 euros in the case of claims from 51-5,000 euros and 60 euros in the case of claims that exceed 5,000 euros. If the address given in the Population Register proves to be incorrect, the fee the debtor has to pay for initiation of enforcement proceedings is doubled.

The decision to go with such a regulation was made because delivering documents to the debtor is often the most problematic and expensive part of enforcement proceedings. The data of debtors in the Population Register are often incorrect or missing altogether, and the bailiff has to spend a lot of time and money to deliver the documents. Bailiffs are also familiar with the situation where a person refuses to accept the documents after they've been located or literally runs away from the bailiff. This is why the fee for initiation of enforcement proceedings (19.16 euros) has generally not covered the expenses incurred in order to deliver the enforcement notice to the debtor.

The amendment that should make the enforcement proceedings cheaper for the debtor concerns the seizure of accounts and the situation where the claim is fully satisfied as a result of this. Namely, the debtor is given the opportunity to avoid the high main fee of the bailiff if the bailiff can collect the entire debt in one go by seizing the bank account electronically. If the funds in the debtor's account at the moment of seizure are enough to cover the debt and the entire claim is satisfied with this one action, the amount added to the initiation fee for the debtor is just 16 euros.

The legal amendment will also reduce the amount of the additional fees of bailiffs and set a limit to the bailiff's fee received from sales of property. At the moment, the bailiff's fee for sales of property is up to 3 per cent of the sale price. The amendment will set a nominal limit of 2,000 euros on additional fees. Its aim is to avoid situations where the bailiff can earn higher fees from selling more expensive property. The present regulation is disproportionate in the opinion of the legislator, as it allows bailiffs to earn profit that is unreasonably big compared to the amount of work they do.

The new version of the act has caused a lot of opposition among Estonian bailiffs. They find that the regulation does not motivate bailiffs to achieve quick and efficient compulsory payment of debts.

The system of state bailiffs once valid in Estonia demonstrated that its efficiency was considerably lower than that of the present system of freelance bailiffs. Namely, the procedure in effect in Estonia until 2001 was such that bailiffs were paid by the state and didn't have to finance their own activities. The reason why the system of self-sufficient bailiffs was introduced was the low efficiency of state-employed bailiffs. Their fees did not depend on their performance, i.e. the success of the enforcement proceedings they carried out, which meant that the bailiffs had little motivation to complete enforcement proceedings quickly and efficiently.

The bailiff's fee and its dependence on the results of the enforcement proceedings was set as the driving engine of the system of freelance bailiffs - the bigger the part of the claims a bailiff managed to collect, the bigger the fee they received. According to the survey carried out after the reform of 2001, the efficiency of enforcement proceedings increased by 50% - the number of closed files doubled.



The present amendment, which will enter into force in January 2017, will reduce the profits of bailiffs and in their opinion may create the situation, where the present cross-subsidising will no longer work, as the profit earned from successful enforcement proceedings may no longer be enough to finance hopeless ones and cover the office of running a bailiff's office. Insufficient or non-existent profit may lead to the situation where bailiffs are no longer motivated to do their job well or they decide to give up the job altogether.

Since the amendments have already been adopted and will enter into force in the next year and the year after that, then we will soon find out what the actual results of the reform will be and how they will impact on the efficiency of enforcement proceedings.