NATIONAL AUDIT
OFFICE OF LITHUANIA
• BRINGING BENEFITS •

IS IT ENSURED THAT FUNCTIONS DELEGATED TO BAILIFFS AND NOTARIES WERE PERFORMED EFFECTIVELY

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SUMMARY

Relevance of the Audit

Enforcement of decisions of courts and other State institutions is an important element of the rule of law. In order to protect the individual's rights or interests protected by the law which are infringed or challenged, it is not sufficient to make a decision, it must also be enforced. Expeditious execution of decisions increases public confidence in justice, the State and its institutions. If the decisions taken are not carried out in good faith, this shall be enforced. The State has transferred the function of enforcement of decisions under the enforcement documents of courts or other institutions to bailiffs. Each year the parties to the proceedings pay about EUR 30 million to bailiffs for the execution of documents amounting to 225 thousand.

Notariate (notaries) are also important in public life. These are persons authorised by the State to carry out the functions delegated by it. Notaries are assigned to ensure that there are no illegal transactions and documents in civil legal relations (family, inheritance, rights in rem, etc.). They perform 1.6 million notarial acts each year, for which the clients pay them about EUR 45 million each year.

The State which has delegated the functions to bailiffs and notaries must ensure that the services provided by them are made available to residents, who pay for them a reasonable price, whereas bailiffs and notaries, when providing services, comply with the requirements set by the State.

In order to assess whether it is ensured that the functions delegated to bailiffs and notaries are properly performed and services meeting the public needs are provided, we conducted a public audit.

Objective and scope of the audit

The objective of the audit is to assess whether the effective performance of state functions delegated to bailiffs and notaries is ensured.

The key questions of the audit:

- are actions of different entities providing notarial services and carrying out enforced debt recovery organised consistently;
- is the availability of bailiff services and notarial acts ensured;
- is it ensured that a reasonable price is paid for the actions of bailiffs and notarial remuneration fees are properly established;
- is control of bailiff activities and official supervision of notarial activities sufficient.

Audited entity – Ministry of Justice charged with shaping, organisation, coordination and control of implementation of the state policy in the areas of functioning of bailiffs and notariate[1].

The audited period is 2016-2019. Taking into consideration the scope of the data analysed and the fact that the Ministry of Justice did not have systematised data on all the questions examined, in relation of the two of the questions (control of bailiff activity and official supervision of notary activity) we analysed the 2018-2019 acts of inspections of bailiff activities and 2017-2019 acts of inspections of notary activities. When evaluating changes in the functioning of bailiffs and notariate, we also analysed the data of 2020.

Audit limitations

In order to obtain sufficient appropriate audit evidence, during the audit we repeatedly applied to the Lithuanian Chamber of Notaries asking to provide access to the notarial register records and documents (stored in notary offices) substantiating the calculation of price of a notarial act. The Lithuanian Chamber of Notaries did not satisfy our requests and refused to provide a possibility to collect audit evidence in notary offices on the grounds that, in their opinion, the National Audit Office is not granted such powers by law (Annex 4). Therefore, we could not obtain information on how notaries calculate the price of a notarial act, applying the notary fee rates established by the Minister of Justice.

The audit was carried out in accordance with the Public Auditing Requirements and International Standards of Supreme Audit Institutions. The scope of the audit and the methods used are described in more detail in Annex 1, “Audit scope and methods” (page 63).

Key results of the audit

Sufficient measures are not taken to ensure that State functions delegated to bailiffs and notaries are performed effectively. The results of the audit show that there is a lack of

[1] The Regulations of the Ministry of Justice approved by Resolution No 851 of the Government of 09.07.1998 (Version of Resolution No. 1464 of 13.10.2010), p. 7.

consistency in organising actions of different entities providing notarial services and carrying out enforced debt recovery, not all residents of Lithuania have equal access to the services provided by bailiffs and notaries, it is not ensured that a reasonable price is paid for the actions of bailiffs and notaries, control of bailiff activities and official supervision of notary activities is insufficiently effective.

1. There is a lack of consistency in organising provision notarial services and enforced debt recovery

Different requirements are applied for the performance of notarial acts

- Elders (535) perform over 30 thousand notarial acts each year. These notarial acts have the same legal effect as performed by notaries, they may cause negative legal consequences if improperly performed. The audit found that it is not ensured that elders have appropriate qualification to carry out these acts: there are no requirements for qualifications and it is not specified who must organise their in-service training and how. 33 % (6 out of 18) of the municipalities surveyed identify the lack of qualifications of elders as the main problem when organising the performance of notarial acts, while 89 % (16 of 18) indicated that the elders did not participate in the training related to the performance of these acts in 2017-2019. The elders lack methodological recommendations on how to perform notarial acts. The procedure approved by the Ministry of Justice in the field of notariate does not apply to elders, because the Ministry is not charged to coordinate notarial acts performed by elders. Only one – Vilnius City Municipality has approved the procedure for notarial acts performed by elders, but it has not been coordinated with the Ministry of Justice as an institution shaping State policy. Therefore, when the elders are granted the right by law to implement the state function – to perform notarial acts, its proper implementation (subsection 1.1, page 18) is not ensured.

Failure to coordinate the actions of bailiffs and state institutions results in a longer and more expensive process of enforced recovery of debt for the benefit of the State

- Enforced recovery of debt for the benefit of the State is carried out not only by bailiffs, but also by public authorities: The State Tax Inspectorate under the Ministry of Finance, the State Social Insurance Fund Board under the Ministry of Social Security and Labour, the Customs Department under the Ministry of Finance and the Bank of Lithuania. They initiate the process of recovery of arrears in payments and, in the event of failure to recover the debt, transmit the enforceable title to the bailiff. Upon the bailiff's receipt of the enforceable title, the recovery proceedings do not continue, but are commenced anew, i.e. the bailiff performs the same acts already performed by state institutions. This results in a longer and more expensive process (section 1.2, page 19).
- The State Tax Inspectorate has submitted the largest part (34 %) of executive documents enforced by bailiffs regarding the recovery of debt to the benefit of the State to bailiffs. It is not subject to an obligation to provide information together with an executive document on actions already taken in the recovery of arrears in payments and their results as well as other actions related to the recovery process. No such information was provided in all 122 enforcement files analysed during the audit. Therefore, without managing information about the results of the actions performed by the State Tax Inspectorate, it is difficult for a bailiff to make the most-effective decisions to recover debt and to ensure that it is not recovered twice (Section 1.2, page 19).

2. Sufficient measures are not taken to ensure availability of bailiff services and notarial actions

- The criteria for assessing the need for bailiffs and determining the territories of their activity have not been established. In 2018, the Ministry of Justice set the maximum number of bailiffs – 121, who were allocated in 17 territories of activity. The Ministry did not provide any justification for the establishment of such a maximum number of bailiffs and why they were distributed in such a manner within the territories of activity. On 01.03.2020 activities were actually performed by 8 bailiffs less than the maximum number set by the Ministry of Justice. Fewer bailiffs than established worked in 7 (out of 17) territories of activity. The minimum number of bailiffs to ensure availability of services has not been established. In some territories of activity, the average number of residents per bailiff differs by more than 2 times.
- Only 1 % of natural persons and 6 % of private legal entities provided e-enforcement documents in 2019. Therefore, the physical availability of bailiff services remains important, however, in 6 (out of 17) territories of activity bailiff offices are concentrated in one town within the territory, therefore a part of the residents of these territories have to travel to the bailiff's office more than 50 km. This is because the criteria for the location of the offices are not defined, and bailiffs themselves choose the location (city) of their office within the territory of activity (subsection 2.1, page 22).
- In 2007, the Ministry of Justice determined the number of 300 notaries to perform the functions assigned by the State. During 13 years, the number of notaries was not changed. On 01.03.2020 activities were actually performed by 55 less notaries than required. According to the methodology established by the Ministry of Justice, at least one notary has to work in each municipality, but in 4 municipalities there are none, therefore a part of residents have to travel to other municipalities up to 60 km to perform notarial acts.

  The performance of notarial acts is not transferred to the electronic space; therefore, it is possible to obtain notarial services only upon arrival to the office. After the announcement of quarantine and emergency in the country, the digitalisation of notary services became even more relevant (subsection 2.2, page 24).
- Elders provide notarial services to residents of wards free of charge; however, residents of not all municipalities may use this, because in 5 (out of 60) municipalities there are no elders, 9 (out of 18 surveyed) elders of municipalities did not notarize in 2017-2019 the documents equivalent to official wills, therefore residents of these municipalities were not able to receive these services free of charge (subsection 2.2, page 24).
- Persons in need of bailiff and notary services may receive all required information only upon arrival to a bailiff's or notary's office. It is not specified where and what information about bailiffs and notarial services must be published in the e-space. 78 % (14 out of 18) of selected bailiff's offices and 76 % (29 out of 38) selected notary offices do not have websites, and information published on the websites of the Ministry of Justice, the Lithuanian Chamber of Bailiffs and the Lithuanian Chamber of Notaries is insufficient and not user friendly. These websites lack information about the way bailiffs and notaries provide services, do not specify which documents persons have to submit in order to receive the service. Only legislation regulating pricing is provided, according to which, in the absence of additional information, it is difficult for persons to calculate the price of services themselves. Information about notarial acts performed free of charge by elders is not published on the websites of the Ministry of Justice and the Lithuanian Chamber of Notaries (subsection 2.3, page 27).

3. It is not ensured that a reasonable price is paid for the actions of bailiffs and notaries

Application of the rates of enforcement costs of a bailiff and establishing criteria for remuneration fees of a notary is not regulated

The criteria for determining the rates of enforcement costs of a bailiff and remuneration fees of a notary remuneration as stipulated by laws[2] are abstract. No procedure implementing laws has been established to regulate the application of these criteria, therefore no legal preconditions have been created to establish reasonable amounts of enforcement costs of a bailiff and remuneration fees of a notary. The Government does not participate in the process of setting the rates of enforcement costs of a bailiff and remuneration fees of a notary. The said rates and fees are established by the Ministry of Justice upon coordination with the Ministry of Finance. The Ministry of Justice also establishes groups of persons exempt from the payment of a notary's fee. Although it is part of the State social justice policy, there are no requirements to coordinate it with the Ministry of Social Security and Labour that shapes the state policy in the field of social security, therefore proper implementation of state policy in this area may not be ensured (Section 3.1, p. 30).

The rates of administration of a bailiff's enforcement proceedings and remuneration to a bailiff are not justified

Parties to proceedings must pay to a bailiff the enforcement costs for the enforced recovery of debt, consisting of the administrative expenses of an enforcement case and remuneration for the bailiff.

- The administrative costs of the enforcement proceedings, as provided for by law[3], must cover the costs incurred by bailiffs in carrying out enforced recovery of debt. The fixed costs differ by 18 times depending on the amount to be recovered (from EUR 12 to EUR 220) although the costs actually incurred by bailiffs do not depend on the amount to be recovered. After analysing 80 enforcement cases, we found that, in all cases, bailiffs carried out a different number of actions in the cases in which the same administration costs were calculated.

  The fixed rates of remuneration[4] for a bailiff depend on the amount to be recovered. Minimum rates of remuneration are set which protect the interests of the bailiff, however maximum rates are not set that would protect the interests of the debtor. Therefore, the balance between the interests of the bailiff and the debtor is not maintained.

  By applying the established rates of enforcement costs of a bailiff and recovering debts of up to EUR 60, the fixed enforcement costs of a bailiff exceed the debt from 1.8 to 10 times. Executive documents for the recovery of such debts account for about one third (over 60 thousand in 2019) of all executive documents submitted to bailiffs (Section 3.2, page 31).

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[2] Code of Civil Procedure, Article 609, Part 2; Law on the Notarial Profession, Article 19[1].

[3] Law on Bailiffs, Article 21(5) (repealed as of 19.12.2019 by Law No XIII-2722 from 01.07.2020), Article 3 of the Law No. XIII-2721 amending Articles 604, 605, 609, 610, 611, 620, 650, 654, 679, 682, 727, 728, 733, 737, 744, 750, 753, 754, 766, 767, 769 and 778 of the 19.12.2019 Code of Civil Procedure.

[4] Instructions for implementation of decisions approved by the Order No. 1R-352 of the Minister of Justice 27.10.2002.

- In 2018, bailiffs earned EUR 30.5 million in income and incurred expenses of EUR 17.7 million. Average net income of one bailiff (bailiff's remuneration) per month amounted to EUR 9.2 thousand. The Ministry of Justice does not evaluate what income and how much net income a bailiff should receive in order to ensure his/her economic independence as stipulated in the law[5], what costs are necessary to create appropriate conditions for customer service and employ the necessary qualified staff, therefore, it does not have the data necessary to determine reasonable rates of the bailiff's enforcement costs (Section 3.2, page 31).

Inefficient debt recovery process unreasonably increases enforcement costs

- The costs of enforcement are increased by the inefficient process of recovery of fines imposed for administrative offences. Debtors who have several dozen or more fines do not receive income for a long period of time from which recovery is possible, however, a bailiff upon receiving a new enforceable title for the recovery of the debt from the same debtor, each time is required to carry out recovery actions. According to the data of the Ministry of Justice, the 100 debtors with the highest number of executive cases have in total 24 229 executive cases for the recovery of fines (the greatest number of imposed fines on one person is 920) with a total amount of EUR 2.4 million to be recovered. This process increases the costs of recovery, but debts remain unrecovered, while the costs incurred by bailiffs are covered by the income received by bailiffs from those debtors who pay their debts.
- The Ministry of Justice did not carry out a systematic monitoring of the legal regulation of the recovery process between 2016 and 2019 and did not assess the statutory actions that have become obsolete and which could be abandoned and thus reduce the costs of performing enforcement actions and the price paid for the actions performed by the bailiff (subsection 3.3, page 36).

Assessment is not carried out of the relevance of compulsory notarial acts and notarial fees are regulated inadequately

- Around 80 % of notarial acts were introduced in 1992 with the adoption of the Law on the Notarial Profession, the Civil Code establishing a mandatory notarial form for the certification of transactions entered into force in 2001. In the meantime, the legal regulation of public relations has evolved and the possibilities for information technology have grown, but the Ministry of Justice did not carry out systematic monitoring of legislation imposing requirements for notarial certification of transactions and documents between 2016 and 2019. Therefore, it has not been assessed whether all the established requirements are necessary, whether there are excessive requirements, unduly increasing the administrative and financial burden.
- The rates of notarial fees are set in two ways: at intervals and fixed amounts. 71 % of the rates are set at intervals within which the price is to be set taking into account the complexity and scope of the notarial act, but there are no criteria for assessing the complexity of the act. The cost of a notarial act therefore depends on the notary's assessment and may vary up to 3.5 times. For example, notarization of a donation contract of EUR 300 000 can be estimated between EUR 900 and EUR 1 500 for the customer and notarization of the establishment of a small community between EUR 57.92 and EUR 202.73.

[5] Law on Bailiffs, Article 21(5) (repealed as of 19.12.2019 by Law No XIII-2722 from 01.07.2020), Article 3 of the Law No. XIII-2721 amending Articles 604, 605, 609, 610, 611, 620, 650, 654, 679, 682, 727, 728, 733, 737, 744, 750, 753, 754, 766, 767, 769 and 778 of the 19.12.2019 Code of Civil Procedure.

- The list of fees[6] approved by the Ministry of Justice contains an additional fee for complex transaction design and legal advice services, but there are no criteria for when a transaction should be considered complex. The notary's assessment determines whether the client will have to pay an additional fee for these services at the time of the notarization of the transaction. For example, in the context of the notarization of a contract for the transfer, sale of immovable property of EUR 150 000, the notary considers that, in the case of a simple transaction, the customer would have to pay EUR 555 and in the case of a complex transaction - between EUR 690 and EUR 780 depending on the notary's application of the fees set at intervals.
- The Ministry of Justice did not analyse how notaries actually apply the rates set at intervals for notarial acts, the drafting of the transaction and legal advice. During the audit, we could not assess the application of these rates as auditors were not given access to the notarial register records held at the offices of notaries. According to the reports provided to the Ministry by notaries, we found that in 2018, for a similar number of notarial acts, the income received by notaries varied by up to 15 times. For example, one notary carried out 9 239 acts and received EUR 55.1 thousand in income, while another notary earned 830.7 thousand. EUR for a similar number of acts (9 406).
- In 2018, notaries received income of EUR 45 million and incurred expenses of EUR 17.7 million. The average monthly net income (notary's remuneration) per notary is EUR 6.6 thousand. The Ministry of Justice does not assess what income and what net income should be generated by the notary in order to ensure his/her economic independence as stipulated in the law[7], what costs are required for creating suitable conditions for customer services and the recruitment of qualified staff, and therefore it does not have the necessary data to establish reasonable rates of notarial remuneration (Section 3.4, page 37).

4. Lack of effective control of bailiff's activities and supervision of notary's activities

The organisation of operational checks does not provide sufficient conditions to identify deficiencies and ensure that they are corrected

According to the procedure laid down by the Ministry of Justice, the planning of routine inspections of the activities of bailiffs and notaries is based solely on the criterion of periodicity (every five and six years), it has not been established how to select what exactly is to be checked, it is not defined the documents of what period are to be checked, what is the scope and selection of checks. There are no criteria for deciding to carry out an extraordinary inspection of the activity. Such organisation of operational checks does not ensure the identification of substantial deficiencies in the activities of bailiffs (bailiffs' assistants) and notaries. There is no control mechanism in place to monitor the implementation of the remedial orders issued during the inspections, so it is not possible to ascertain whether the deficiencies have been corrected and how this has affected the quality of the activities of bailiffs and notaries. The Ministry also has no criteria for taking decisions by the Minister for Justice to initiate disciplinary proceedings. Therefore, the objective and correct application of disciplinary liability may not be ensured (Chapter 4.1, page 46).

[6] List of fees for the execution of notarial acts, preparation of draft transactions, consultancy and technical services, approved by Order No 1R-96 of the Minister of Justice of 31.03.2020.

[7] Law on the Notarial Profession, Article 19[1].

There are no proper conditions for an objective assessment of the qualifications of bailiffs and notaries

Notaries are certified in accordance with the assessment criteria laid down in the Notaries Certification Rules approved by the Minister for Justice. The certification of notaries is carried out by a committee composed exclusively of notaries set up by a resolution of the Presidium of the Lithuanian Chamber of Notaries. The certification of bailiffs is carried out by a commission set up by order of the Minister of Justice, whose members are representatives appointed by the Ministry of Justice, the Lithuanian Chamber of Bailiffs and the President of the Supreme Court of Lithuania, but, unlike notaries, the Rules on the certification of bailiffs do not lay down assessment criteria against which bailiffs' activities should be assessed. For the reasons set out above, the transparency and objectivity of the process of assessing the qualifications of both bailiffs and notaries may not be sufficiently guaranteed (Chapter 4.2, page 49).

The procedure for the reporting of bailiffs and notaries do not provide sufficient information required for making decisions

- The reports by bailiffs and notaries to the Ministry of Justice are insufficiently informative: there is a lack of data on the costs incurred by bailiffs and notaries in carrying out the functions delegated by the State, as they are reported together with the costs incurred in providing services which are not regulated by the State, there is a lack of data on the income received by bailiffs according to their functions and by type of enforcement costs, as bailiffs report income in a single amount. Incomplete data also refer to notarial acts and income received by notaries, since notaries only indicate the number of a part of notarial acts carried out, all others are indicated under the heading “Other notarial acts“. As a result, the Ministry of Justice did not receive detailed information on more than 68 % of 2018 notarial acts and income of EUR 7.8 million (18 %) received for their performance. The provision of data creates an administrative burden for bailiffs and notaries as well as for the ministry, however data reported by almost 60 %. (13 out of 22) of bailiffs and 66 % (65 out of 98) of notaries for the years 2016 to 2018 were not structured.
- Data from the bailiffs' information system (AIS) is inaccurate: Only 2 (out of 97) paper enforcement files analysed matched with AIS data on amounts recovered and amounts to be recovered. The data provided by the Lithuanian Chamber of Bailiffs and AIS on the amounts recovered by bailiffs to the benefit of the State for the period 2017-2019 differs by almost EUR 14 million. As a result, the Ministry of Justice did not receive precise data relevant to the assessment of the performance of bailiffs. In the absence of accurate and complete data, it is not possible to make evidence-based decisions on the number of bailiffs and notaries and on the pricing of the services they provide.
- The reports submitted by bailiffs and notaries are not digitalised, the Ministry of Justice receives paper reports and it is therefore inefficient to use them: the organisation of the data needed for decision-making is time-consuming and require additional time costs (chapter 4.3, page 51).

Recommendations

To the Government of the Republic of Lithuania

1. In order to ensure proper implementation of state policy in the field of notariate and to always provide high-quality notarial services to persons, we propose to make decisions

which would ensure that not only notaries, but also other entities performing notarial acts have the necessary qualification to perform notarial acts assigned to them, performance of all of them would be subject to the same requirements, supervision of their performance would be carried out (1st key audit result).

2. In order to ensure consistency in the process of enforced recovery to the benefit of the State, we propose to:

   2.1. optimise the process of enforced recovery of arrears in payments in such a way that bailiffs would consistently continue the process of recovery and a balance between the interests of the State and debtors would be ensured;

   2.2. to oblige state institutions to provide bailiffs with information about the recovery actions taken and their results, and other information related to recovery (1st key audit result).

3. Taking into account the importance of public relations regulated by the State and in order to ensure that the state policy in the financial, social security, justice and other fields would be properly implemented when determining the rates of bailiff's enforcement costs and the notary's remuneration fees, we propose:

   3.1. to take decisions on the expediency of setting of rates of bailiff's enforcement costs and the notary's remuneration fees at Government level;

   3.2. to ensure the establishment of procedures for calculating the rates of bailiff's enforcement costs and notary's remuneration fees, providing for the application of statutory criteria, ways of determining the rates of bailiffs enforcement costs and notary's remuneration fees, and rules for the application of notary fees, as well as recalculation of rates of bailiffs enforcement costs and notary's remuneration fees in accordance with the established procedures (3rd key audit result);

   3.3. to ensure that all residents are provided with equal access to free of charge notarial services (2nd key audit result).

To the Ministry of Justice of the Republic of Lithuania

4. In order to increase the availability of services provided by bailiffs and notaries in performing the delegated State functions, we propose:

   4.1. to assess the need for human resources necessary for the implementation of these functions and adjust the established number of bailiffs and notaries on the basis thereof;

   4.2. to ensure, where possible, equal access to the services of bailiffs and notaries to all residents;

   4.3. to provide for measures increasing the provision of services of bailiffs and notaries by electronic means;

   4.4. to set requirements for information published in e-space: what, how and where is to be published (2nd key audit result).

5. In order to reduce the administrative and financial burden on residents, we propose to carry out a systematic review of the legal acts establishing mandatory notarial

certification and regulating the process of enforced debt recovery: assessing whether there are no excessive (unnecessary) notarial actions, whether there are possibilities to optimise the process of enforced recovery (3rd key result).

6. In order to achieve more effective supervision of bailiff's activities and official supervision of notary's activities, we propose:

   6.1. improving the procedure for inspecting bailiffs and notaries: to determine the scope of the inspections, the criteria for taking the decision to carry out extraordinary inspections and a mechanism for the control of elimination of deficiencies identified during the inspections;

   6.2. making decisions on the expediency of establishing criteria for taking decisions on instituting disciplinary proceedings against bailiffs and notaries;

   6.3. improving the procedure of certification of bailiffs and notaries: to establish the evaluation criteria of the circumstances on the basis of which bailiffs are certified and to take decisions on the expediency of involvement of representatives of other institutions in the notary assessment commission;

   6.4. specifying the reporting procedure in such a way as to ensure that accurate and complete data are obtained to take evidence-based decisions;

   6.5. taking decisions on the digitalisation of reporting by bailiffs and notaries and providing for the measures to submit and process their reporting data by means of information technology (4th key audit result).

Measures and deadlines for the implementation of the recommendations are provided in the Section "Plan for the implementation of the recommendations" (page 54).