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# The bailiff profession in Poland

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The role of enforcement agents in Poland is both highly professionalised and highly regulated. It is subject to rigorous training and entry requirements, as well as supervision at the government, court and industry levels. Reforms to the profession, which started in in the 1990s, are continuing.

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The bailiff's job is difficult – and often unrewarding – but it is a necessary job nonetheless when a debt needs to be enforced. The profession of a bailiff plays a huge role in the judiciary system, since stable enforcement of judicial decisions guarantees economic stability. Efficient enforcement of judicial decisions, especially those pertaining to business activity, is a warranty of economic safety, but most of all a warranty of the state under the rule of law, because a bailiff's work implements decisions contained in a verdict of a court.

In Poland, the profession of court bailiff has been continuously evolving. Until 1989, court officials supervised the enforcement of the court's judicial decisions. From the fall of communism until 1997, court bailiffs were full-time employees of the court, responsible for enforcement activities. Court bailiffs would receive remuneration from the court, while being responsible for the organisation of enforcement

activities; bailiffs would hire employees and incur the running costs of enforcement.

The Court Bailiff and Enforcement Act of 29 August 1997 (the Act) introduced a new organisational model for the profession of court bailiff in Poland. These reforms arose from the necessity to improve the efficiency of enforcement activities in the country's dynamically developing economy. The Polish Ministry of Justice considered two possibilities for regulating the bailiff profession: adopting the German system, where court bailiffs are state officials and employees of the court, whose decisions they implement; or the French system, where court bailiffs perform a public function, but are not officials – they perform activities on their own account.

The French concept prevailed, and so today in Poland a court bailiff is a public officer. A bailiff enforces judicial decisions, but is not a full-time



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employee of the court or of any other public body. Bailiffs are public officers, running their own bailiff office – a professional practice, similar to a notary. Every court bailiff is registered in one district court, but can perform enforcement activities across the entire country, excluding the execution of real estate. Court bailiffs only perform executions of real estate for judicial decisions regarding the geographic area in which they have been registered by the district court (the area in which a bailiff has been registered by the district court is called a bailiff's district). A court bailiff in Poland performs a profession of public trust and, as a public officer, exercises powers similar to the state administration, within the scope of enforcing courts' decisions. A court bailiff carries an identity document, similar to state service employees and inspectorates, and uses a round official stamp.

However, these are the extent of the similarities. Court bailiffs receive a decision to enforce and run enforcement proceedings based on that judicial decision; they are not authorised to check the legitimacy of a verdict or the maturity of the debtor's obligation. The law stipulates that court bailiffs shall carry out procedures personally and on their own account under the performed activities. This means that, within the

scope of taxes and social security contributions, the same regulations apply to bailiffs as to entrepreneurs – that is, as people operating businesses. The same applies in respect of responsibility for enforcement activities; as bailiffs operate on their own account, rather than on the account of the court whose decisions they enforce, they bear full civil liability for the performed enforcement activities. Because of this, the court bailiff has the obligation to enter into professional indemnity insurance in relation to enforcement activities, undertaken by the bailiff, as well as those resulting from the actions of any employees hired by the bailiff's office.

### How to become a bailiff in Poland

In order to practise in the bailiff profession, higher education and relevant work experience is required. The legal basis for this is the Act. The procedure for appointing and dismissing court bailiffs is regulated by the Act, which is why court bailiffs in Poland – public officers – practise a regulated legal profession. Becoming a bailiff in Poland requires the completion of higher education in law and a two-year traineeship, during which the trainee is introduced to the profession.





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In order to begin bailiff traineeship, the candidate must pass a competitive exam with high marks. Upon completing the first year of the traineeship a court bailiff may authorise the bailiff trainee to independently perform certain enforcement activities. Upon completing the second year of the traineeship, the trainee must pass the final bailiff examination. Bailiff trainees passing the exam are appointed to the position of assistant bailiff, and are entered onto the list of assistants. Appointments to the position of assistant bailiff are made by the president of the appeal court. The work period in this position is two years. After that period, the assistant bailiff may apply for the position of a court bailiff.

Representatives of other regulated legal professions are exempt from the requirement to complete bailiff traineeship. These professions include judges, prosecutors, lawyers, legal advisors, notaries and persons who have completed court, prosecutor, legal, legal advisor's or notary training, as well as persons with a doctorate degree in legal sciences.

The court bailiff is appointed by the Minister of Justice, and the appointment is submitted through the president of the appeal court in whose district the candidate will practice. Before appointing the bailiff, the Minister of Justice consults the bailiff association about the candidate.

The Minister of Justice also has the power to dismiss a bailiff in cases of disciplinary offences arising from breaches of the law or from a failure to maintain professional indemnity insurance, and in connection with substantiated complaints about the bailiff's professional conduct.

### How does a court bailiff operate in Poland?

In order to perform enforcement activities all newly appointed court bailiffs open an office in the district in which they have been registered. A bailiff's office can most often be found in cities where a district court sits. The size of the office – the number of hired employees – varies significantly, and depends on the number of cases run by the bailiff. In Polish practice, a bailiff's office will hire several employees, but in big economic centres a bailiff may employ over 100 people.

Bailiffs' offices must possess means for obtaining information about debtors and their property – both movable and real estate – in order to enforce judicial decisions. For the purpose of enforcement, a bailiff has the right to demand information about the debtor's property from state administration bodies, tax offices, pension agencies, banks, brokerage houses and other institutions that may be in possession of information regarding the debtor's property. In Poland there does not yet exist full, online access to office, bank and financial data. However, "e-government" services are developing, and bailiff offices are generally equipped with modern instruments for obtaining information about a debtor's property.

In Polish practice a court bailiff has access to the national on-line register of all natural persons in the country. A bailiff also has online access to the database of bank accounts, as well as online access to the database of the Social Insurance Institution, which enables identification of the debtor's employer (as the payer of social security contributions). In addition, bailiffs have access to an online database that registers all cars and mechanical vehicles. Currently, bailiffs have no access to the cadastral databases, which register real estate throughout Poland. Such access would allow bailiffs to establish all real estate in which a debtor holds legal title, in the entire country, based on their personal data.

During their professional practice court bailiffs run different types of cases of monetary and non-monetary claims. In Poland a bailiff most often handles cases of monetary and non-monetary claims regarding business obligations, as well as cases in which the Treasury is the creditor. The latter cases typically relate to fines and court fees. A separate category of enforcement cases are those of "repeated" claims – generally, these are financial maintenance payments towards children, spouses and elderly people, which are unpaid by the debtor.

In order to enforce monetary claims, bailiffs will attach (seize) bank accounts, salaries, annuities and pensions, as well as other monetary receivables. They will also attach movable property, including mechanical vehicles, and sell this property by public auction. A bailiff may also perform enforcement in relation to shares and companies' stocks, as well as to real estate. The sales of shares, stocks and



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real estate occurs by way of public auction, and the bailiff credits the proceeds obtained from such sales towards the enforced debt.

As part of the performed enforcement, a bailiff collects execution fees from the debtor. The system of fees is dependent on the amount of the enforced debt and the manner of performing the enforcement. In the case of enforcement from bank accounts, annuities, pensions and salaries, the bailiff collects an execution fee in the amount of eight per cent of the enforced debt from the debtor. In other cases bailiffs collect 15 per cent of the amount of the debt. From the fees obtained, bailiffs must cover the costs of maintaining their office, seizing the property, ensuring necessary personal protection, insuring office property, professional indemnity insurance, and fees for membership of the bailiffs association.

### Supervision over court bailiffs' activities

#### **Bailiff professional self-government**

Court bailiffs in Poland have established a system of self-governing professional associations, called Bailiff Chambers, and membership of these is obligatory. There are 11 Bailiff Chambers, which are organised by court districts.

Every Bailiff Chamber selects its Chamber Council, with its president, as well as the auditing committee, through a vote at the general meeting of the members of the Bailiff Chamber. The Chamber Council and the auditing committee manage the current activities of the Chamber. The general meeting of the Bailiff Chamber selects two members of the National Bailiff Council, which is the representative of all bailiffs in the country.

Positions in the Bailiffs Chambers are for terms of four years. The bailiff self-government is managed by the National Bailiff Convention, which appoints the President of the National Bailiff Council and the National Auditing Committee, and adopts resolutions regarding the most important matters for the profession, particularly in relation to good practices and professional ethics.

The bailiff self-government system monitors the professional practice of bailiffs, checks whether all bailiffs running bailiff offices are covered by the obligatory professional indemnity insurance, and issues opinions on bailiffs' work upon the request of public bodies.

The National Bailiff Council supervises the activities of bailiffs, conducts inspections in bailiffs' offices and, when necessary, takes disciplinary action against bailiffs who breach professional or legal standards. Every bailiff's office in Poland is inspected by bailiff inspectors appointed by the National Bailiff Council at least once every three years. The subjects of review during office inspection are timeliness, reliability and efficiency of enforcement activities performed by the bailiff. If the bailiff inspectors ascertain irregularities in the running a bailiff's office, the bailiff bears disciplinary responsibility.

The bailiff is responsible for faulty acts or omissions in the performance of their activities, in particular, for:

- undermining the seriousness and dignity of the profession
- offences against the rules of law
- failure to fulfil post-inspection orders
- misusing the proceeds of execution fees
- undertaking actions with an unjustified delay
- performing enforcement activities outside their own district in circumstances not provided for by law.

The disciplinary commission appointed by the National Bailiff Council makes decisions concerning penalties for infringements, which may include warnings, reprimands, fines of up to 20 times the average national monthly salary, and dismissal from office

Should a court bailiff be penalised by a fine or a reprimand, the bailiff is simultaneously deprived of the right to stand for election to the bailiff self-government bodies for three years from the date of the disciplinary decision becoming final.

#### **Supervision by the Minister of Justice**

The Minister of Justice also provides general supervision over the activities of bailiffs and public officers. In order to exercise this supervision the Minister is assisted by the presidents of the district courts and judges.

Direct supervision over bailiffs' activities is exercised by the district court in which the

## Author

bailiff has been registered. The court provides judicial and administrative supervision. Judicial supervision is exercised through dealing with complaints about the bailiff's actions by the common court, in civil proceedings. According to the regulations of the Polish Code of Civil Procedure, a complaint about a bailiff's actions may be submitted by the parties whose rights have been allegedly been violated, to any enforcement proceeding. A complaint may be submitted on the basis that a bailiff has performed improperly and violated the rights of a party (whether a creditor or a debtor), or on the basis of a failure to act.

Administrative supervision is exercised by the president of the district court. This supervision focuses on the efficiency of the bailiff's activities – the promptness, effectiveness and reliability of enforcement proceedings. According to the maxim, "time is money", the president of the district court evaluates whether any unjustified delays have occurred in the bailiff's activity. The administrative review also includes checking the proper maintenance of records relating to enforcement proceedings, as well as proper accounting practices. In order to analyse the correctness of financial documentation of enforcement proceedings, the president of the district court appoints an accountant from the district court to review the correctness of financial records and the timeliness of transferring recovered money to the creditor. In this area the applicable deadlines for court bailiffs in Poland are very short – a bailiff is obligated to transfer the successfully recovered money from the debtor to the creditor within four days of receiving it. Following a change in the regulations in August 2013, such reviews of bailiffs' offices should now occur every four years.

### Conclusion

Poland has an established a well-regulated bailiff profession. However, as in many policy areas, efficiency and regulation need to be balanced, and resources must be optimally utilised. This requires constant review and analysis. For example, in 2013 the court supervision of bailiffs' offices discussed above was changed, so as to require formal reviews only once every four years, thereby freeing up valuable time for the courts. Further changes are mooted to take effect in 2014, including in relation to the fees which bailiffs can charge for their services.



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