To complete this edition, this article examines the enforcement of court decisions in Tunisia. As in other counties in the EBRD region, delicate questions arise about the status of enforcement agents, and the need to balance the interests of judgment debtors and creditors.
The etymology of the word “bailiff” in Arabic (Adil Al Tanfeed) connotes “man of justice undertaking the task of execution”. It alludes to the value of justice in the execution process. This explains why the bailiff in Tunisia is considered a public official (article 1 of the law dated 13 March 1995 Organising the Profession of Bailiffs; the Bailiffs’ Law) who is subject to the requirements of a public system, with all of its privileges and limitations. Similarly, and according to article 42 of the Bailiffs’ Law, when bailiffs are performing their tasks, they are like public employees, in the sense defined in article 82 of the Penal Code.

In order to ensure the greatest degree of compliance with the necessities of justice throughout all stages of litigation, and to facilitate bailiffs becoming better specialised and focused on realising this objective, Tunisian legislation has transferred the task of notarisation (previously part of a bailiff’s duties) to another type of judicial official. In this context, the effectiveness of the judicial system in terms of executing judgments is fundamentally tied to the effectiveness of the role undertaken by the bailiff.

As bailiffs act in the capacity of assistant to the judiciary, it is natural for the desired objectives of their tasks to be embodied in and firmly linked to the judicial establishment. This necessitates integrity, impartiality and autonomy, in return for the entitlement to the privileges of public authority. Similarly, it requires that bailiffs organise the various operational frameworks and powers towards facilitating the execution process.

The task of execution calls for both transparency and integrity; initially, in dealing with the petitioner and the respondent in the early stages, and also in the final stages, in dealing with the executor and the debtor. Perhaps it is these duties, with the constraints they
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bear, that explain bailiffs’ need for protection, and their right to seek assistance from the police, in the performance of their duties.

As with those who belong to other auxiliary judicial professions and structures, and other public bodies, bailiffs have strongly expressed the need to introduce a number of amendments to the Bailiffs’ Law. Many have called for measures to overcome the most important obstacles facing this profession, including the nature of relations with the Ministry of Justice as an executive authority and with the Public Prosecutor’s office as a judicial body, and procedural hindrances that complicate notification and execution tasks and result in the failure to properly grant people their rights.

Such calls may lead to a variety of actions, from a diagnosis of the existing situation, to an outline of the solutions called for. Such a process will involve dealing with two primary issues: 1) the structure of the profession; and 2) proposals to remove substantive obstacles affecting bailiffs.

**The profession: legitimate structural aspirations**

Bailiffs consider that their tasks fall within the rubric of the actions performed by the judicial system and that, within this system, these tasks aim to grant people their due rights. Nevertheless, bailiffs remain insistent on the need for significant autonomy from the Ministry of Justice. Therefore, they dislike the strict monitoring which they are subjected to by the Ministry of Justice and the Public Prosecutor. They would prefer to be under the supervision of the National Bailiffs Organisation (NBO), through its various chambers. In addition, there is a proposal to expand the scope of intervention and to reconsider the resolution for setting wages.

Bailiffs have emphasised their right to this legitimate demand of greater autonomy by insisting that the head of the NBO be given sole authority to issue dismissals and to receive resignation letters instead of such tasks being assigned to the Minister of Justice as stipulated by current provisions of the Bailiffs’ Law. Such demands are inseparable from the context of the current situation in Tunisia, which is witnessing a transitional political and social movement that focuses prominently on justice in all of its dimensions, and in a variety of specific realms (whether related to the legislative system or the execution framework). The grievances raised by bailiffs can be understood better in the context of Tunisian judges’ demands for the same level of freedom enjoyed by attorneys; that is, for autonomy from the executive authority, and from the Public Prosecutor in particular.

Like lawyers, bailiffs enjoy a significant degree of freedom in their profession (they are not paid by the state, but rather earn wages from clients, and belong to independent organisational structures). Hence, they have a natural and legitimate motive to demand greater autonomy from state structures. However, consideration must be given to the delicacy of the task entrusted to them, which requires impartiality and fairness in fulfilling the requirements of justice in the execution of judicial rulings. Such impartiality requires that bailiffs maintain the same distance between themselves and both the monitoring officer and the debtor.

The trend in this context is to emphasise that the demand for more autonomy could ultimately result in transferring the task of monitoring the bailiff’s ledger from the Public Prosecutor to the head of the NBO. The same issue applies to clients’ accounts. If the NBO were to undertake these tasks, however, this would not remove all intervention by the Public Prosecutor. Rather, as bailiffs themselves state, it would be preferable for monitoring by the Public Prosecutor to be treated as a follow-up action, to be undertaken as needed, subsequent to the NBO head’s action. Moreover, to avoid this option being exploited as a loophole that enables violators of the law to escape punishment, communication and transparency must be guaranteed between the NBO and the judicial system that supervises the proper execution of judicial rulings.

These demands appear to have arisen out of the pressure that some bailiffs have long complained of in their direct dealings with the Public Prosecutor. Some bailiffs complain, for example, of being made to feel inferior, and even of being bullied or humiliated by the Public Prosecutor on the pretext of the exercise of legal powers.

The procedure that most angers bailiffs is the direct inspection of their offices, which, in their view, disregards confidentiality and disrespects personal data and the sanctity of the workplace.
The effectiveness of the law and the efficacy of judicial rulings are linked, to a large extent, to bailiffs’ tasks. Hence, recognising bailiffs’ autonomy is not, of itself, objectionable. However, such autonomy does need to be subject to safeguards. Consideration should be given to the optimal formula for preserving the autonomy of bailiffs, while providing for the minimal required level of direct monitoring by the NBO and follow-up by the Public Prosecutor. To this end, it is necessary to expand and diversify representation within the NBO so that its membership is not limited to bailiffs, which could cause a monopoly of power within the NBO and therefore provide opportunities for breaches of professional standards to be concealed.

The safeguards required in granting freedom and autonomy are to be found in transparency and accountability. Once it is recognised that serving the public good requires accepting responsibility for providing information to those who request it – and this principle is enshrined in law – the autonomy of bailiffs should not engender reservations. Bailiffs’ objections to the invasive nature of the Public Prosecutor’s periodic monitoring of their ledgers and client accounts will dissipate if a legal provision requires them to place such ledgers and accounts at the disposal of those who have a legitimate interest in them, and prescribes penalties for refusal to do so, and for the misuse of such information for personal gain.

In addition to their concerns about autonomy, bailiffs maintain the right to actively participate – as competent, effective parties – in the process of making major decisions that are required in the phase through which Tunisia is passing, particularly those having to do with the new constitution. They also assert their right to be consulted and involved in legislating for their own profession. This is precisely what is required by a democratic philosophy, and by the participatory approach adopted in advanced democracies. After all, the professionals in this field are most aware of, and familiar with, their own concerns, what is needed to address these concerns, and the mechanisms needed for improving their profession.

**Obstacles facing bailiffs**

An examination of the tasks assigned to bailiffs reveals some of the serious obstacles that hinder their work. Considering their multiplicity and their impact on the various phases of the execution process, these obstacles have led to a significant number of bailiffs’ proposing a single judicial body dedicated to solving disputes and overcoming the execution-related difficulties that are a potential barrier to delivering people their rights.

The legal and material difficulties facing bailiffs occur in numerous situations and tasks. However, they can be summarised in the following key points.

The process of notification and summoning leads to many problems arising in litigation, due to the complicated and imprecise procedures detailed in article 8 of the CCPC, governing summons notifications. Bailiffs often resort – either by necessity or lack of diligence – to giving the summons to local authorities, expecting such authorities to serve the notice on the actual respondent. Such a procedure does not guarantee that the summons will be delivered. Consequently, this practice does not respect the principle that a person must be aware of legal proceedings brought against them, including enforcement proceedings. These issues explain the frequency of rulings that are issued in absentia.

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**Box 1. Key difficulties confronting enforcement in Tunisia**

- Lack of clarity in notifying debtor of enforcement action.
- Formalities associated with seizing movable assets.
- Ambiguity about when property must be valued.
- Bailiffs’ broad discretion to reduce the sale price of seized assets.
- Obtaining information about debtors’ wages.
- Enlisting the support of the police.
Bailiffs encounter significant difficulties in enlisting the assistance of the police and in obtaining information about debtors’ earnings. This can be problematic, as the last clause in article 392 of the CCPC indicates that the minutes relating to seizure of movables must carry the signature or thumbprint of the person officially assigned to safeguard the property pending seizure for the purposes of sale (the custodian). The problem arises when the custodian is also the debtor and happens to be absent when the bailiff comes to take the property. The debtor’s absence means no signature can be obtained, delaying the process.

A further problem arises under article 394 of the CCPC, which obliges the bailiff to request the court to appoint an expert to determine the value of “important movable assets”. The problem arises in relation to the lack of a definition of “important movable assets”. A further issue is the fate of the execution process when the judge decides not to appoint an expert upon an application under this article, which arguably further undermines the execution process.

As a time-saving measure, bailiffs often authorise the enforcement officer to reduce the initial sale price of seized assets by up to 20 per cent. This is often done simply when bailiffs consider it advantageous to do so – a low price is more likely to result in a sale, avoiding the time and expense of further sales processes. However, this results in items being sold at under value, to the detriment of the debtor.

Further technical difficulties arise under article 55 of the Finance Law of 2006. This article requires the debtor’s value added tax (VAT) code or identity card number to be provided when making notarisation arrangements (of a consensual nature). This applies even to judicial sales of seized property. Bailiffs are responsible for obtaining this information and bear the consequences of financial mistakes in this process. Such consequences include tax penalties imposed on the bailiff. However, the sale will not be invalidated as a result of such errors.

Bailiffs also encounter significant difficulties in enlisting the assistance of the police and in obtaining information about debtors’ earnings. These are perhaps among the most important issues raised in the execution process, and relate to the underlying objectives of the legislation: to demonstrate concern for the rights of both judgment creditor and debtor, and to avoid arbitrary or random execution.

The issue of seeking the assistance of the police arises in cases where debtors hinder the process of executing civil judicial rulings. The police and public authorities are required by law to assist bailiffs (see article 253 of the CCPC). However, in practice, the Public Prosecutor often asserts a requirement that the Public Prosecutor authorise the involvement of the police. Bailiffs do not see any justification for having to seek the Public Prosecutor’s permission to request the assistance of the police and public authorities, believing that this impedes their work. Indeed, bailiffs contend that the law requires public authorities, and the Public Prosecutor, to assist bailiffs in their work. Bailiffs therefore expect more from the Public Prosecutor, and other public authorities with a role in the enforcement process, than simply responding to requests for assistance. They believe that these authorities should proactively summon and warn the defendant that the verdict is executed and should obeyed.
Concerns have also been raised by bailiffs about their need for protection, and they argue for stiffer punishments for those who infringe the enforcement law, particularly infringements that involve rioting and resistance, and attacking a public officer in the course of their duty.

Bailiffs are striving to overcome one of the most serious execution-related obstacles: the lack of information on debtors’ property and what can be sequestered. It appears that the current political and legislative trend in Tunisia towards reforming the legal, judicial and administrative systems will assist bailiffs on this issue. This is because the draft laws that seek greater transparency and affirm people’s right to information and access to administrative documents will help to effect bailiffs’ right to obtain information about the income of debtors, whose earnings are subject to an execution order at the time a judicial ruling is issued.

Conclusion

All of the procedural obstacles and difficulties discussed above, which result in the failure to secure people’s rights during enforcement processes, explain bailiffs’ growing insistence on the need to establish a specialised judicial structure which is capable of addressing all of the difficulties and disputes that may arise in the execution of a civil ruling. The person designated to lead such a structure would be called an execution judge, or a civil rulings execution judge.

The institution of an execution judge is not a new notion. Such a concept is being applied in some countries, and its viability has been demonstrated. Reliance on a single body that is qualified to resolve all execution-related disputes would avoid the time-wasting that occurs with many of these obstacles, and which results in a consequent loss of rights. This would, in turn, reflect positively on the economic cycle. Properly protecting creditors equates to protecting financial rights, which are fundamental to the economy. Indeed, legislators recognise the advantage of a judicial presence in the many processes that affect creditors, such as those in bankruptcy rulings or debt distribution.

Through unifying efforts towards resolving execution-related disputes, and enabling bailiffs to obtain the assistance of the police, it is hoped that the effectiveness of judicial rulings will be improved, and the rule of law will be strengthened.

Notes

1 Such as experts, notaries and court clerks. Lawyers are considered assistants in establishing justice.
2 This is in the framework of the draft law presented to competent authorities, which the Ministry of Justice’s Center for Legal and Judicial Studies has commented on.
3 This is consistent with the national consultancy report on reform of the judicial system, presented in Tunisia, on 19 December 2013.
4 Articles 16 and 18 of the Bailiffs’ Law.
5 In accordance with the report presented at the National Consultancy Seminar on Judicial Reform, in Tunisia, on 19 December 2013.
6 According to article 22 of the Bailiffs’ Law.

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