THE EFFICIENCY OF PRIVATE ENFORCEMENT OF PUBLIC LAW CLAIMS IN ESTONIA

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Abstract

In Estonia, since 2001 the function of the enforcement of public law claims, such as fines or taxes, has been transferred to freelance bailiffs. The intention was to create profit motives for private enforcers to increase the effectiveness of the enforcement system. In this paper it is shown that the remuneration scheme for bailiffs that is currently applied tends to lead to inefficiently low level of enforced public law claims. Through quantitative calculations it is illustrated that there might exist alternatives that significantly increase the economic efficiency of the enforcement system.

Keywords: public law claims, bailiffs, private enforcement, efficiency

JEL classification numbers: D61, K40, K42

1. Introduction

In order to carry out public functions, states have imposed a variety of financial obligations, such as taxes, fines or fees. In the view of protection of public interest and legal certainty, it is important that they would actually be enforced. It simplifies planning of public spending and has a positive impact on the state budget capacity and thus on the quality of public goods and services. Effective enforcement of financial obligations has also broader social impacts. For example, if a fine imposed for an offense is not effectively collected from the debtor, it does not deter individuals to commit new offenses. Thus, the state's failure to ensure the efficient enforcement of public law claims[6] casts doubt also on the objective of these claims in general.

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[6]This article defines public law claims as the financial obligations listed in the Constitution of the Republic of Estonia (2011) §§ 113 and 157, i.e., state and local taxes, fees, fines and compulsory insurance payments.

In order for the public law claims to be actually paid, the states have established a compulsory enforcement mechanism through which the payment of outstanding liabilities of the debtor is required. In Estonia, the last body conducting proceedings of outstanding public law claims is generally the bailiff[7]. A bailiff is, in the Estonian judicial area, the independent person in a public office whose activities are governed by rules of public law and who is acting in public law relations, and to whom the state has transferred the exercise of part of the state power. Since the enforcement procedure reform in 2001, financing the activities of the bailiffs from the state budget was discontinued (Alekand 2004, 252). This means that from 1 March 2001 bailiffs are freelancers, hold office in their own name and on their own responsibility and are remunerated by themselves from the financial resources collected from the debtors[8].

The main reasons for the involvement of the private sector were seen the need to increase effectiveness and improve the quality of service (Annus 2002, 226). Within a year, freelance bailiffs were able to double the collection of debts arising from judicial decisions and administrative penalties (Alekand 2008, 115). Despite the initial success of the reform, the state has in recent years, as a claimant, repeatedly expressed dissatisfaction with the enforcement of state claims. Deficiencies in the enforcement system have led to a situation where a portion of government revenues will not be collected. That places a burden on public budget and complicates the implementation of regulations and policies of the state in the respective areas, be it imposition of road traffic fines to ensure traffic safety or imposition of financial penalties in crime prevention. To bring some clarity to these issues, the following research problem is raised in this article: What are the efficiency implications of the system of private enforcement of public law claims existing in Estonia?

As the formulation of the research problem indicates, this paper addresses the problem of deficiencies in Estonia`s enforcement system from the perspective of welfare economics. More specifically, the economic efficiency of the enforcement of the public law claims in the existing executive system of Estonia is examined. This approach enables to investigate the problem from social perspective that should be the main interest of any benevolent state. The focus of the analysis lies on the following research questions:
1) How to formulate the efficiency (i.e., optimality) conditions for the enforcement of public law claims?
2) Will the current enforcement system in Estonia, including the bailiffs' remuneration scheme, lead to an efficient level of enforced claims?

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[7]The exception is the claims of tax authorities that are enforceable by compulsory tax proceedings.

[8] It does not preclude the collection of the bailiff's fee from the claimant, i.e., from the state agency who is the holder of the claim. For example, an obligation to pay the bailiff's fee in the amount of an advance payment arises for the claimant if the successful enforcement of the claim is hopeless (Bailiffs Act 2015, § 33 (4)).

3) What are the alternatives to the current enforcement system?

In order to answer the research questions, a simple partial equilibrium model is used. The model is examined theoretically as well as through quantitative simulations. The article consists of five parts. The following section or Part II explains theoretical background of the problem. Part III examines the efficiency of the enforcement system and its possible alternatives through a simple partial equilibrium model. Part IV presents the simulation results. The article ends with a discussion.

2. Theoretical background

The engine of the enforcement procedure reform carried out in Estonia can be considered to be the spread of the new public management ideology. Its primary objective was the involvement of the private sector and thus minimization of the state activities (Pollitt & Bouckaert, 2004, p. 88). In doing so, privatization was considered one of the solutions to solve problems in the public sector (Randma and Annus 2000, 135). The enforcement reform was seen as an increase in efficiency through competition between bailiffs, a motivational remuneration system, and the use of private sector management techniques. The civil reinforcement system as the continuation of the wave of privatization led to two significant changes: i) the law authorized private entities, i.e., bailiffs, to act in enforcement proceedings applying state coercion, ii) the enforcement procedure costs were directed from the taxes to the service fees (Annus 2002, 224-225).

Since the early 2000s Estonian enforcement system has remained nearly unchanged for fifteen years. It is based on the so-called French model, where freelance bailiffs are considered part of the state power, and a person operating in public interests (Mathieu-Fritz and Quemin 2009, 179). In doing so, a bailiff does not create new law, does not take decisions to resolve disputes between the parties, but his or her mission is to fulfil the administrative functions of the state (Alekand 2010, 23). In other words, the bailiffs are public authorities who perform public duties imposed on them individually on their own behalf, independently of the state power (Andersen 2006, 147).

Feasibility of private enforcement can be examined from various angles. As concerns the new public management ideology, its suitability in the formation of the contemporary model of the public sector has been recently under question (O'Flynn 2007). This article, however, does not focus on the involvement of the private sector in itself, but specifically on the investigation of the efficiency of the current enforcement system in Estonia.

One strand in the literature, which has studied a similar problem, starts with Becker and Stigler (1974), where the issue is whether the involvement of private sector in detecting and penalizing of offenders could lead to a more efficient outcome, compared to the public enforcement. In these models, it is often assumed that the

income of private enforcers is the monetary penalty collected from the offenders. It has been found that in case of such a scheme, the private enforcement could lead to a higher than the optimal level of offenses (Landes and Posner 1974), as well as to the lower than the optimal level of offenses (Polinsky 1979). It means that previous literature does not provide unambiguous answer with regard to the efficiency of private enforcement (see also Polinsky and Shavell 2007).

While this paper examines the efficiency of private enforcement as well, the focus is on the enforcement of financial obligations. Specifically, the literature cited above has rather focused on the optimization of offenses, i.e., to find the appropriate penal and detection rates, which would affect the offenders` expected benefits in such a way that they would commit only the violations, the deterrence of which proves to be too costly for the society (Friedman 1993, 736). One of the most common assumptions in the literature is that the social benefits and costs of the implementation of financial sanctions is zero because it is just a transfer within society. Although the possible costs in collecting monetary punishments has been acknowledged, it has been done only in the context of finding optimal fines (Polinsky and Shavell 2007, 430-431).

In practice, the enforcement of financial penalties may be difficult and very costly. Thus, this paper models the situation, which occurs after the offender has been assigned a financial penalty or another state claim. That means, the focus lies on the question, how much should the state or society as a whole use the resource in order to collect the claims, and whether the system in force in Estonia based on the private sector supports the achievement of the socially desirable outcome.

Thus, while the central issue in the prior literature concerns the modelling of the offenders` behaviour, then in this paper, the key result depends in particular on the activities of the enforcer, because in any case, the offender must pay the debt, and the behaviour of the debtor does not play a decisive role[9]. Rather, the question is whether the enforcer of the debt, for whom enforcement is associated with certain costs, is remunerated so that he or she would be motivated to spend socially appropriate amount of resources for collection of debts. Therefore, the partial

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[9]Of course, the actual conduct of the debtor plays an important role in the sense that if a potential debtor would settle their obligations on a voluntary basis and in a timely manner, the state or the bailiff would not have to spend resources for enforcement. Here, however, is meant in particular that the enforcer's choices do not have a significant impact on the conduct of the debtor. In other words, for the debtors, the main alternative, aside from payment of the debt, is to try to `hide´ themselves and their assets from the enforcerer (if there are any assets at all), but this choice (whether to `hide´ or not) will probably not be substantially dependent on how many resources the state spends on the enforcement of the debt. However, in the earlier literature, aimed at the optimizing of offenses, has led to the situation where if the country increases the resource costs of detecting violations, then the expected benefit of the violation decreases for the offender (due to the increased probability of detecting the violation), and this directly affects the behavior of the offender (for example, he or she may give up committing the violation).

equilibrium model has been used in this work, focusing exclusively on the analysis of the conduct of the claimant and his or her remuneration.

3. The model

3.1 Private enforcement

It is assumed that there are n identical bailiffs who aim to maximize their profits. They achieve this goal only at one specific volume of collected claims. Bailiffs' income is assumed to depend directly on how many claims they effectively enforce. The amount of their basic income is equal to the specific share of the monetary value of each individual collected claim. The claims can have m monetary values and the value of ith claim hereinafter is denoted by τ_i ($i = 1,2,\dots,m$ and $0 < \tau_i \leq \bar{\tau}$), and the proportion that constitutes the bailiff's fee from this claim is denoted by μ_i ($0 < \mu_i \leq 1$). Thus, the bailiffs' fee in monetary units for one claim is $\mu_i \tau_i$. They will charge this fee from the debtor in addition to the claim and thereby cover their basic operating costs, including labour costs, and maintenance costs of the premises. Additionally, it is assumed that the bailiff shall be reimbursed by the debtor part of the expenditure incurred to enforce the claims arising in execution of specific operations, such as arrest operations or organizing auctions, etc[10]. While denoting such benefits by κ_i, the marginal private benefit of the enforcement of the ith public law claim for a bailiff can be expressed as follows:

$$MPB_i = \mu_i \tau_i + \kappa_i Q_i \tag{1}$$

In function (1) Q_i denotes the volume of the ith collected claims by a bailiff. One should note that all bailiffs face the same marginal private benefit and marginal private cost function. In practice, this might arise from evenly distributed claims. Since there is no perfect competition between the bailiffs this might be rather close to the reality. For example, since 2011 the system of distribution of claims to the bailiffs was changed. When earlier, the claimant was able to choose the bailiff on the

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[10]In practice (according to the Bailiffs Act 2015, § 28-53) bailiff's fees may compose of the fee for the commencement of proceedings, a basic fee of proceedings and in certain cases also of additional fees. The fee for commencement of proceedings is the fee for delivery of the enforcement notice, regardless of the type of delivery, and it must cover the primary costs of commencement of the enforcement proceedings. The bailiff's basic fee is intended to cover the basic costs of the proceedings, including the bailiff's own salary and his or her office management costs. Additional remuneration is intended for operations that are technically or legally complex and time-intensive, and payment thereof starting from the second hour can also take place on an hourly rate basis, which is 19 euros. In addition to the bailiff's fee, the debtor must pay also the expenses related to a specific procedure or the enforcement costs, e.g., the fees related to the proceedings, legal fees, the costs of transmission of documents, etc (Code of Enforcement Procedure 2015, § 37)). In terms of his or her fee, a bailiff is prohibited from entering into agreements, altering the rates of fees and exempting from the fees (Bailiffs Act 2015, § 28 (2)).

basis of his or her performance, and then, from 2011 onwards, all of the public law claims have been distributed among the bailiffs on a uniform basis (Government Regulation No. 42 2015).

Another assumption is that one part of the marginal benefit, $\mu_i \tau_i$, is a constant, i.e., it does not change when the volume of the collected claims changes. The basic fee is a constant also in practice and equals with certain proportion of monetary value of the claim. The second part of the marginal benefit, $\kappa_i Q_i$, reflects the additional fee and is positively related to the volume of enforced claims. It means that the additional fee increases by κ_i monetary units when the level of collected claims increases by one unit. As is the practice, the rate of additional fee payable per hour is fixed, then in essence the conditions (1) can be also interpreted so that the workload, that is, for example, the time spent on a marginal claim, grows linearly when the volume of successfully enforced claims grows, but the rate of fee per workload unit, or for example, per one hour, is fixed. In this case, the change in the rate of fee would result in a change in the parameter κ_i, as the marginal benefit of the collection of each claim changes.

In practice, of course, the workload does not increase linearly, but in case of some claims it may be of an equal size and vary greatly across certain claims. However, if it can be assumed that the bailiffs contribute in the first order for the collection of such claims the additional cost (hence the additional revenues) of which are smaller, and subsequently more difficult and time consuming claims, the linear positive relationship between claims and the marginal benefit should reflect the approximate reality.

Enforcement of ith claim incurs additional costs for a bailiff - marginal private cost - which can be expressed as follows:

$$MPC_i = c_i + s_i Q_i \tag{2}$$

In the function (2) s_i reflects how quickly the marginal cost changes in case of the increases of the volume of the collected claims, i.e., how much the collection of each additional claim is more expensive than the last one. A positive linear relationship has been assumed here for the same reasons as in the condition (1). In addition, it is assumed that $s_i > \kappa_i$, i.e., only a certain part of the additional costs of the bailiffs would be remunerated. This assumption is based on the information that has been communicated by bailiffs publicly, that for example, the hourly rate of 19 euros to remunerate the additional activities is not motivating for the bailiffs. There is no very solid empirical evidence in this regard, though. Further, c_i in the equation (2) is the constant that expresses the base level of marginal costs, which does not depend on the volume of the collected claims. In certain cases, for example when there are claims with very low enforcement costs, it may be assumed that $c_i = 0$.

Further investigation of the optimal behaviour of bailiffs allows to draw up the profit function π of a bailiff. This is achieved by integrating the equations (1) and (2) with

respect to Q, and subtracting the second from the first (i.e., the total cost from the total revenue). The result is the following profit function for a bailiff summed over collected claims:

$$\pi = \sum_i \left[\mu_i \tau_i Q_i + \frac{1}{2} \kappa_i Q_i^2 - \left(C_i + c_i Q_i + \frac{1}{2} s_i Q_i^2 \right) \right] \tag{3}$$

In the equation (3), the first term represents the total income receivable from the enforcement of public law claims and the other term in the brackets represents the total costs associated with the collection of claims. The additional cost component C_i reflects the fixed cost, which is independent of the activity level of the bailiffs, i.e., of the volume of the collected claims. The volume of the profit-maximizing claims of a bailiff can be found by differentiation of the function (3) with respect to Q_i, expressing the optimal volume of claims as follows:

$$\sum_i Q_i^b = \frac{\sum_i (\mu_i \tau_i - c_i)}{\sum_i (s_i - \kappa_i)} \tag{4}$$

Condition (4) indicates that the greater the remuneration (higher μ_i or τ_i) of the bailiffs or the greater the value of the claim, *ceteris paribus*, the more claims the bailiffs decide to collect[11]. In addition, the higher the cost of enforcement of the claim (the value of s_i or c_i), the lower the volume of claims the bailiffs seek to collect.

3.2 Socially optimal enforcement

The government's interest is to maximize the welfare of the society, which is expressed as the difference between the total social benefits and total social costs and in case of optimal collection volumes, the marginal social benefits must equal the marginal social cost. While for the bailiffs the marginal benefit is equal to the payment which they receive for the collection of a claim (see equation (1)), then for the society, in this model the benefit is the monetary value of the collected claim.

In the strict sense, the state claim may also be considered a mere transfer, where on enforcement of the claim, the financial resources move from the debtor to the claimant, as a result of which the society as a whole will not benefit. This has been one of the primary prerequisites in the earlier works, in which payment of a fine is not regarded as a revenue or expense for the society. But it seems that such a

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[11]In practice, the bailiffs are obliged to process all the claims presented to them, but the bailiffs can choose between procedural steps. This study also assumes that the cost of a certain standard set of operations that bailiffs are obliged to carry out is minimal. Therefore, the model only accounts for costs of claims that are enforced by bailiffs. In fact, if the magnitude of claims presented to bailiffs does not change much, the cost to exercise a certain standard set of operations can be classified as a fixed cost that must be borne regardless of changes in the overall activity level of the bailiff. Thus, these costs do not affect the marginal costs and marginal revenues, on which the analysis performed in this work mainly relies on.

presumption is used for the purpose of simplifying the model, because the focus has not been the enforcement of a fine, but the optimization of penalties. However, if one assumes that the intention of the claims (e.g., unpaid fine) is to influence individual behaviour and that upon failure to collect them, this effect essentially disappears, the value of the claim can be regarded as a rough estimate of the possible impact of the enforcement of the claim[12].

However, many public law claims are tax claims that often have only a fiscal function, i.e., enforcement of that claim does not relate to the correction of some social problem or market failure. However, here the monetary value of the claim may also be regarded as a social benefit accruing, as successful collection of claims from debtors might give the benefit to other residents of the state, ensuring social fairness and legal certainty. For example, it may be assumed that the total willingness-to-pay of all the residents of the country for the claim to be enforced is at least equal to the monetary value of the claim[13]. As willingness-to-pay reflects the benefits that individuals gain, the collected amount can also be regarded as a benefit to the society.

On the basis of the described aspects, the monetary value of the claim collected by a bailiff is equated to the marginal social benefit as follows:

$$MSB_i = \tau_i \tag{5}$$

The marginal social cost of the enforcement of public law claims is assumed to be equal to the marginal private cost, which means that the bailiffs themselves shall bear all costs associated with the enforcement of public law claims[14]. The total

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[12] For example, let us assume that an individual decides to commit an offense in order to obtain benefit of EUR 500. In addition, the damage caused by this offense is EUR 700. If such violation is punishable by a fine at the rate of EUR 700, rational individual does not commit the offense and as a result the damage of EUR 700 has not been incurred. Although in this case the offender will lose the benefit of EUR 500, the society can ignore that on moral considerations. If payment of the fine is not executed and the offender knows it in advance, then he or she still performs that act, and generates EUR 700 worth of damage. Thus the collection of the fine (worth EUR 700) essentially prevents damage in the value of EUR 700.

[13] A more pragmatic argumentation can be put forward. For example, let`s assume that a person's income tax debt is EUR 100, which for the state is a tax levied for purely fiscal purposes. Obviously, all the other people living in the state would be willing to pay at least 99 euros (a maximum of 100 euros), in order to get benefits for EUR 100 in the form of public services (financed by funds collected from the debtor). While on collection of EUR 100, a cost would be incurred in the view of the debtor, it can be ignored by the society for the reasons of morality, which is why on collection of EUR 100, the benefit the society obtains is also EUR 100.

[14] In fact, some of the costs are also borne by the debtors who incur time costs in dealing with the bailiff, and for carrying out various activities for settling his or her debt. However, in this context, this is not taken into account on moral considerations. In addition, one could argue that a rational offender has already taken these costs into account when the decision to commit an offense was made.

welfare of the society expresses the difference between the total benefit received from all the claims and the total costs incurred for the purpose thereof. By integrating the equations (5) and (2) with respect to Q_i and summing over the claims and n bailiffs, the welfare of society W can be formulated for as follows:

$$W = n \sum_i \left[\tau_i Q_i - \left(C_i + c_i Q_i + \frac{1}{2} s_i Q_i^2 \right) \right] \tag{6}$$

In the equation (6) the first term inside the summation operator represents the total social benefit and the second term (in parentheses) the total social cost, the level of which depends on the volume of enforced claims. One way to find the optimal level of collected claims is to differentiate the equation (6) with respect to Q_i, making it equal to zero, and solving for Q_i. The result is the following volume of ith claims:

$$\sum_i Q_i^w = \frac{\sum_i (\tau_i - c_i)}{\sum_i s_i} \tag{7}$$

The condition (7) gives the partial solution to the first research question of this study that concerned the determination of the optimal level of collected claims. In other words, the condition (7) will hereinafter be handled as the efficient level of collected claims, the achievement of which is the objective of the society. However, this may not be the only criterion to take as a basis, as discussed below.

3.3 Efficiency of private enforcement

When subtracting the equation (4) from the equation (7), the result will be the amount of the claims by which the level of claims collected by bailiffs is different from the level of the claims which is optimal for the society. If $\mu_i < \frac{s_i - \kappa_i}{s_i}$, it follows that the level of collection of claims is inefficiently low:

$$\sum_i Q_i^w - \sum_i Q_i^b > 0 \tag{8}$$

However, if κ_i is sufficiently large compared with s_i, or in other words, only slightly smaller thereof, which means that very high additional fees or hourly rates have been set, bailiffs can choose also an inefficiently high level of collected claims volume. The same happens also in the case of a high μ_i. Thus, with the enforcement system examined hereby, it is at least theoretically possible to achieve an efficient level of collected claims so that $Q_i^w = Q_i^b$, if to impose appropriate fee rates[15].

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[15] As can be easily seen through the conditions (1) and (5), in order for the bailiffs to choose a socially optimal level of collected claims, their marginal private benefit at the optimal level should be equal to the marginal social benefit, i.e., $\mu_i \tau_i + \kappa_i Q_i = \tau_i$, which can be expressed as follows: $\kappa_i Q_i = \tau_i (1 - \mu_i)$. Given that $\kappa_i Q_i$ is a part of the marginal benefit (or total fee) which is formed of additional fees, consequently, at the optimal level, the additional fee must represent $[(1 - \mu_i) * 100]\%$ of the value of the claim, in order to achieve an efficient level of collected claims.

Inefficiency arising from ith claims not collected (or over-collected) can be expressed as the difference between MSB and MSC from Q_i^b and Q_i^w, summed over different types of claims, multiplied by the total number of bailiffs:

$$E = n \sum_i \int_{Q_i^b}^{Q_i^w} (\tau_i - s_i Q_i) dQ_i = n \sum_i \frac{1}{2} s_i \left(Q_i^w - Q_i^b \right)^2 \qquad (9)$$

The condition (9) shows that the efficiency cost will be the higher, the greater the difference between the socially optimal level of collected claims and the level chosen by the bailiffs, whereas efficiency cost increases by the square of the difference, i.e., exponentially. The impact of the parameter s_i to the efficiency cost is ambiguous. Namely, the lower growth of the marginal cost will increase the motivation of the bailiffs to increase the volume of level of collection, but at the same time increases the level of socially optimal level of collected claims, and therefore, the difference between the actual level and the socially optimal level can even be increased. Social net benefits, defined in this paper as a difference between total social benefit and total social cost of enforcement, is growing, however, in any case, because the costs of all collected claims go down.

3.4 Optimal fees

In the social view, the main question is how to reduce efficiency cost of the enforcement of public law claims. One way to achieve this, and at the same time to maximize public revenue, is to change the basic fee μ_i or the additional fee κ_i, which would change the marginal benefit of the bailiffs. However, increase of fees, for instance, can damage the welfare of the debtors. For the government who has to be guided by the welfare of the society as a whole, a better option would probably be to achieve simultaneously three objectives: i) to minimize the efficiency cost, ii) to minimize the profit of bailiffs[16], iii) to maximize the state revenue from the enforcement.

Therefore, the objective of the government can be formulated as minimizing the social loss function[17], i.e., the total profits of bailiffs, as well as the efficiency cost, minus the state revenue. Formally the described social loss function can be expressed as follows:

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[16]This essentially reflects the part of the fee that exceeds the actual cost of enforcement for the society and therefore lays unreasonable burden on debtors. In a strict sense this approach might seem to account for distributional aspects as well because profits are just transfers from debtors to bailiffs. However, in this paper the profits of bailiffs are rather used to measure the cost of the enforcement without offsetting benefits.

[17] It is easy to mix up the concepts of social loss and social net benefits in this paper. While the definition of social net benefits is more narrow and concerns the maximization of total surplus from the enforcement of the public claims, regardless of who is the enforcer or how is he or she remunerated, the concept of social loss additionally accounts for effects arising from fiscal revenues and bailiffs` profits.

$$L = E + n\pi - \varepsilon R \tag{10}$$

The first two components of the function (10) are as defined above, the final component R represents the state revenue, which may be expressed as a product of the total volume of collected claims and monetary value of the claims as follows:

$$R = n \sum_i \left[\frac{(\mu_i \tau_i - c_i)}{(s_i - \kappa_i)} \tau_i \right] \tag{11}$$

Since the growth of state revenue is a mere revenue transfer within society from one member of the society to another, then it is not generally correct to regard it as a full social benefit. However, receipt of every additional euro to the state treasury will reduce the need to collect the revenue with other taxes or enables to lower other taxes. This kind of efficiency gain per revenue unit is usually expressed as the marginal efficiency gain. In this paper such a gain is denoted by ε, and the social benefits of the additional income received by the state treasury is reflected by εR.

Thus, on the one hand, as the fee for the bailiffs increases, the efficiency cost decreases, because it motivates the bailiffs to enforce more claims. On the other hand, it increases the portion of the fees that the debtors must pay, in addition to what the enforcement of the claim truly costs for the society. Third, it will bring more funds to the state treasury. The condition (10) essentially defines the optimality criterion for the level of collected claims in this paper, i.e., the answer to the first research question has been reached. Specifically, the level of enforced claims should be increased until the additional benefits resulting from the enforcement of the additional claim in terms of tax revenue and efficiency gain exceeds the additional cost of the debtors.

The government's main instrument to change the volume of collected claims in the current system is fee rates. Therefore, the government should establish rates which would balance the three effects described above, i.e., to increase the rates until the benefit from the decline of the efficiency cost and from the growth of state revenues exceed the growth of the profit. For formal finding of such a fee rate, functions (9) and (3) should be substituted in the condition (10), the obtained result should be differentiated with respect to μ_i and κ_i, equating the derivatives to zero and solving for the corresponding fee rate, yielding the following optimal fee formulas:

$$\mu_i^w = \frac{\frac{c_i}{\tau_i}(1+\varphi_i)+(1+\varepsilon)}{2-\varphi_i} \tag{12a}$$

$$\varphi_i = \frac{\kappa_i}{k_i - s_i} \tag{12b}$$

$$\kappa_i^w = s_i \left[1 - \frac{\mu_i}{(1+\varepsilon)-\frac{1}{2}\mu_i} \right] \tag{13}$$

As the derivative of the function (12a) with respect to τ_i is negative, then, consequently, the optimal basic fee system should be regressive, i.e., the proportion of the fee from the claim should decrease when the value of claim increases. However, if $c_i = 0$, then the optimal fee does not depend on the value of the claim, as in this case $\frac{c_i}{\tau_i}(1 + \varphi_i) = 0$, and the formula of the optimal fee is simplified to the form $\mu_i^w = \frac{(1+\varepsilon)}{2-\varphi_i}$. Assuming that $c_i = 0$, the condition (12b) expresses the ratio of additional fee to basic fee at equilibrium level of enforced claims[18]. Assuming that $\varphi_i < 0$, it is easy to see that the larger the share is, the smaller is the optimal basic fee. Condition (13) represents the optimal additional fee rate, and suggests that the more rapid the growth of marginal cost of enforcement, i.e., the greater the s_i, the greater must be the additional fee rate. At the same time, the larger the basic fee μ_i, the lower should be the additional fee.

3.5 Other alternatives

The alternative option of reducing the efficiency cost of the current system is by using certain measures to reduce the opportunity costs associated with the enforcement of the public law claim. In the model, it could be reflected in the decrease of the value of the parameter c_i. For more accurate expression of the impact of declining of costs on the economic efficiency, the equation (9) should be differentiated with respect to c_i, yielding the following result:

$$\frac{dE}{dc_i} = (-\varphi_i)\left(Q_i^w - Q_i^b\right) \tag{13}$$

If we assume that $(-\varphi_i) > 0$, for which is sufficient the assumption that $s_i > \kappa_i$, the reduction of the value of the parameter c_i will reduce the efficiency cost of the enforcement of claims.

As is apparent, the possibilities of reduction of the efficiency cost of the current system in this simple model appear to be relatively limited: either reducing costs or increasing the fees of the bailiffs. In the first case, the increase in the efficiency is limited to the ability to find new more economical solutions for the enforcement of the debts. In the second case, the problem is the disproportion of fees from the debtors' perspective. The central problem here is that the marginal benefit of the claimant does not coincide with the marginal social benefit.

In this model, there is one additional alternative to achieve a significant qualitative shift in the direction of a more efficient system, i.e., so that the volume of collected claims would increase, the efficiency cost would reduce and at the same time the

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[18] This arises from the fact that at equilibrium level (at Q_i^b) MSC=MPB. Therefore, the ratio of additional fee to basic fee can be easily expressed through $\frac{d}{dQ_i}(MSC)$ and $\frac{d}{dQ_i}(MSB)$, that is through s_i and κ_i.

revenue of the country would increase, without the burden of the debtors having to grow disproportionately high. It involves handing the enforcement function fully over to a state agency. In this case, since the state agency is able to handle all the revenue received by the state treasury as private revenue and the resources used for enforcement as a private cost, then the agency chooses the socially optimal volume of enforced claims[19]. In this case, the marginal benefit of the state agency would be MSB, the marginal cost MSC, and the optimal volume of activity would reach the level where MPB = MSC, in the case of which no efficiency cost will arise.

4. Quantitative implications

4.1 Parameter values

For more thorough investigation of the above theoretical model, below is given an exemplary calculation. Essentially, on the basis of the model the total profit of bailiffs and the efficiency cost of the enforcement system, the corresponding revenues received by the state treasury, the socially optimal fees and the opportunity cost of the enforcement has been simulated. Out of the above variables, the conditions (3), (9), (11) and (12) are used respectively for quantification of the first four. For finding the opportunity cost of enforcement the marginal cost function is integrated from 0 to Q_i^b as follows:

$$V = \int_0^{Q_i^b} (c_i + s_i Q_i) \, dQ_i \tag{14}$$

For quantitative simulation it is necessary to find the numerical values of the following parameters: μ_i, τ_i, ε_i, c_i, κ_i, s_i, Q_i^b, where $i = 1, 2, \ldots, m$. Since it is not intended to simulate the empirical estimates, but rather to compare the quantitative effects across the various alternative enforcement systems, then a number of simplifying assumptions are used on giving values to parameters. However, wherever possible due to the availability of data, the assumptions imitating the real world are taken as a basis.

For simplicity, it is assumed that $m = 10$ and $\tau_1 = 10$ and $\bar{\tau} = \tau_{10} = 100{,}000$ (see other values in Appendix). The distribution of claims was determined so as to correspond to the distribution of the tax debt of the Estonian Tax and Customs Board (2015). Estonian Tax and Customs Board (TCB) statistics shows that most of the debts are in the range of 50 to 3,200 euros, slightly less are the debts with the value of up to 50 euros, and substantially less are the debts with the value of more

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[19]It is easy to see in the equations (4), where in the numerator of the right hand member $\mu_i \tau_i$ would be replaced with τ_i, and $\kappa_i = 0$ since the need for payment of additional fees disappears. As a result $Q_i^b = Q_i^w$, meaning that the socially optimal level of collected claims will be chosen.

than 3,200 euros. A similar distribution skewed to the right was also expected in the calculations, as shown in Appendix.

The number of collected claims Q_i^b was derived based on actual economic activity of bailiffs in Estonia. As is apparent from Table 1, there are approximately 50 bailiffs in Estonia engaged in the collection of public law claims and their turnover from the professional activities is a total of more than 10 million euros a year, out of which, the profit without social and income tax accounts for about a third. In addition, Table 1 presents the monetary value of claims terminated every year due to the settlement of the claim and its proportion of the monetary value of the new claims of the same year. Based on the data it can be suggested that bailiffs are able to collect about 10-25% of total monetary value of claims. However, when considering only the number of cases, they are more successful, i.e., the proportion of cases that have been successfully terminated will remain around 40-50% of the new cases in one year.

Table 1. The aggregate indicators of the economic activity of bailiffs in Estonia in 2009-2013

	2009	2010	2011	2012	2013[20]
The total number of bailiffs[21]	42	38	41	42	47
Total income from professional activities (mln euro)	10.30	12.59	13.63	14.21	14.51
Total cost of business[22] (mln euro)	6.35	7.88	9.19	9.55	6.05
Total profits (net of social security contributions) (mln euro)	2.97	3.54	3.34	3.51	6.36
Total profits per bailiff (mln euro)	0.07	0.09	0.08	0.08	0.14
Monetary value of the enforcement files terminated due to settling the claim (mln euro)	8.16	11.62	12.58	-	-
Proportion of the monetary value of the files terminated due to settling the claim from the monetary value of new files (%)	10.29	14.11	20.63	-	-

Source: Estonian Tax and Customs Board (personal communication, January 28, 2015), authors' calculations

Considering the data presented above, it was assumed that, depending on the value of the claim, collected number of claims represents 10%-50% of the total claims (see Appendix). Additionally, enforcement of claims with a lower monetary value was assumed to be more successful than the enforcement of higher value claims.

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[20] This year's data is not directly comparable to previous ones, as well as containing data from the bailiffs, who were not engaged in the enforcement of claims.
[21] The bailiffs engaged in professional activities, i.e., the enforcement of claims.
[22] It includes all costs, including costs related to non-professional activities, thereby profits from the professional activity are actually higher.

Consequently, different proportions were also used in the simulation. The total volume of claims is expected to be of the same magnitude as the bailiff's claims submitted in one year during the period 2009-2011. In the simulation, the total volume of claims was assumed to be 90,770 claims and their monetary value was 74.75 million euros (see Appendix).

For the purpose of simplicity it was also assumed that the parameter $c_i = 0$. The values of the parameter μ_i for the different claims were retrieved from the Bailiffs Act (2015) (see Appendix). As is apparent, the percentage of the monetary value of the claim, which the bailiffs will receive as a fee, decreases as the value of the claim increases, dropping from 30% to 5%.

Finding of the parameters s and κ was based on the premise that the additional fees of bailiffs represent approximately 100% of the basic fee at the equilibrium level of collected claims (i.e., at Q_i^b)[23]. This assumption made it possible to find the value of the parameter κ_i, from which in turn through the condition (4) could be found the value of the parameter s_i[24]. Essentially, this premise of 100% also means that the level of collected claims is expected to be below the level of the efficient level. As described in a footnote in the subsection 3.4, in order for the level of collected claims to be on the efficient level or above, the additional fee for the marginal claim must equal $[(1 - \mu_i) * 100]\%$ of the value of the claim. As shown in Appendix, the maximum basic fee rates are mostly below 30%, which is why the additional fee should amount to at least 70% of the monetary value of the claim, which is not realistic at least in case of claims with a higher value.

4.2 Simulation results

Table 2 presents the quantitative effects of the four alternatives on the profits of the bailiffs, the efficiency cost, state revenue and opportunity cost. In addition, the efficiency cost and the opportunity cost has been presented per unit of the state revenue, in order that the effects of the alternatives would be more comparable.

First, it is apparent that the efficiency cost of the current system is almost equal to state revenue, and it exceeds the opportunity costs that fall below 2.5 million euros,

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[23] One should note that this ratio is assumed to apply only at equilibrium level, and in case of the other claims the ratio is lower.

[24] For example, to find the value of κ for a claim with a value of EUR 50, the following calculation was made: $\kappa_i = \frac{1*\mu_i\tau_i}{Q_i^b} = 1 * \frac{15.5}{12500} = 0.00124$. The logic is that as the total additional fee for a claim at equilibrium level must be $Q_i^b\kappa_i$, the ratio of additional fee to basic fee can be expressed as $\frac{Q_b\kappa_i}{\mu_i\tau_i}$. If this ratio is assumed to be 1.0, the value of κ_i can be derived as was shown above. The value of the parameter s_i was found through condition (4) as follows: $Q_i^b = \frac{\mu_i\tau_i - c_i}{s_i - \kappa_i}$ or $12500 = \frac{15.5}{s_i - 0.0004}$, where it is found that $s_i = 0.0016$.

approximately five times. If to apply socially optimal basic fee rates, i.e., raise them to 40%, both the state revenues, as well as the profits of bailiffs, would grow significantly. At the same time, the efficiency cost would decrease significantly. This suggests that the socially optimal system defined in this paper, compared to the current system, would allow to increase the burden on debtors, as the additional cost for the debtors is less than the benefits from the reduced efficiency costs and from the additional receipts to the state treasury. Optimization of the basic fees would lower social loss by about ten times, i.e., from 10 million to 1 million euros.

Table 2. Comparison of alternative systems (mln euro)

	The current system	Optimal basic fee	Optimal additional fee	The reduction in marginal cost (20%)	Transfer of the function
Profits	1.21	7.29	3.80	2.01	0.00
Efficiency cost	11.52	0.91	3.68	11.05	0.00
State revenues	13.68	36.44	51.09	22.79	45.55
Opportunity cost	2.42	14.58	28.85	0.29	0.27
Efficiency cost per 1 mln of state revenue	0.84	0.03	0.07	0.48	0.00
Opportunity cost per 1 mln of state revenue	0.18	0.40	0.56	0.01	0.01
Social loss	9.99	0.91	-2.77	8.51	-9.11
Social net benefits	11.26	21.87	22.40	22.51	45.28

Compared with the basic fee, a much better performance is achieved by optimization of additional fees, bringing more revenues into the state treasury with twice the smaller profit of bailiffs. Moreover, the social loss will be reduced by approximately 13 million euros, and the social net benefits will increase slightly more than on the optimization of the basic fees.

The marginal cost savings of 20% would not result in major changes. The state revenues would grow by about 9 million euros and, therefore, the efficiency cost per unit of revenue would also decline to some extent. The efficiency cost does not decrease considerably due to the fact that the cost savings would lead to the increase in a socially optimal level of enforced claims, so the difference between the market equilibrium and the socially optimal equilibrium does not change much or could even grow. Social net benefit is growing, however, as each further claim that is collected will increase the welfare of the society.

The fourth alternative, the transfer of the function of the public law claims to the state agency, would create a significant improvement, over the 30 million euros, in the receipt of the state revenues. While the opportunity cost would rise significantly, it simply reflects the large amount of collected claims. The value of the function of social loss reflects the efficiency of this alternative most strikingly, as is clearly lower than other alternatives. Thus, this alternative would be the best from the social perspective, as the optimization of all the loss function (10) components takes place in the fullest possible way: total profits, or an excessive burden on debtors is minimized to zero, the efficiency cost is minimized to zero as well, and the state revenue it collected to the volume, in the case of which the cost of obtaining the last collected euro is less than or equal to one euro.

5. Discussion

This paper studied the efficiency of the private enforcement of public law claims in Estonia. In the theoretical model, it was shown that the remuneration of the bailiffs in such a way, where their basic fee is formed as a percentage of the collected amount may lead the volume of enforced claims to the level that from the perspective of the society would be inefficiently low as well as inefficiently high. However, provided that the additional fee is generally lower than the basic fee, this kind of system will be more inclined to enforce too few claims.

This result seems to be in accordance with the actual indicators characterizing the economic activities of bailiffs. Specifically, while rather strong incentives have been created for effective action, from the perspective of the state or society it has not been accompanied by excellent results. On the other hand, the high-income levels of bailiffs imply that profit opportunities have been successfully realized. Profits per bailiff (net of social security contributions) are 70,000 to 80,000 euros (see Table 1 above), which in the light of Estonia's average income level is a good result. For example, the Estonian average salary in the field of public administration in 2009-2013 was around 10,000 to 12,000 euros per year (Statistics Estonia 2015).

The main objective of the quantitative simulation of the model was to compare the efficiency of alternative enforcement systems. The results showed that the optimization of the fee rates, which in the context of Estonia means increase thereof, will lead to a significant increase in social net benefits and decrease in social loss. In case of the basic fees, this result can be explained by the fact that the optimal basic fee rate, namely 40%, is considerably higher than the current basic fee rates, which are mostly less than 30%. However, introduction of such high rates is questionable, especially in case of claims with the greater monetary value. Although the principle of disproportionality of fees was taken into account in the analysis through minimizing the profits of the bailiffs, the 40% fee rates are likely to be inapplicable in practice.

Significantly better result can be achieved by optimization of additional fees. Their more positive impact on the welfare of society results from the fact that in the current system, the additional fees are more related to the workload of the bailiffs. Therefore, with these fees, the profits gained by bailiffs are lower, which substantially reduces the portion of the fees paid by debtors that exceeds the opportunity cost of enforcement. This in turn allows the treasury to collect more revenue because the enforcement is less expensive for society. Thus, under the current system, the reward system should shift more to the workload-based pay.

The simulated decrease in marginal cost by 20% compared to the current situation did not lead to a significant increase in efficiency. This result arises from the fact that cost reductions will also enhance the socially optimal level of collected claims because in the new situation, i.e., with the lower cost, the marginal cost of a collected claim and the marginal benefit are equal at the higher level. Surely this result cannot be interpreted so that the pursuit of economical enforcement system does not pay off. As is apparent from Table 2, similar increase in social net benefits will take place as under optimal fees. Relatively large efficiency cost of this alternative should rather be interpreted in such a way that it reflects the efficiency cost, after the cost savings are achieved, which rather suggests that the inefficiency will inevitably remain a part of the current system due to the bailiffs' remuneration scheme.

Thus, the cost-saving opportunities of the current system should definitely be taken advantage of. For example, pursuit should be towards re-creation of competition (see section 3.1), in order for the motive of cost minimization to strengthen. In addition, Randlane (2012, 144) has pointed out that the current system is characterized by an agency-based logic. Specifically, currently claims are generically subject to coercive enforcement in three ways: by the claim's owner himself or herself (the tax claims are collected by tax authorities), the coercive enforcement has been handed over by law or administrative contracts for collection to the tax authorities (e.g., environmental charges, local taxes), or the claim is subject to coercive enforcement in the enforcement proceedings (for example, the traffic fine). Consequently, it may be that at the same the outstanding claims of a person are claimed both by the tax authorities, as well as several bailiffs. As a result, the process of enforcement of claims is characterized by fragmentation, resulting from which the state has no centralized overview of the outstanding obligations of the persons to the state. Significant cost savings could be achieved by transferring agency based services to a customized logic, which in all likelihood would free the resources of bailiffs, reduce the administrative burden of the parties, ensure an overview of the person's outstanding debts to the state (Randlane (2012, 153). For example, one solution could be the creation of a single database of debtors.

The only alternative highlighted in this paper that fully solves the problem of inefficiency, is transfer of the function of enforcement to a state agency. The advantage of this alternative over others is in particular due to the fact that in this case the marginal private benefit of enforcement of a claim for the state agency

would overlap with the marginal social benefit, provided that the state agency is acting in the interests of society. To some extent, this alternative is comparable with the imaginary system under which the bailiffs would be remunerated only according the cost which they bear[25], paying a slightly higher fee for creation of profit motives. With regard to economic efficiency, transferring the enforcement function to a state agency and cost-based remuneration system should lead to the very similar result. Application of the latter system in practice, however, is virtually impossible or at least administratively very costly. While each debtor is different and requires resources from the bailiffs, for the state it is very costly or even impossible to get information about the actual enforcement costs. In addition, there is no motivation for bailiffs to disclose that information, which is why the state should still reward bailiffs significantly higher than it would actually cost for the society. Thus, from this point of view, the simplest would be to transfer the function to TCB.

Such centralized systems operate in several countries. For example, in 2006 Sweden created a separate collection authority, the Swedish Enforcement Authority, which collects all the claims on a uniform basis (grew out of the Swedish Tax Board) (Kronofogden 2015). That being said, the Swedes deem their procedural organization extremely effective (Liedström Adler 2012). Similarly to Sweden, in Denmark since 2005 has been operating a geographically independent Danish Debt Collection Administration (Jørgensen 2010, 138). In Denmark, most of the activities are automated by way of information technology, customer contact does not occur and all claims are collected on a uniform basis. In addition to the above examples, the state organizes the compulsory enforcement of its own financial claims in many other European countries, including Germany, Austria, Switzerland and others. Neither are exceptional the so-called mixed approaches, such as in Finland, in the Netherlands, etc. The enforcement system that is fully functioning on the private sector in the context of Europe is in fact rather exceptional. (Lhuillier, Lhuillier-Solenik, Nucera and Passalacqua 2007)

Of course, the transfer of the function of enforcement to a state agency may give rise to different kinds of problems. The goal of the deployment of the current system of bailiffs was to achieve efficiency through competition and profit motives, which in the private sector is expected to be easier and more natural. If to transfer the enforcement function to the state, there will be no profit incentives, and this could result in the growth of the marginal cost of enforcement. Theoretically, this growth could be so significant that the level of collected claims will not increase in comparison with the current level. Ultimately, this debate leads to the question, in which case can claims be collected at a lower cost. It would require a separate analysis, for example, the assessment of the operating costs of TCB and bailiffs on the enforcement of claims.

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[25] In the context of current remuneration scheme this would mean to rely only on additional fees to finance the bailiffs` enforcement activities.

As the limitation of the analysis, the question can arise, as to how many of the claims that bailiffs have not collected (or have done so by implementing passive measures and with low performance), are in fact enforceable. This means that the assumption of the model, according to which using additional resources it is realistically possible to efficiently collect more complicated debts that are currently not enforced, may be questionable. This paper assumes that at least some of these claims which will remain successfully unresolved, will be successfully enforceable with the help of additional resource cost. This seems a reasonable assumption, but its realism and the real reasons why the performance of the bailiffs, at least based on the statistics, seems modest, would require further analysis for understanding the problems.

A certain indirect indication in terms of the realistic nature of the model is provided by the comparison of the actual and simulated profits of bailiffs. As the simulation of the model was based on the data from the years 2010 and 2011, then the total earnings of bailiffs of these years were between 4.4 - 4.7 million euros (see Table 1 in subsection 2). The sample calculation of the model yielded a profit of 1.2 million euros. Given that, in addition to collection of public law claims, bailiffs also handle other activities, meaning that their profits only from enforcement of public law claims are probably lower, then nothing controversial is apparent in these figures.

In summary, it can be stated that the system applied in Estonia is not conducive to the efficient enforcement of public law claims, despite the bailiffs' profit motives. However, the analysis does not suggest that there is a necessarily more efficient alternative to the current system. While according to the model studied in the paper, transfer of the enforcement function, e.g., to TCB will allow to achieve the most efficient result, the adverse impacts of this alternative should be separately empirically investigated. In addition, the future research should integrate the optimization of offences and enforcement of public law claims into one framework, in order to create a more holistic approach.

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Appendix. The assumed distribution of public law claims, the proportion of enforced claims (upper panel) and the actual current basic fee rates (lower panel)
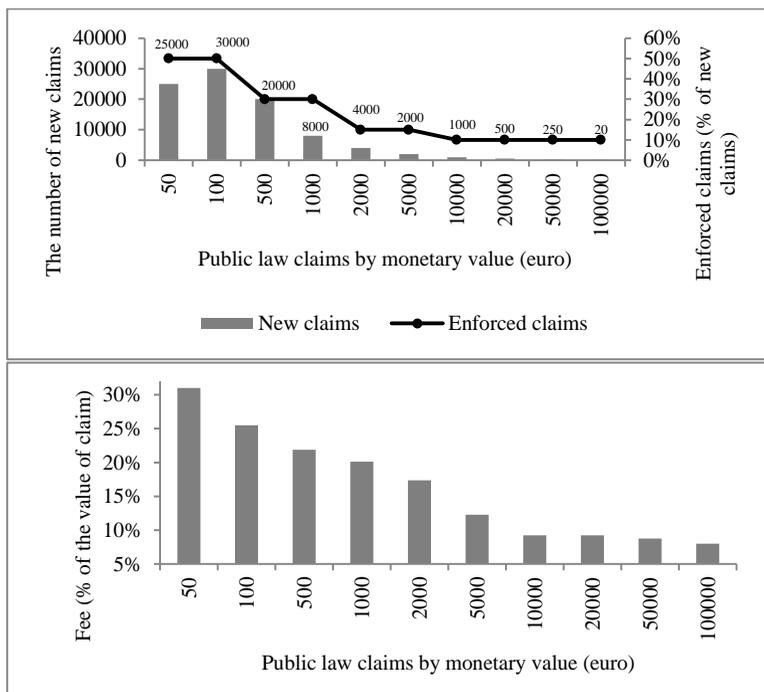
Source: Bailiffs Act (2015), authors' calculations

RIIGINÕUETE SISSENÕUDMISE EFEKTIIVSUS EESTIS[1]

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Probleemipüstitus

Riigid on kehtestanud oma funktsioonide täitmiseks füüsilistele ja juriidilistele isikutele erinevaid rahalisi kohustusi – maksud, trahvid, tasud jne. Avaliku huvi ja õiguskindluse kaitsmiseks on oluline, et need saaksid ka reaalselt täitmisele pööratud. Näiteks lihtsustab see fiskaaltulude ja -kulude planeerimist ning mõjutab positiivselt riigieelarve mahtu ja seeläbi riigi poolt osutatavate avalike kaupade ja teenuste hulka ja kvaliteeti. Samas on rahaliste kohustuste täitmisel ka laiemad ühiskondlikud mõjud, sest see lihtsustab riigil oma põhifunktsioonide täitmist. Näiteks kui õigusrikkumise eest määratud rahatrahvi võlgnikult tulemuslikul sisse ei nõuta, ei mõjuta see ka isikut hoiduma uutest õigusrikkumistest. Seega riigi suutmatus tagada riiginõuete[7] efektiivne sissenõudmine seab kahtluse alla ka riiginõuete kehtestamise ja kohaldamise eesmärgi.

Et riiginõudeid reaalselt tasutaks, on riigid loonud sundtäitmise mehhanismi, mille kaudu nõutakse tähtaegselt tasumata kohustused võlgnikult sisse. Eestis on tasumata riiginõuete viimane menetleja üldjuhul kohtutäitur[8]. Kohtutäitur on Eesti õigusruumis avalik-õiguslikku ametit pidav sõltumatu isik, kelle tegevus on reguleeritud avaliku õiguse normidega ja kes tegutseb avalik-õiguslikes suhetes ning kellele riik on delegeerinud osa riigivõimu teostamisest. Alates aastast 2001 lõpetati kohtutäiturite tegevuse finantseerimise riigieelarvest ning toimus avalike ülesannete üle andmine erasektorile. See tähendab seda, et 1. märtsist 2001 on kohtutäiturid vabakutselised, peavad ametit oma nimel ja oma vastutusel ning neid tasustatakse nende endi poolt võlgnikelt sissenõutud rahalistest ressurssidest.

Kohtutäiturite reformi puhul nähti erasektori kaasamise peamiste põhjustena vajadust tõsta efektiivsust ja parandada teenuse kvaliteeti. Seejuures aasta pärast täitereformi toimumist hinnati reformi, mille eesmärgiks oli saavutada parem lahendite täitmine ja vabastada riik täitevorganisatsiooni ülalpidamisest, täielikult õigustatuks. Vabakutse-

lised kohtutäiturid suutsid aastaga kahekordistada kohtuotsustest ja halduskaristustest tulenevate kohustuste täitmise.

Reformi esialgsele edule vaatamata on riik viimastel aastatel sissenõudjana korduvalt väljendanud rahulolematust riiginõuete sundtäitmisel. Täitesüsteemi puudused on viinud olukorrani, kus märkimisväärne osa riigitulusid jääb sissenõudmata, mis raskendab vastavates valdkondades riigi regulatsioonide ja poliitikate rakendamist, olgu selleks siis liiklustrahvide määramine liiklusturvalisuse tagamisel või rahaliste karistuste määramine kuritegevuse ennetamisel. Sellest tõusetub ka antud artikli keskne uurimisprobleem: millised on kehtiva riiginõuete sissenõudmise süsteemi implikatsioonid majanduslikule efektiivsusele?

Antud töös on sellele küsimusele lähenetud heaoluökonoomilisest vaatenurgast. Täpsemalt uuritakse kohtutäiturite sissenõudmise alase tegevuse majanduslikku efektiivsust Eestis kehtivas täitesüsteemis. Fookuses on järgmised uurimisküsimused:
1) Kuidas formuleerida optimaalse riiginõuete sissenõudmise tingimused?
2) Kas Eesti kehtiv sissenõudmise süsteem, sh kohtutäiturite tasustamise skeem, viib optimaalse sissenõudmise tasemeni?
3) Millised on alternatiivid kehtivale riiginõuete sissenõudmise süsteemile?

Riiginõuete sissenõudmise süsteemi analüüsimiseks ning uurimisküsimistele vastamiseks kasutatakse lihtsat osalise tasakaaluga mudelit, mille põhjal teostatakse ka kvantitatiivne simulatsioon. Mudeli koostamisel on kaks kesket eeldust. Esiteks eeldatakse, et kohtutäiturid on ratsionaalsed ning maksimeerivad kasumit. Teiseks eeldatakse, et valdav osa nõuetest on võimalik edukalt sisse nõuda, kuid põhitakistuseks on osade nõuete sissenõudmise kõrgem kulu. Mudeli koostamisel lähtutakse Eestis praktikas kehtivast täitesüsteemist, st püüdlus pole mitte niivõrd varasemas kirjanduses esitatu mudelite edasiarendamine, vaid praktilise probleemolukorra modelleerimine.

Teoreetiline taust ja modelleerimise lähtekohad

Üks suund kirjanduses, mille raames on sarnast probleemi uuritud, ulatub 1970ndatesse, kus on põhiküsimuseks, kas erasektoril põhinev õigusrikkumiste avastamine ja õigusrikkujate karistamine viib võrreldes avaliku sektoriga efektiivsema tulemuseni. Sellistes mudelites on sageli eeldatud, et erasissenõudjate tuluks on õigusrikkujatelt sissenõutud rahaline karistus ning uuritud, kas see motiveerib sissenõudjaid käituma efektiivsemalt võrreldes avaliku sektori sissenõudjaga. On leitud, et erasektori kaasamine võib sellise skeemi korral viia nii optimaalsest kõrgema kui ka madalama rikkumiste tasemeni, mis üldistatult tähendab seda, et varasemas kirjanduses puudub veendumus, et erasektori kaasamine õigusrikkumiste heidutamisel võrreldes avaliku sektoriga efektiivsust suurendaks.

Antud töös uuritakse samuti erasektori kaasamise efektiivsust, kuid seda mitte õigusrikkumiste avastamisel, vaid rahaliste kohustuste sissenõudmisel. Täpsemalt, varasemas kirjanduses on keskendutud õigusrikkumiste taseme optimeerimisele, st püütakse leida sobivad karistus- ja avastamismäärad, mis mõjutaksid õigusrikkujate oodatavat kasu selliselt, et toime pandaks üksnes rikkumisi, mille heidutamine osutub ühiskonna jaoks liiga kulukaks. Kusjuures üheks levinumaks eelduseks kirjanduses on see, et rahaliste karistuste rakendamise sotsiaalne tulu ja kulu on null, sest tegemist on tulusiirdega ühiskonna sees. Praktikas siiski võib rahaliste karistuste täitmisele

pööramine olla raskendatud ja seotud suurte kuludega. Seega, antud töös modelleeritakse olukorda, mis tekib pärast seda, kui õigusrikkujale on rahaline karistus määratud või muu riiginõue esitatud. Fookuses on küsimus, kui palju peaks riik või ühiskond tervikuna kasutama ressurssi selleks, et nõuded sisse nõuda, ning kas Eestis kehtiv erasektoril tuginev süsteem ühiskondlikult soovitava taseme saavutamist toetab.

Seega, kui seenises kirjanduses on kesksel kohal õigusrikkujate käitumise modelleerimine, siis antud töös sõltub tulemus eelkõige rahaliste kohustuste sissenõudja tegevusest, sest nõue tuleb võlgnikul igal juhul tasuda ja võlgniku käitumine ei mängi otsustavat rolli. Pigem on küsimus selles, kas võla sissenõudja, kellel sissenõudmisega kaasnevad teatud kulud, on tasustatud selliselt, et ta oleks motiveeritud võlgade sissenõudmiseks kulutama ühiskonna jaoks sobivas mahus ressurssi. Seetõttu on antud töö kasutatud osalise tasakaaluga mudelit, keskendudes üksnes sissenõudja käitumise ja tema tasustamise analüüsimisele.

Modelleerimisel on eeldatud, et kohtutäiturite eesmärk on kasumi maksimeerimine. Selle eesmärgi saavutavad nad üksnes ühe konkreetse riiginõuete sissenõudmise mahu juures. Teiseks eelduseks on, et kohtutäiturite tulu sõltub otseselt sellest, kui palju nad riiginõudeid tulemuslikult sisse nõuavad. Nende põhitasu suurus on võrdne konkreetse osakaaluga igast sisseõutud nõude rahalisest väärtusest. Selle tasu nõuavad nad lisaks nõudele sisse võlgnikult ning katavad sellega oma peamised tegevuskulud, sh tööjõukulud ja ruumide ülalpidamiskulud. Täiendavalt on eeldatud, et kohtutäiturile hüvitatakse osa riiginõuete sissenõudmiseks tehtud kulusid, mis tekivad konkreetsete toimingute sooritamisega nagu näiteks arestitoimingud või enampakkumiste korraldamine jms. Need kulud hüvitatakse sõltuvalt täiturite kuludest, sh ajakulust, ning ka need kulud on täituril õigus sisse nõuda võlgnikult.

Riiginõuete süsteemi efektiivsuse analüüs viidi läbi kolmes etapis. Esiteks defineeriti kirjeldatud eelduste põhjal kohtutäiturite kasumifunktsioon ning ühiskonna heaolufunktsioon. Teiseks leiti nende funktsioonide põhjal sissenõudmise mahud, mis maksimeeriksid kohtutäiturite kasumeid või ühiskonna heaolu. Kuna majanduslikku ebaefektiivsust väljendatakse antud mudelis kohtutäiturite kasumit maksimeeriva ja ühiskonna heaolu maksimeeriva taseme erinevuse kaudu, siis kolmandaks uuritigi, kas ja millistel tingimustel kohtutäiturite optimaalne sissenõudmise maht langeb kokku ühiskondlikult optimaalse mahuga. Neljandaks analüüsiti alternatiivseid võimalusi sissenõudmissüsteemi efektiivsuse tõstmiseks, nii teoreetiliselt kui ka kvantitatiivselt erinevate näitlike arvutuste põhjal.

Tulemused ja järeldused

Teoreetilises mudelis näidati, et täiturite tasustamine selliselt, kus nende põhitasu kujuneb osakaaluna sissenõutavast summast võib viia riiginõuete sissenõudmise mahu ühiskonna seisukohast nii ebaefektiivselt madalale kui ka kõrgele tasemele. Samas eeldusel, et lisatasu on üldjuhul põhitasust väiksem, siis pigem kaldutakse sedalaadi süsteemis sisse nõudma ebaefektiivselt vähe riiginõudeid. Kvantitatiivne mudeli simulatsioon näitas, et teatud eeldustel võib efektiivsuskulu ulatuda peaaegu samale tasemele riigikassasse kogutud tuludega.

Mudeli kvantitatiivse simulatsiooni peamine taotlus oli võrrelda alternatiivsete sissenõudmissüsteemide efektiivsust. Tulemused näitasid, et tasumäärade optimeerimine,

mis Eesti kontekstis tähendab nende tõstmist, tooks kaasa olulise kasvu sotsiaalses heaolus. Põhitasude puhul on see seletatav sellega, et optimaalne põhitasumäär, st 51%, on oluliselt kõrgem kehtivatest põhitasumääradest, mis jäävad valdavalt alla 30%. Samas on küsitav nii kõrgete määrade kehtestamine, seda eriti kõrgema rahalise väärtusega nõuete korral. Kuigi tasude ebaproportsionaalsuse põhimõtet võeti analüüsis täiturite kasumite minimeerimise kaudu arvesse, pole 51%-lised tasumäärad praktikas ilmselt rakendatavad.

Oluliselt parema tulemuse annab lisatasude optimeerimine. Nende positiivsem mõju ühiskonna heaolule tuleneb sellest, et lisatasud on kehtivas süsteemis põhitasudest enam seotud kohtutäiturite töökoormusega. Seetõttu on nende tasudega kohtutäiturite teenitavad kasumid väiksemad, mis sisuliselt vähendab seda osa võlgnike makstavates tasudest, mis ületab sissenõudmise alternatiivkulu. See omakorda võimaldab ka riigikassasse koguda enam tulusid, kuna sissenõudmine on ühiskonna jaoks odavam. Seega kehtivas süsteemis peaks tasusüsteem enam nihkuma töökoormusel põhinevale tasustamisele, see on ühiskonna seisukohast optimaalsem.

Ainus antud töös esile toodud alternatiiv, mis lahendab ebaefektiivsuse probleemi täielikult, on sissenõudmise funktsiooni üleandmine riigiasutusele. Selle alternatiivi eelis teiste ees tuleneb eelkõige sellest, et sel juhul sissenõudmise erapiirkasu riigiasutuse jaoks ühtib sotsiaalse piirkasuga, eeldusel et riigiasutus tegutseb ühiskonna huvides. Teatud määral on funktsiooni üleandmine võrreldav töökoormusel põhineva kohtutäiturite tasusüsteemiga. Kui näiteks oleks võimalik täitureid tasustada sotsiaalsete piirkulude alusel, makstes sellest veidi kõrgema tasu kasumimotiivide tekkimiseks, saavutataks sisuliselt sama tulemus. Sellise süsteemi rakendamine praktikas on raskendatud. Kuna iga võlgnik on erinev ja nõuab täituritelt erinevat ressursikulu, siis riigil on väga kulukas või isegi võimatu hankida infot sissenõudmise tegelike kulude kohta. Lisaks kohtutäituritel puudub motivatsioon neid avaldada, mistõttu peaks riik kohtutäitureid tasustama oluliselt kõrgemalt, kui see tegelikkuses ühiskonna jaoks maksma läheks. Seega sellest vaatenurgast oleks kõige lihtsam lahendus anda funktsioon üle näiteks Maksu- ja Tolliametile (MTA).

Mõistagi võivad sissenõudmise funktsiooni üleandmisega riigiasutusele tekkida teist laadi probleemid. Kohtutäiturite süsteemi kasutusele võtmisel oli eesmärgiks efektiivsuse saavutamine läbi konkurentsi ja kasumi motiivide, mis erasektoris peaks eeldatavalt olema lihtsam ja loomulikum. Kui anda sissenõudmisfunktsioon üle riigile, siis puudub konkurents täielikult ja selle tulemusel võib sissenõudmise piirkulu tase kasvada. Teoreetiliselt võib see kasv olla nii suur, et sissenõudmise tase võrreldes praeguse tasemega ei kasvagi. Lõppkokkuvõttes viib see arutelu küsimuseni, kummal juhul suudetakse nõudeid sisse nõuda madalamate kuludega. See vajaks eraldi analüüsi, näiteks MTA ja kohtutäiturite tegevuskulude hindamist riiginõuete sissenõudmisel.

Analüüsi piiranguna võib esile tõsta küsimuse, et kui palju nendest nõuetest, mida täiturid sisse nõudnud pole (või on teinud seda passiivseid meetmeid rakendades ja madala tulemuslikkusega), on tegelikult sissenõutavad. See tähendab, et küsitav võib olla mudeli eeldus, mille kohaselt täiendavaid ressursse kasutades on reaalselt võimalik keerulisemaid ja praegu mitte sissenõutud (või mittetulemuslikult sissenõutud) nõudeid tulemuslikult sisse nõuda. Kui kohtutäiturite 2009-2011 aastate täitestatistikast nähtub, et igal aastal lõpetatakse nõude rahuldamise tõttu täitetoimikuid mahus, mis moodustab

uutest nõuetest 30-50%, rahalises väärtuses aga üksnes 10-25%, siis antud analüüsis on eeldatud, et vähemalt teatud osa nendest nõuetest, mis jäävad edukalt lahendamata, on täiendava ressursikuluga edukalt sissenõutavad. See tundub mõistlik eeldus, kuid selle realistlikkus ja tegelikud põhjused, miks täiturite tulemuslikkus vähemalt statistika põhjal tundub tagasihoidlik, vajaks probleemidest arusaamiseks täiendavat analüüsi. Näiteks võib siin probleemiks olla ka täiturite ülekoormatus, mida ei saa lahendada ka täiendava abipersonali värbamisega.

Teatud kaudset indikatsiooni mudeli realistlikkuse kohta pakub kohtutäiturite tegelike ja simuleeritud kasumite võrdlus. Kuna mudeli simuleerimisel lähtuti 2010 ja 2011 aastate andmetest, siis nende aastate kohtutäiturite kogukasum jäi 4.4–4.7 miljoni vahele. Mudeli näitearvutustes saadi kogukasumiks 1.2 miljonit eurot. Kuna arvutustes ei võetud eraldi arvesse püsikulude taset, võib simuleeritud kogukasumit pidada veelgi väiksemaks. Arvestades, et kohtutäiturid tegelevad lisaks riiginõuete sissenõudmisele ka muude tegevustega, siis jäävad nii tegelikud kui simuleeritud kasumite tasemed samasse suurusjärku.

Kokkuvõtteks saab esile tuua, et Eestis rakendatav süsteem ei soodusta efektiivset riiginõuete sissenõudmist, vaatamata kohtutäiturite kasumi motiividele. Samas ei saa analüüsi põhjal väita, et eksisteerib kehtivast süsteemist efektiivsem alternatiiv. Kuigi töös uuritud mudeli põhjal sissenõudmise funktsiooni üleandmine näiteks MTA-le võimaldab saavutada efektiivsema tulemuse, siis selle alternatiivi negatiivseid mõjusid tuleks eraldi empiiriliselt uurida. Lisaks võiks tulevikus ühendada trahvide sisse-nõudmise käsitlused õigusrikkumiste optimeerimise käsitlustega, et luua terviklikum käsitlus, mis hõlmaks endas nii õigusrikkumiste optimeerimist laiemalt kui ka karistuste kohaldamisega kaasnevaid probleeme, mis oli fookuses antud töös.