Court reform in FYR Macedonia: Sustained multitasking

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Macedonia's comprehensive court reform is the result of years of sustained effort on multiple fronts. The number of innovative concepts introduced simultaneously is even more remarkable if one considers the reform's seemingly contradictory goals: strengthening the independence of the judiciary by giving judges greater professional freedom, on the one hand, and increasing its efficiency by asking them to work more, on the other.

After gaining independence from the former Republic of Yugoslavia in 1991, and overcoming the initial economic difficulties of a nascent economy, Macedonia declared judicial reform a top priority. First things first, substantive law, including parts of the civil code, was rewritten. With this foundation, reform then focussed on improving efficiency in the justice sector. In November 2004, the government passed its far-reaching *National Strategy for the Reform of the Justice System (2004–2007),* (see figure 1.) Because implementation was sure to extend beyond the current legislative term, the government also sent this strategy paper to its opposition's political parties. The Ministry of Justice then set itself performance markers—an exhaustive list of goals to be achieved within a certain time-frame over the short and medium term. The government also provided for the budget requirements of the ambitious program.

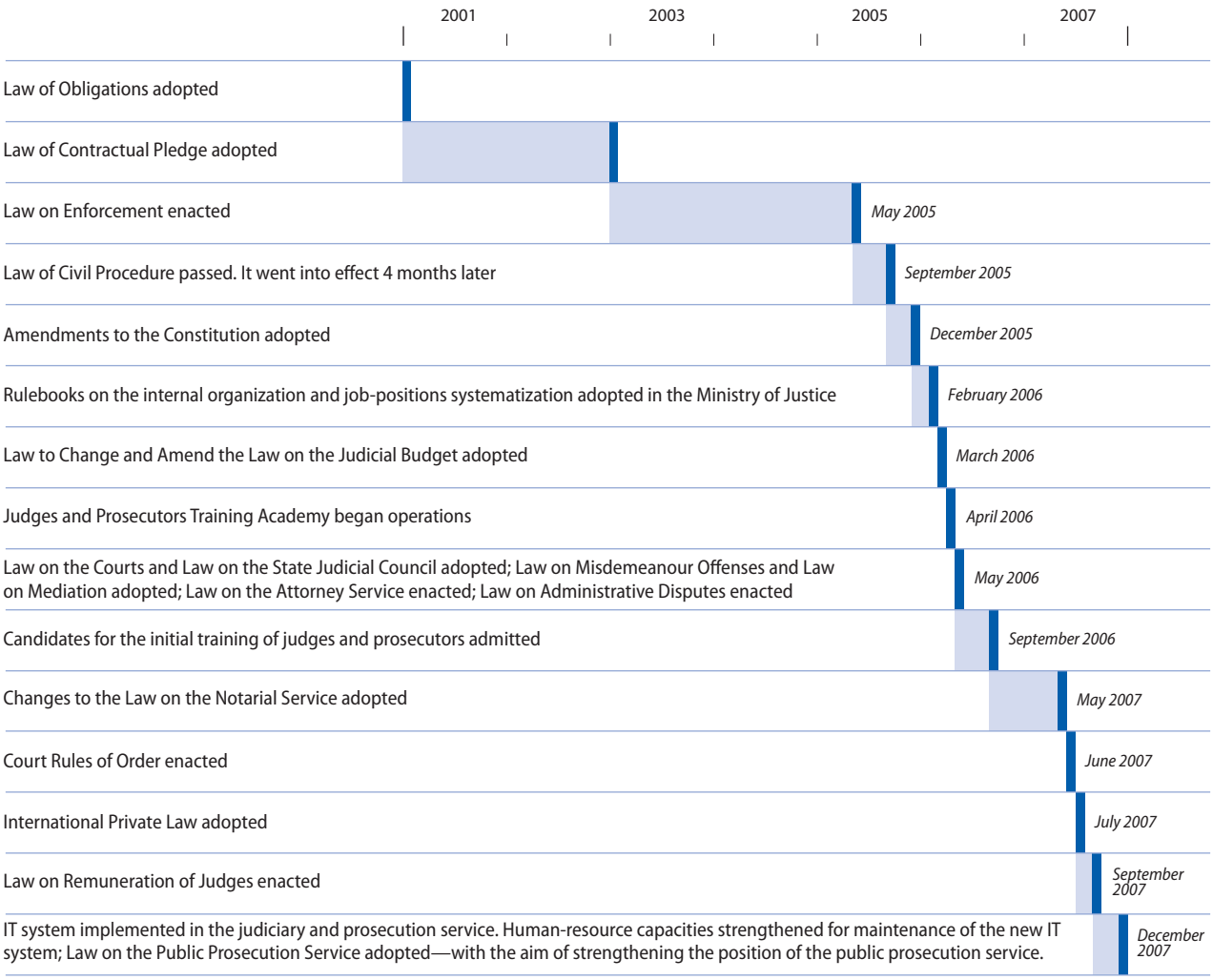
Coordination and communication were key. Every agency involved in the implementation of the *National Strategy for the Reform of the Justice System* must submit quarterly reports to a specially appointed Judicial Reform Council. The Judicial Reform Council itself produces a special report on the accomplishment of the program every six months, which is then distributed to the government, parliament, judicial institutions and the public.

Situation and diagnosis

With 27 courts of first instance, 4 appellate courts and a supreme court, Macedonia already had a solid court infrastructure when it became independent. In 1995 a new judiciary entered into service based on the 1995 Law on Courts. For the first time in Macedonia, judges were elected by the parliament to serve for life. The change in judiciary marked the beginning of post-Yugoslav rule of law. But demand soon outgrew the capacity of the new institutions. Litigation increased and by 2003, there were more than 1.2 million cases filed—with ever fewer judgments being enforced. *Doing Business 2004* found that contract

FIGURE 1
Timeline of substantive law and efficiency reforms

Source: Doing Business database.



enforcements required over a year and a half, on average, in Macedonia's courts. Change was necessary for both the laws on the books and the practices in the courts. Revising court procedure would help improve contract enforcements and the overall judicial environment.

The Law of Civil Procedure

Parliament passed a new Law of Civil Procedure in September 2005. The new law, which went into effect 4 months later, increased the responsibilities of the litigating parties. Before, judges not only had to investigate the case, they were

also responsible for requesting evidence from the parties. In fact, an appeal could be based on a judge's failure to ask for a decisive piece of evidence, even though it was in the hands of plaintiff.

The new law also introduced more procedural discipline. Admitted cases had to be based on precisely argued claims. Furthermore, it was now the litigating parties' responsibility to propose and produce evidence. The judge still directed the process—for example, deciding if an independent expert was needed. Preliminary hearings in court allowed judges to review evidence that was readily available and make sure nothing would be missing for trial day. As a result, every party knew what to bring on trial day. Finally, the new law abolished the possibility of adjourning a trial without just cause. It also introduced fines for abuses of authority by parties to the trial.

At the same time, the new law reduced the number of appeals in the system. The appellate process is always a delicate balance between efficiency in the court system and an individual's right to have a judicial decision reviewed for mistakes. Before the new law, cases could be ping-ponged between the court of first instance and the appeals court. That was made possible by the right of an enforcement judge to review an entire case, which meant cases were decided anew in appeals. Then, if an appellate judge reversed the first judge's decision and the case was sent back, it could later be appealed again—in some cases, ad nauseam. Under the new procedural law, the appellate court had to render a final decision if a case it sent back was appealed a second time.

Further up the ladder, Macedonia's Supreme Court used to be a bottleneck in the legal system. It would receive approximately 3,000 cases per year and resolve approximately 2,000 of them. In addition to its appellate role, the Supreme Court served as the court of first instance for certain administrative grievances that were deemed to require adjudication at the highest level. For these administrative cases, a public prosecutor was brought in. Furthermore, for all cases involving the state, a representative of the state maintained the procedural rights of a party plus the right of vetoing the judicial decision, even in trials of a purely civil nature. The situation was untenable. The new law introduced a separate administrative jurisdiction (at the lower court level), so the Supreme Court no longer had to serve as a court of first instance for any administrative matters. The new law also removed state attorneys from civil appeal cases. As a result, the Supreme Court's caseload became much more manageable.

The Law on Enforcement

What is a judgment worth if it cannot be enforced? After decisions were made, losing parties could still gamble on time. Inefficient enforcement proceedings were a powerful card in their hand. Consider debt enforcement. USAID estimated that 429,192 decided debt cases were awaiting enforcement in Macedonia at the end of 2005.

The new Law on Enforcement—enacted May 2005—reshaped proceedings by introducing private bailiffs. Previously, Macedonia's enforcement judges, tasked to authorize and oversee the attachment process, had the power to delve into material issues. They could, and did, reconsider facts, even questions of law, already decided in a case; such authority had been decreed by no less than 17 provisions in the old law. No longer: the new law removed "enforcement judges" from the system. In their place, a private bailiff profession was instituted.

Turning to private enforcement agents can be a sensible solution for a state because it is cost-neutral, relieving the country's justice sector budget. Private agents compete based on their reputations, so they strive for excellence in service delivery. Yet, it should be noted that enforcement is a highly sensitive matter. It may require coercion—for example, taking away a debtor's property. This power should not be granted lightly to private entrepreneurs who might put monetary returns before a debtor's rights.

Macedonia's reformers were well aware of this. They had studied the successful implementation of private bailiff systems in Estonia and Lithuania. They had also the studied the difficulties faced by Bulgaria, where private bailiffs acted in parallel to entrenched public enforcement agents. To structure its system, the designers of Macedonia's reformers also sought advice from the Netherlands, were debt enforcement had been a core focus of justice reform in previous years.

In the end, Macedonia helped ensure that its bailiff profession was well regulated by granting licenses to lawyers with 3 years of legal experience, as a minimum. An earlier requirement of 5 years of specialized experience—of which 3 years were to be specialized experience in the field of enforcement—had proven too selective. Even with the simpler 3-year requirement, only 55 bailiffs were initially licensed. To help enforce professional rules and standards, the government also required bailiffs to be organized in their own professional chamber.

The fee schedule (with a proportionate but decreasing filing fee and a proportionate success fee) helped serve the interests of customers and the bailiff profession by assuring that small claims also attract the attention of the bailiffs. The

Ministry of Justice started out by setting all fees, but the constitutional court ruled that a self-organized profession ought to control its own pricing. Now the chamber of bailiffs sets its own fees, which are then approved by parliament.

Perhaps most importantly, the new Law of Enforcement set strict deadlines for enforcements. A court's president was to pronounce judgments within 72 hours of the trial. If a debtor objects to the ruling, he may file and receive judgment from an appeals court within another 72 hours. A creditor may request a delay of enforcement for up to 30 days. If a creditor requests delays more than twice, an executor halts proceedings and terminates the intervention entirely. These deadlines offer incentives for timely investigations, while allowing a debtor to resume business with limited delays in the event of a conflict with a creditor. Also, creditors can work directly with bailiffs to determine time-frames and means of intervention.

After a $150,000 TV and radio campaign, success became evident. Already in 2005, debt enforcements went from 20% to 50% of delivered judgments. And this success was seen despite a legislative malfunction: the new law failed to offer relief for cases that had already been decided under the old enforcement system. These cases continue to be drawn out, tying up the resources of enforcement judges when they should have been concluded. But eventually even these cases will be resolved.

Decongestion and case management

No court can function properly with an ever increasing workload—and no prospect of relief. Macedonia invested in case management software, which was developed and customized locally. The software helps keep track of deadlines in all courts. Furthermore, the courts were connected electronically to each other and to other judicial institutions (such as the public prosecution offices). Today, every court has its own website with information for litigants. Judges and court staff underwent training to use the new IT system.

Due to hardware malfunctions and a lack of some basic needs (like internet routers), there were initial problems with the implementation of the new IT system. Moreover, not all courts were receptive to advanced case management systems. Some courts were hesitant to adopt new procedures and some judges even refused to be trained. But cooperative pilot courts helped pave the way. The pilot court in Ohrid, in particular, stood out. Its court president was ready to embrace IT innovations. Its capable IT staff also helped the Ohrid court serve as an example for future judicial efficiency in Macedonia.