

Fighting entrenched interests to enforce judgments faster

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Going through a lawsuit is about arcane rules, unnerving uncertainty, and headaches. And in Poland the headaches used to last long after the lawsuit ended. Enforcing a judgment could be a nightmare. The average judgment took close to half a year to enforce, and hard-to-enforce judgments could take years.

After commissioning a study, the new government decided that the noncompetitive organization of the bailiff profession—mainly responsible for enforcing judgments to collect debt—was to blame for the slow enforcement of judgments. So, in 2007 the Polish government attempted to help litigants by liberalizing the profession.

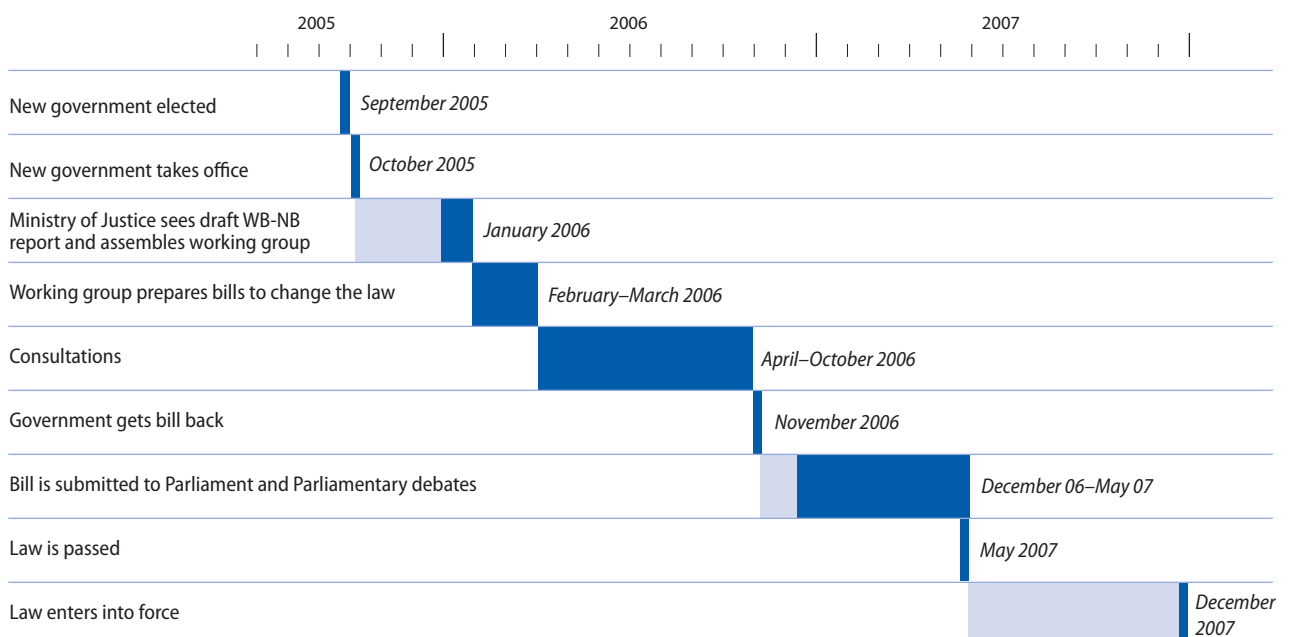
Enforcing judgments—not so fast!

Apart from voluntary compliance and extralegal enforcement by criminals, there are 2 legal frameworks to enforce judgments. In public enforcement a salaried state employee is responsible for enforcement. In private enforcement a private professional, under close state regulation and supervision, is responsible. These are a “liberal profession,” akin to lawyers or notaries.

FIGURE 1

Timeline of bailiff reform in Poland

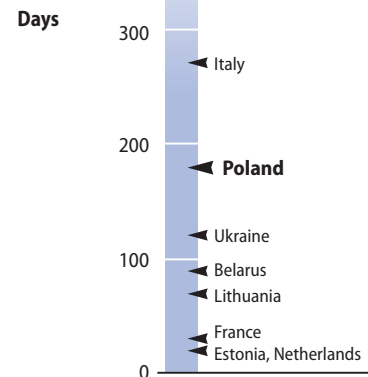
Source: Doing Business database.



Coming from a system of public enforcement under Communist rule, Poland reformed in 1997 to introduce private bailiffs. But this reform did not make enforcement efficient. The 2005 *Doing Business* report ranked Poland as having one of the world's slowest judiciaries—1,000 days to enforce a contract, including 180 days to enforce a judgment (figure 2).

FIGURE 2

Before reform—Poland among Europe's slowest in enforcing judgements



Source: *Doing Business* database.

Poland's entrenched bailiffs

Prompted by the *Doing Business* findings, the National Bank of Poland and the World Bank drafted a report, *Poland: Legal Barriers to Contract Enforcement*. The report found that the lack of competition among bailiffs contributed to inefficient enforcement. There were 3 problems:

ENTRY INTO THE PROFESSION New bailiffs were highly restricted from entering the market. Only the president of a regional court could request a new bailiff—and only after consulting with the local chamber of bailiffs. The justice minister then had to approve the increase after consulting with the National Council of Bailiffs. The bailiffs, who had a vested interest in keeping new entrants out, thus had considerable influence. And with only a single bailiff allowed per district, creating a new bailiff position required creating a new district—technically difficult because it required redrawing districts to ensure that all remained similar.

New bailiffs were thus rare, leaving Poland with about 1.5 bailiffs per 100,000 inhabitants, among the lowest ratios in Europe. Even as the number of court cases increased by 20% between 2000 and 2003, the number of bailiffs rose just 1.4%.

TERRITORIAL COMPETITION Because litigants could hire bailiffs only from their own region, competition was limited. Although regions included several districts, in practice the bailiffs worked almost exclusively in their own districts. For enforcements involving real estate, litigants had to hire the bailiff in the same district as the property.

PRICE COMPETITION As fees were legally fixed, bailiffs could not compete on price. So, consumers could not benefit from the lower prices of bailiffs trying to attract business. And there was no price signaling for quality or speed—say, a bailiff charging more for a difficult or especially speedy execution. Hard cases would not get executed because bailiffs would, sometimes by necessity, cherry-pick the easiest and most profitable (for instance, seizing a bank account).

Elections bring reform

The September 2005 elections brought new people to the top of the Justice Ministry. The new team had ambitious reform plans, endorsing the World Bank and National Bank report. Krzysztof Józefowicz, then the Undersecretary of State, says that “broadly speaking, we suggested three things. First, the justice minister should be able to appoint more bailiffs without going through a complicated procedure. Second, the bailiffs should be able to compete with each other regardless of their location. Third, price flexibility should be introduced to bailiff fees.”

Interest groups try to block the way

But this was only the beginning of the journey. Interest groups stood between the suggested reforms and their implementation. “During the consultations the bailiffs association reacted very negatively to the proposed reforms,” Józefowicz says. Bailiffs had grown used to their secure positions—a regional monopoly and the power to block new entrants.

The disagreement also took place on a more fundamental level. The bailiffs saw themselves as part of a system of public enforcement—as Agata Bartkowiak of the National Bailiff Association put it, “In Poland a bailiff is not an entrepreneur like in the Netherlands; he or she is a body of public authority.” According to the Constitutional Court, competition between public authorities is forbidden. That means that the new law is unconstitutional, claimed the bailiffs. The reformers, by contrast, saw the bailiffs as private enforcement officers who should be allowed to compete with each other.

To preserve the status quo and torpedo the reforms, the bailiffs association employed a host of measures. “At first, they wrote articles in legal journals opposing the reforms. Next, they approached people from the legal academy with their arguments. When the act was before Parliament, they tried to influence public opinion and the lawmakers by placing articles in popular newspapers warning about the impending disaster should the reform pass.” Once the reform passed, they petitioned the Constitutional Court of Poland to have the new laws declared unconstitutional. That case is still pending, but it did not preclude the law from entering into force.

Overcoming opposition—3 keys

Three factors helped Poland overcome opposition: World Bank support, political savvy, and political will.

First, the World Bank and National Bank report provided an objective benchmark to persuade decisionmakers. According to Józefowicz, “It helped to persuade the lawmakers, even if it did not persuade the bailiffs. The report showed comparatively that there are better ways to handle the execution process.” Józefowicz also notes that, “whenever our opponents alleged that we did not know what we were talking about or that we had partisan interests, we could point to the support of the World Bank.”

Second, the new justice minister, Zbigniew Ziobro, is not a technocrat but a politician with popular appeal and political instincts. Because he does not hail from the traditional legal establishment, he was unfazed by criticism from that front. This helped him garner the necessary votes in Parliament for approval. Even figures from the other side of the political divide, such as Leszek Balcerowicz, supported the reforms.

Third, the new government had the political will to take on cliques in the legal profession. The main political party in the coalition, Law and Justice, campaigned in the general elections on an anti-establishment ticket to diminish the privileges of powerful vested interests, including lawyers, notaries, and bailiffs.

Reform passes, but with mixed results

The amendment to the Act on Court Bailiffs and Debt Collection finally passed on 24 May 2007, was published on 27 June, and entered into force on 28 December. Józefowicz hopes that the reform will expand the supply of bailiffs, so people will turn less often to “self-help” solutions. The reform was a step forward, but in all 3 fields, the results are mixed:

ENTRY INTO THE PROFESSION The justice minister can now increase the number of bailiffs in a region based on the petition of the judge presiding over the Regional Court. Józefowicz, who meanwhile became president of the Regional Court of Poznan, has already used this power to petition for more bailiffs in his region. Even if the president of the Regional Court in a given region does not petition for an increase, the minister can also increase the number of bailiffs on his own initiative, after consultations with the local bailiff association.

The downside is that it is possible that a minister will not nominate any bailiffs, or not nominate enough of them. In fall 2007 a new party came to power after general elections. According to newspaper reports in April 2008, the new

Minister of Justice plans to add just 35 bailiffs, far fewer than the hundreds expected. This could mean that improvements to the execution system are still years away.

TERRITORIAL COMPETITION Except for real estate, a creditor is now able to choose any bailiff in the country to execute a judgment, increasing competition. And multiple bailiffs can compete for work in the same district. But now there is another problem: it is more likely that multiple bailiffs will try to execute on the same assets. There are priority rules for such cases, but they are unclear and could bring conflicts. The matter could then go back in front of the judge—and further delay matters. Further reform might be needed.

PRICE COMPETITION Much time went into discussing this issue. But ultimately the reformers had only limited success. Bailiffs are still not able to compete on price because only the variable costs of the bailiff, such as transport or hotel expenses, are freely negotiable. This means that difficult executions remain a problem.

Advice for would-be reformers

Józefowicz has advice for other countries about to embark on similar reforms: rely on comprehensive studies to back up the case, ensure broad political support for reform, and gather a team capable of withstanding criticism. This advice might be relevant for Poland itself, should the new government want to tackle the remaining problems in enforcing judgments. In that case, the headaches of the litigants just might end a little sooner.