

TAKING ON THE BAILIFF MONOPOLY IN POLAND

KRZYSZTOF JÓZEFOWICZ

The difficulties in breaking up a monopoly became clear to me while I was the Under-Secretary of State at the Ministry of Justice in Poland between December 2005 and March 2007. During that time, I and others took on the bailiffs, a powerful interest group in the Polish legal landscape. Bailiffs are enforcement officers charged with executing judgments by seizing and selling the goods of debtors who do not pay their debts on time. In Poland, the bailiffs enjoy a quasi-monopoly, because just one bailiff per enforcement precinct is allowed, prices are fixed by law, and entry into the profession is nearly impossible. Shielded from any competitive pressures, Polish bailiffs deliver poor service, and the execution of judgments in Poland is patchy at best, with varying standards of service and some judgments not executed at all.



How it all began

The 2005 Doing Business report rated Poland as one of the slowest judicial systems in the world. It took 1,000 days for a contract to be enforced through the courts, causing Poland to be ranked 140th of 145 countries in regard to the speed of courts. This poor ranking prompted the National Bank of Poland and the World Bank to draft a report, “Poland: Legal Barriers to Contract Enforcement,” which contained recommendations designed to speed up court proceedings. One of the key recommendations of the report was to open the bailiff profession to more competition, so as to improve the service bailiffs delivered. Specifically, the report called for an expanded number of bailiffs, for creditors to have greater choice among those bailiffs, and for the deregulation of bailiff fees.

After a change of government in 2005, a new team—including me—headed the Justice Ministry. We were receptive to new ideas, and the Justice Ministry endorsed the report, which provided the impetus for undertaking these reforms. We suggested three changes:

1. The Justice Minister should be able to appoint more bailiffs without going through a complicated procedure.
2. Bailiffs should be able to compete with each other regardless of their location.
3. Price flexibility should be introduced to bailiff fees.

Oh dear, problems ahead

This was only the beginning of the journey, because between suggested reforms and implemented ones lie interest groups. The bailiffs association reacted negatively to the proposed reforms, which was not surprising considering that the bailiffs had grown used to their cushy position: a regional monopoly, fixed fees decreed by government, and, most of all, the power to block new bailiffs from entering the profession.

Needless to say, new entrants are rare, which leaves Poland stuck with about 1.5 bailiffs per 100,000 inhabitants, among the lowest ratios in Europe. In 2002, when I was the vice president of the Poznan court, it took me two years to increase the number of bailiffs from 12 to 15 in the Poznan appellate region, because the procedure for nominating bailiffs was so complicated and drawn out. And the Poznan region was among the lucky ones: In the whole of Poland between 2000 and 2003, the number of cases in court increased from about 10 million to 12 million (an increase of 20 percent), while the number of bailiffs barely budged, from 578

in 2001 to 586 in 2003 (an increase of 1.4 percent).

To preserve the status quo and torpedo the reform plans, the bailiff association employed a range of measures, including writing articles in legal journals opposing the reforms, approaching people from the legal academia, and, when the Bailiff Act was before Parliament, trying to influence lawmakers.

How was opposition overcome?

So how did Poland overcome opposition from these vested interests? I think three factors made the difference:

1. *Political will.* The new government had the political will to take on monopolies in the legal profession. The main coalition partner in the government, Law and Justice, campaigned strongly on an antiestablishment ticket and wanted to diminish the privileges of the various professional groups.
2. *Political savvy.* The new Justice Minister, Zbigniew Ziobro, was not a real technocrat, but he was a politician with popular appeal and political instincts. Since he did not hail from the traditional legal establishment, he was largely unfazed by criticism from that establishment. Moreover, as a politician with broad-based support he was able to garner the necessary support of Members of Parliament for the approval of the reform.
3. *World Bank support.* This proved to be key for two reasons:
 - It provided the government with legitimacy. 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.
 - The National Bank-World Bank report provided the kind of objective benchmark that could persuade decision makers, even if it did not persuade the bailiffs. The report showed comparatively that there are better ways to handle the execution process.

So, how did it end?

The amendment to the Act on Court Bailiffs and Debt Collection finally came to a vote on May 24, 2007, was published on June 27, 2007, and will enter into force on December 28, 2007. I am happy with this aspect of the reform and would not do it differently if I had to do it again. I believe the reform will lead to more bailiffs, and as a result people will turn less often to self-help solutions such as “repo men.”

Once the law goes into effect, a creditor will be able to choose any bailiff in the country to execute his judgment (except with regard to real estate), thereby increasing competition and leading to a better enforcement of judgments. In addition, the Justice Minister will be able to increase the number of bailiffs in a district based on the petition of the judge presiding over the regional court. If the president of the regional court does not petition for an increase, the Minister can autonomously increase the number of bailiffs based on market needs.

What now?

After the reform enters into force, it will still be at least some months before the effect of the law is visible. Also, the World Bank and National Bank identified the following remaining weaknesses:

Discretion of the Justice Minister. Entry into the bailiff profession, while significantly eased, still depends on the discretion of the Justice Minister. As ministers come and go, it is possible that a minister will not nominate any bailiffs, or not nominate enough of them. However, I think that this is not likely to happen, because there are so many problems with the execution of judgments that the pressure to nominate the bailiffs will remain very strong. Moreover, the Minister will surely get many petitions from presidents of regional courts, which will increase the pressure on the Minister even further.

The limited deregulation of bailiff fees. Only the variable fees of the bailiff, such as transport or hotel expenses, will be freely negotiable—not the price of the service itself. This means that consumers will not benefit from lower prices of bailiffs trying to attract business. In addition, because the price is fixed, no price signaling can occur regarding quality or speed. This could mean, for instance, that difficult cases would hardly ever get executed, because bailiffs would cherry pick the most profitable executions and ignore those executions that are expensive to perform, because they would not be able to recoup the higher expenses through higher fees. An outsider might therefore say that real competition would remain limited.

Lessons for would-be reformers

I would give three pieces of advice for other countries about to embark on similar reforms, and these are the same three elements that made a difference for us:

1. You need to mobilize broad political support for reform. In our case, in its election campaign, Law and Justice announced that it would take on the cosseted legal professions of lawyers.
2. You need to get a team together that is capable of withstanding criticism. In our case, we had a popular Justice Minister who was unfazed by criticism from the legal establishment.
3. You need objective studies to back you up. In our case, we had the World Bank study that showed how execution could be done differently, highlighting best practices from other European countries.

Breaking an established monopoly may not be easy, but as the bailiff reform in Poland shows, it is certainly possible.

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About the Author

Krzysztof Józefowicz was born on August 8, 1964, in the town of Kóscian. In 1988, he graduated with a degree in law from the Adam Mickiewicz University in Poznan, and that same year he became a trainee judge in the Poznan district court. In 1990 he became a judge in the regional court of Grodzisk Wielkopolski and, in 1999, in the district court of Poznan. From 2000 to 2001, he was delegated to the Justice Ministry as deputy director of Human Resources. In 2001, he returned to the regional court of Poznan as its vice president until 2004. After that, he helped set up the appellate court of Szczecin, where he then became a judge in 2005. From December 5, 2005, until March 14, 2007, Krzysztof Józefowicz was the Deputy Minister of Justice of Poland, which is when he helped push through the bailiff reforms. After that, he returned to the Poznan district court as the presiding judge, the position he currently holds.

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