One of the key policy choices for governments is whether to introduce private enforcement agents. Serbia adopted a private system in 2011. This article examines the success of Serbia’s private enforcement agents system, as well as some of the difficulties that have arisen. It provides a useful insight for other countries considering the potential advantages and disadvantages of private enforcement agents.
Throughout its history the Serbian judicial system has had to contend with radical legislative reform, and the area of enforcement law is no exception. Special legislation pertaining to enforcement of judicial decisions and legal titles dates back to the time of the Kingdom of Yugoslavia (1930). The newest piece of legislation is the Law on Enforcement and Security (LoES), adopted in 2011. The LoES introduced private enforcement agents into the judicial system, as an independent, judicial profession.

Enforcement agents commenced activities under the regulation of the LoES in 2012. The intention of the legislature was that private enforcement agents, vested with powers of the state, should contribute substantially to the establishment of the rule of law, and increase the levels of accountability and effectiveness in enforcing judgments and protecting people’s rights. Indeed, most countries which introduce private bailiffs do so for reasons of efficiency, with state-employed bailiffs being seen as too slow or lacking in incentives to perform to a high standard. However, such considerations must be balanced against fairness for debtors. After only one year of operation it is difficult to draw firm conclusions about the success of the legislation, due to the lack of official statistical data and any comprehensive analysis of the new enforcement system in Serbia. However, some preliminary conclusions can be drawn, and these are presented here.

Inadequate legislative framework

While the introduction of private enforcement agents promises greater efficiency, there are a number of concerns related to perceived deficiencies in the LoES. These concerns relate to the fields of both legal practice and legal theory, and to their impact on the general public. The Serbian Minister of Justice and Public Administration asked for the Council...
In regional parts of Serbia there appears to be little interest or incentive for those with legal training to take up the profession of enforcement agent.

The Serbian legal profession emphasises the following shortcomings of the LoES:

- The inability to delay enforcement even in a case of obvious shortcomings in proceedings. The Ministry of Justice and Public Affairs (MoJPA) and the Ombudsman have received a number of citizens’ complaints in relation to this shortcoming.

- The inability to formally exempt (or disqualify) an enforcement agent (for example by reason of conflict of interest).

- The absence of the application of the principle *restitutio in integrum* (that is, the reinstatement of the status quo ante for certain prescribed reasons is not permitted).

- However, the most serious concerns relate to the lack of appeal as an effective legal remedy, and the absence of two-tiered decision-making (appeal to an administrative body, then to a court), which can seriously compromise the basic human rights guaranteed by the Constitution of Serbia and the European Convention on Human Rights, such as the right to access to justice, the right to an effective legal remedy and the right to a fair trial within a reasonable time. Many objections related to the monopolisation of enforcement agents’ jurisdictions, which in some cases led to speculation about possible corruption in utility companies (refer to the section below, *Private enforcement agents – pros and cons*).

It should also be mentioned that important questions of regulation and status, such as election, dismissal, liability, and rights of association of enforcement agents, should be regulated by special legislation, as is the case in other legal professions. This is particularly relevant for private bailiffs, who, unlike state-employed bailiffs, are not otherwise regulated by public service legislation. Respected lawyers have commented that the legislature’s failure to address the issue of ethics on a legislative level is a major concern, and that this should be addressed through legislative amendment of the LoES, or through a new, separate enactment covering these issues.

**Professional profile of an enforcement agent**

The profession of private enforcement agents is an independent legal profession. However, despite the concerns about under-regulation just mentioned, enforcement agents are still under the supervision of the state – that is, the MoJPA – which reflects the prevailing European enforcement model.

Under this system, private enforcement agents are persons vested with public authority who, in addition to having a law degree and passing an examination for obtaining the certificate for enforcement agents, have some work experience in enforcement activities. They must also meet a number of other terms and conditions, which relate to organisational requirements (for example, they must work in properly equipped premises and hold mandatory professional indemnity insurance). The enforcement agents are responsible for the professional standard of their work and – to the extent of all of their personal assets – for possible damages to third parties. Enforcement agents are appointed and dismissed by the Minister of Justice.

There are presently approximately 130 enforcement agents in Serbia, roughly one-third of the anticipated number of 334. The Rulebook on the Number of Enforcement Officers stipulates that one enforcement agent shall be appointed per 25,000 inhabitants. The majority of enforcement agents have been appointed for the areas of the four major cities in Serbia – the capital, Belgrade, Novi Sad, Nis and Kragujevac. However, in other, more regional parts of Serbia, there appears to be little interest (and perhaps incentive) for those with
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Competition between the courts and enforcement agents (and between enforcement agents) should lead to increased quality and efficiency in the protection of individuals’ rights.

Legal training to take up the profession of enforcement agent. The new enforcement system has not even “touched” those areas of Serbia. In these regions parties have no avenue for the enforcement of their claims other than through the courts. This shows the potential limitation of market forces in the profession, and the need for an ongoing role for the state to cover the gaps.

**Competitiveness in the service of efficiency**

As is evident from the above discussion, the government has opted for a dual system of enforcement, meaning that enforcement within the courts still exists parallel with the private enforcement agent system. However, the two jurisdictions are differentiated, in the sense that there are some exclusive competences of the courts, such as enforcement in family cases and in labour cases related to the return of an employee to work. On the other hand, private enforcement agents have some exclusive competences, such as the enforcement of certain monetary claims; for example, utility fees. In all other areas of enforcement creditors may choose the way the enforcement will be conducted: either by the courts or through private enforcement agents. Competitiveness between the courts and enforcement agents (and between enforcement agents) should lead to increased quality and efficiency in the protection of individuals’ rights. Through the direct impact of the enforcement agents system on the reduction of the backlog of cases in the courts, the system should also improve the efficiency of the judiciary overall.

There are great discrepancies in qualifications between the court enforcement officers and enforcement agents.⁶ Court officers are generally educated only to secondary school level, and are generally seen to be demotivated due to low salaries and significant workload. They do not usually receive any training, and have no possibilities for professional improvement. Conversely, enforcement agents have advanced professional qualifications, and consequently may provide a higher level of quality in their work than court officers.⁷ Furthermore, they have better financial motivation due to substantial awards available for successful execution, which are considered attractive given Serbia’s uncertain financial situation.

**Private enforcement agents – pros and cons**

The abovementioned exclusive competences of enforcement agents have been subject to public debate. One focus of concern was the potential that utility companies’ rights to choose an enforcement agent might lead to corruption. Media have reported on some suspicious situations in which directors of utility companies assigned thousands of cases to only one enforcement agent, thereby placing other enforcement agents in an unequal and less competitive position, rendering them jobless for extended periods of time (monetary claims – especially regarding utility bills – are by far the most numerous enforcement cases). Despite the significant probability of abuse in such cases, the conduct of utility companies’ directors cannot be challenged on legal grounds because there appears to be no tangible evidence of their corruption.

Some respected Serbian lawyers⁸ contend that, despite the alleged problems of corruption, the assigning of a case to a particular enforcement agent should not be done on a random basis, as judges are allocated to cases in the courts. The intention of the legislature was not to provide random allocation of bailiffs, but rather to introduce fair and professional competition between enforcement agents, striving to achieve permanent improvement in their quality and performance. These lawyers’ opinions support the position that competition, and the possibility of choosing an enforcement agent according to their qualifications, is productive and healthy for the entire enforcement system, and that any move by the state to curtail this would be contrary to the legislative purpose of introducing private enforcement agents.

It appears that competition between enforcement agents should exist on the basis of improving the quality of their work, professionalism, efficiency and effectiveness. However, if that possibility is abused, including through corruption, the reputation of this young profession may be seriously undermined.
The European Union allocated €1.8 million through its Instrument for Pre-Accession Assistance to support Serbia’s new enforcement system.

Ongoing capacity building of the main stakeholders in the Serbian enforcement system

The Chamber of Private Enforcement Agents (the Chamber) was formed in May 2012 as the new professional body for private enforcement agents. The LoES stipulates mandatory membership of enforcement agents in the Chamber. It is still a young professional association, which was supported from its establishment both by the state and the international community. Capacity building within this institution is an ongoing process, which is strongly supported by the GIZ Legal Reform Project in Serbia (GIZ LRP)

The EU allocated €1.8 million through its Instrument for Pre-Accession Assistance (IPA) to support Serbia’s new enforcement system. These funds were for the introduction of the private enforcement system, where a contract was awarded to GIZ LRP for the implementation of the project, “Support to the Rule of Law System in Serbia – Enforcement of Civil Claims” (the IPA Project). The IPA Project has a 27-month duration, and will be implemented until the end of 2015.

The focus of the IPA Project will be on building the capacity of the MoJPA (the unit responsible for monitoring the new professions in the justice sector – enforcement agents and notaries), the Chamber and enforcement agents individually. In respect of the latter, the IPA Project will focus on improving enforcement agents’ legal and professional expertise in enforcement and on their related skills. Special attention will be given to developing ethical standards in the profession. In addition, the IPA Project will support the capacity development of the Disciplinary Commission responsible for conducting disciplinary procedures against enforcement agents. At the time of writing, two procedures against enforcement agents were pending before the Disciplinary Commission, which were based on findings of the MoJPA supervisory unit. This is an early indication that oversight mechanisms are functioning well.

Strategic national approach to enforcement agents

Support to enforcement agents was recognised as one of the priorities within the country’s main, strategic judiciary-related national document – the National Judicial Reform Strategy 2013-2018 (NPRS), adopted by the government in July 2013. The Strategy envisaged a set of reform measures which should improve the independence, transparency, competency, accountability and efficiency of the Serbian judiciary, including support to the new professions: enforcement agents and notaries. However, this document is vague and general in relation to finances; there is no specified budget for any of the envisaged activities, so it is difficult to determine a sufficient budget for achieving an efficient and accountable enforcement system in Serbia. Although the absence of a financial section in the NJRS indicates a somewhat superficial and inadequate approach to this policy area, the adoption of the NJRS does clearly indicate the government’s good intentions – notwithstanding the limited state capacity for supporting enforcement agents – and the strategy explicitly calls for urgent support from the international community. Fortunately, donors – particularly the EU and GIZ LRP – have responded to these calls.

The budget-related deficiency of the NJRS is also reflected in the Action Plan for Implementation of the NJRS, adopted in September 2013. Nonetheless, that document has developed a number of activities for the improvement of the enforcement system, which could serve as a roadmap for interested donors. Considering the backlog of 3 million unenforced cases in the Serbian judiciary at the beginning of 2013, it is not surprising that enforcement agents were afforded such a prominent place in national strategic documents.

Enforcement agents and European integration

Serbia was granted EU candidate status on 1 March 2012, and the process of membership negotiations started on 28 June 2013. The review of the alignment of national legislation with the EU acquis communautaire (screening) started in September 2013. The EU’s screening report is expected in the second quarter of 2014, and should define opening benchmarks as a precondition to further steps in the European integration of Serbia. It is expected that action plans for the judiciary, including enforcement agents, will be the opening benchmarks, and their proper implementation will be an essential pre-condition for Serbia’s further progress.
Notes


5 Rulebook on the Number of Enforcement Officers, “Službeni glasnik RS” No. 16/2012.


7 M. Milosevic and Šarkić, N. “Analiza efekata Zakona o izvršenju i obezbeđenju”. GIZ LRP, October 2013.


Conclusion

As mentioned, it is too early to draw firm conclusions about the success of the LoES, or about the future of the newly-introduced enforcement system in Serbia. The main objectives of the regulation of enforcement agents should be improving the Serbian legal system through the effectiveness and efficiency of enforcement agents, improving legal certainty and trust in the Serbian legal system (for both citizens and investors), and, as an indirect outcome, increasing foreign and domestic investment in the national economy.

It is not an easy task to build a new legal institution, but there is reason for confidence that Serbia’s EU integration will inspire common efforts between Serbia and the international community to make enforcement agents a successful example of transitional justice.

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