Strengthening the Efficiency and Quality of the Judicial System in Azerbaijan

Recommendations on setting up a system of enforcement timeframes and recovery rates as indicators on the efficiency of the enforcement system and in view of evaluating the enforcement agent's performance

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Contents

List of abbreviations

CEPEJ	Council of Europe's Commission for the Efficiency of Justice
CEPEJ (2009) 11	Guidelines for a better implementation of the existing Council of Europe's Recommendation on Enforcement, European Commission for the Efficiency of Justice (CEPEJ), CEPEJ (2009) 11 REV
CoE	Council of Europe
CM	Council of Ministers of the Council of Europe
CMS	Case Management System
CPC	Civil Procedure Code
COMONEX	World Code on Enforcement; international principles on enforcement as developed by UIHJ, the International Union of Judicial Officers
DGE	Directorate General of Enforcement
ECHR	European Convention on Human Rights
ECJ	European Court of Justice
ECtHR	European Court of Human Rights
EIS	e-Enforcement Information System
EU	European Union
ICT	Information-Communications technology
IT	Information Technology
LAE	Law About Execution
LAEO	Law About Executive Officials
LSJA	Law on Conditions of Service in Judicial Bodies
LSS	Law on State Service
M&C	Monitoring & Control
PI	performance indicator(s)
QA	Quality Assurance
Rec 17(2003)	Council of Europe Recommendation (2003) 17 of the Committee of Ministers to member states on enforcement (adopted by the Committee of Ministers on 9 September 2003 at the 851st meeting of the Ministers' Deputies)
UIHJ	International Union of Judicial Officers

Executive summary

The Council of Europe since 2000, followed by and together with the CEPEJ since 2002, have developed many cooperation programs, studies, recommendations, and guidelines relating to enforcement in Europe[1]. Although not binding these instruments have been assembled in the light of best practises and with the aim to comply with all the requirements of the European Convention on Human Rights (ECHR). They constitute a roadmap for any country to follow.

A court decision which cannot be properly enforced serves no purpose. Efficient and fair enforcement of court decisions is central to any legal system. It is therefore as necessary for any country to assess the quality of its enforcement system as is it necessary to assess the efficiency of its justice system.

The Council of Europe and the CEPEJ have developed tools to improve the quality and efficiency of legal systems in Europe. These tools include indicators which can also be used in the fields of enforcement, such as the complexity of the case, methods to calculate the length of proceedings, the clearance rate, and the disposition time.

In the framework of the present report, questionnaires on the enforcement system in Azerbaijan were sent to the Directorate General of Enforcement of the Ministry of Justice of Azerbaijan, the Directorate of Information and Communication Technologies of the Ministry of Justice of Azerbaijan (ICT Department), judges and also to two creditor companies (Azercell and Azerenerji).

The analysis of these questionnaires draws a picture of the current use of performance indicators in the Azerbaijan enforcement system. In the light of this analysis, the report focuses on the use of enforcement indicators in the field of enforcement system, covering requirements about relevant performance indicators (time, pending cases, success rate, costs, and indicators to identify bottlenecks).

The study led to the drafting of recommendations for the use of performance indicators in the Azerbaijan enforcement system, boxed in a set of 23 practical multi-level indicators, including efficiency indicators, case-revolving indexes, specific indicators, and financial indicators.

[1] In particular, the CEPEJ Guidelines on enforcement of 17 December 2009 (CEPEJ (2009) 11 REV).

1. Introduction

The importance of enforcement of court decisions has been underlined by the judgment of the European Court of Human Rights (ECtHR) of 19 March 1997[2], Hornsby v Greece, which observed that the execution of a judgment is considered to be an integral part of the fair trial within the meaning of Article 6§1 of the ECHR. Therefore, the notion of fair trial covers not only access to a judge and the conduct of the proceedings, but also the enforcement of a final and binding judicial decisions. The European judge thus intends, in the name of the rule of law, to provide full effectiveness to the "right to a court".

Indeed, the ECHR aims to protect rights that are not theoretical or illusory, but concrete and effective[3]. Based on this principle, the right to a court would be illusory if it did not extend to the enforcement of court decisions. Under the effect of this jurisprudential impulse, the scope of this right has become such that the member states and public authorities necessarily had, by virtue of their positive obligations, to organise their judicial system in such a way as to avoid any obstacle to the enforcement of final judgments[4] and provide for an effective remedy to obtain enforcement of a decision[5].

The duty of a State is to ensure that the enforcement system is not only strong and reliable but is also effective. To that purpose, the CoE and the CEPEJ have developed tools and soft law instruments under the form of recommendations and guidelines relating to enforcement (see 2.1. hereafter) for the use of states. These tools and instruments ensure a full compliance with the requirements of the ECHR. They also insist on the importance of assessing the efficiency of the enforcement system and the work of the enforcement agents in charge of executing court decisions and other enforceable titles.

Evaluating the system and the enforcement agent's performance is a key element as well as the necessity to set up a system of enforcement timeframes and recovery rates as indicators on the efficiency of the enforcement system and in view of evaluating the enforcement agent's performance.

The questionnaires sent by the project to the Azerbaijani authorities[6] and creditor companies[7], show that management information are used to measure the progress / efficiency of enforcement, at central level, and shared with the local staff, including a series of date collected periodically (See 3. hereafter). For this, the tools developed by the CEPEJ[8] have been successfully used by the authorities.

In the field of enforcement, further specific performance indicators could help ensuring a broader monitor and control over all the requirements of the enforcement system. The purpose of this report is to identify these indicators in the light of the current existing ones.

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[2] ECHR, *Hornsby v. Greece*, 19 March 1997, echoing the Golder v. The United Kingdom (ECHR, 21 February 1975) case, in that the right to a fair trial would be illusory if the legal order of a Contracting State allowed a final and binding decision to remain ineffective to the detriment of one part.

[3] ECHR, *Airey v. Ireland*, 9 October 1979, §24.

[4] ECHR, *Pibernik v. Croatia*, 4 March 2004.

[5] ECHR, *Zazanis v. Greece*, 18 November 2004, §49.

[6] Directorate General of Enforcement of the Ministry of Justice of Azerbaijan, the Directorate of Information and Communication Technologies of the Ministry of Justice of Azerbaijan (ICT Department), judges.

[7] Azercell and Azerenerji.

[8] Including the CEPEJ Handbook for Conducting Satisfaction Surveys aimed at court users in Council of Europe Member States (2016).

2. International standards

2.1. Introduction

Though the organization of enforcement differs within the CoE member states, the CoE has identified common standards and principles:

- Council of Europe Recommendation (2003) 16 of the Committee of Ministers to member states on execution of administrative and judicial decisions in the field of administrative law (adopted by the Committee of Ministers on 9 September 2003 at the 851st meeting of the Ministers' Deputies) (here after Rec 16/2003);

- Council of Europe Recommendation (2003) 17 of the Committee of Ministers to member states on enforcement (adopted by the Committee of Ministers on 9 September 2003 at the 851st meeting of the Ministers' Deputies) (here after Rec 17/2003);

- CEPEJ, Council of Europe's Commission for the Efficiency of Justice included enforcement of judicial decisions into the list of its priorities. On December 17, 2009 CEPEJ published the Guidelines for a better implementation of the existing Council of Europe's Recommendation on Enforcement (here after CEPEJ 2009 Guidelines)[9]; these Guidelines were later completed by a Good practice guide on enforcement of judicial decisions[10];

- Council of Europe Opinion No 13 (2010) on "The role of judges in the enforcement of judicial decisions" of the Consultative Council of European Judges.

The CoE Recommendations 16/2003 and 17/2003 contain merely the same principles as the case-law of the ECtHR, to which it expressly refers. Stating that enforcement procedures should be as effective and efficient as possible, the Recommendations outline ideas, which might be followed by the states that wish to improve the effectiveness of enforcement procedures and practices.

With regard to the evaluation of court performance, CEPEJ, Council of Europe's Commission for the Efficiency of Justice, has developed a set of tools to improve the quality and efficiency of legal systems in Europe[11]. Among others, CEPEJ developed surveys to measure the satisfaction of public with the performance of courts. To a large extend (see chapter 4) the indicators as proposed by CEPEJ, can also be used in the field of enforcement:

1. The first indicator includes the complexity of the case; the applicant's conduct; the conduct of the competent authorities; the type of case, which may involve issues that are of particular concern for the applicant (e.g. labour disputes involving dismissals, or family cases concerning relations between children and parents).

[9] Guidelines for a better implementation of the existing Council of Europe's Recommendation on Enforcement, European Commission for the Efficiency of Justice (CEPEJ), CEPEJ (2009) 11 REV.
[10] As adopted at the 26th CEPEJ Plenary Session of 10-11 December 2015 (CEPEJ(2015)10).
[11] See (among others): CEPEJ Handbook for Conducting Satisfaction Surveys aimed at court users in Council of Europe Member States (2016), here after CEPEJ Handbook Courts.

2. The second indicator includes an indication of the methods to calculate the length of proceedings. The starting point of the calculation for civil cases generally is the date on which the case was referred to the court. The end period is the date on which the final judgement is given and/or may take into consideration. Based on this information the length of proceedings can be assessed.

3. The Clearance Rate measures how effectively courts within a State or entity are keeping up with the incoming caseload. The Clearance Rate is a simple ratio, obtained by dividing the number of resolved cases with the number of incoming cases, expressed as a percentage:

    - A Clearance Rate close to 100 % means: the court is able to resolve approximately as many cases as the number of incoming cases within the given time period.
    - A Clearance Rate above 100 % indicates the ability of the system to resolve more cases than those received, thus reducing any existing backlog (pending cases).
    - A Clearance Rate below 100 % appears when the number of incoming cases is higher than the number of resolved cases. In this case the total number of pending cases (backlog) will increase.

4. The calculated Disposition Time measures the estimated number of days that are needed to bring a case to an end by comparing the total number of pending cases at the end of the observed period with the number of resolved cases during the same period and converts this ratio into a number of days. This also gives insight into how long it takes for a type of case in a specific jurisdiction to be solved.

Indicators 3 and 4 is used to achieve an initial general picture of the efficiency of courts in a certain country.

3. The current use of performance indicators in the Azerbaijan enforcement system

Management information are used to measure the progress / efficiency of enforcement, at central level. Such management information is shared with the local staff. For this, a series of data is collected periodically:

- **Case flow figures**:
    - Backlog at the beginning of the period
    - Received cases during a certain period
    - Closed cases during a certain period
    - Unsolved cases at the end of the period
    - The enforcement measures being taken
    - Number of cases per type of creditor

- **Number of cases by basis for the enforcement**

  These indicators are used outside the current CMS.

    - Enforceable title
    - Authentic documents
    - Number of enforcement actions by type

- **Average (or, better, median) age of open cases**: "on hold" cases and on some types of cases (alimony claims, child visitation).

- **Success rate**

- **Collection rates per claims-value ranges and age of claim**

- **Closing rate**

- **Time-lapse for Courts to decide on objections**: objections to the enforcement agent's actions are submitted to the head of the enforcement body or the Chief Enforcement Officer in accordance with the legislation. Electronic control is possible. Reviewed in 10 days.

- **Number of sales of movable property, and their success rate**: Division on credit debts of the DGE (out of the system).

- **Sale price of real property as percentage of the estimated value**: Division on credit debts of the DGE (out of the system).

- **Number of offers in the sale of real property if by auction**: Division on credit debts of the DGE (out of the system).

- **Number of amicable settlements through e.g. payment in instalments**

- **Liquidity**: limited use only: for cases directed to garnishing salaries

All these data are relevant. Some of them can be used as indicators of efficiency, notably the ratio among number of closed and received cases and the amount of collected amounts as percentage of the total claims. These indicators can however be misleading: if for example a substantial amount of cases has been received towards the end of the reporting period, it is not realistic to expect that any meaningful collection has started, but all statistics will be skewed.

It is not possible through the currently collected data to determine how many of the enforcement actions were successful, and to obtain a detailed overview on the length of proceedings.

In addition, the CMS enables certain indicators to be used, but in practice are not used or just partially used:

- **Number of cases by basis for the enforcement**

- **Average (or, better, median) age of open cases**

- **Average length of proceedings until the resting decision is issued**

- **Average age of resting cases**

- **Costs**

- **Number of sales of movable property, and their success rate**

- **Sale price of real property as percentage of the estimated value**

- **Number of offers in the sale of real property if by auction**

- **Liquidity**

- **Solvability**

- **Savings obligation**

Several of the data (e.g. number of cases by basis for enforcement and the number of public sales) are currently collected outside the system. Such data, in our opinion should be collected through the CMS.

4. The use of performance indicators in the field of enforcement system

4.1. Introduction

Reliable and up-to-date statistics on the performance of enforcement agents are a keystone element of the functioning of the entire enforcement system. With no (or unmanageable) data, policymakers can't take proper decisions for regulatory and/or structural changes in the system; businesses cannot take informed decisions and project on their activities and costs and the general public cannot trust the system which is not transparent and accountable.

The data need to cover all necessary information to draw out of the performance indicators. Those indicators are crucial to monitor the functioning of any system. They will allow comparison of performances among different actors within the system (in Azerbaijan the overall Directorate General of Enforcement (DGE), the regional offices and the individual enforcement agents), comparison over time in order to monitor progress or emerging issues, and of course provide data which are relevant to provide information to the decision makers for the improvement of the enforcement system, to creditors to monitor progress in the collection of claims and the efficiency of the enforcement system. Finally, such indicators are of importance for DGE as information to manage the business processes in the enforcement system.

It is important that data are delivered/ collected on a regular base, electronically and automatically. The e-Enforcement Information System (EIS), is a database which allows for automated/electronic submission of the data/ reports, processing of data and generation of various reports.

4.2. Requirements with regard to the indicators

Indicators should be *simple* enough to be easily described, used, and acted upon. However, the choice of indicators remains a delicate and complex matter. There is a risk that individual enforcement agents will behave so to improve indicators. Such an improvement might lead to unintended behaviours that at the end do not imply any increase of efficiency. For example, if the efficiency of an enforcement agent would be measured using the number of documents they produce, and if such indicator would be used as a strict basis to assign new cases, there would be a concrete risk that enforcement agents would start increase the production of letters and other documents without any relation to the needs of the cases, but just to keep their position.

For this reason, it is also important to *precise in advance* which use will be made of the indicators, if the indicators will be made publicly available and if there are certain consequences to the value of the indicators.

For each indicator there should be a *clear-cut definition*, and a description of the modalities to be used for measuring it. Indicators should be excluded if there is no reliable tool to measure their value. For particularly relevant indicators it is worth considering setting up new procedures and mechanisms just in order to measure them.

Aggregate functions, which extrapolate a single value out of a collection of enforcement cases, are crucial to define comparable indicators:

- The *average* is the most common, obtained by dividing the sum of all values by the total number of cases. Such function is however particularly dependent on the values of the extremes; adding only one extraordinarily high value in a set can substantially impact the total average.

- A better aggregate function is the *median*, which is calculated as the middle value of a set, having half of the cases with a higher and half with a lower value than the median. This value can be obtained only if all cases are individually considered and data are available to be electronically processed. In Azerbaijan this would mean that all cases are dealt by the case management system.

Single aggregate values provide however only a slim picture of reality.

Electronic data storing and simple data processing allow for much more information to be retrieved than it used to be possible at the time of manual registers. It is possible to choose among different combinations of the available variables, and to look not only at averages or medians, which give an idea of a distribution of events, but at the distribution itself (e.g., not only at the average cost per claim, but at the whole distribution of costs in function of the value of the claim).

Actions (e.g. closing of a case, collection of money) can be easily linked to the information about the case they belong to, instead of roughly comparing it with the data available in the same reporting period. For example, comparing the number of closed cases in a period with the inflow in the period and the backlog at its inception does not tell us anything about "which" cases have been closed –the older or the newest – and hence does not provide much insight on realistic expectations for the future.

Old-style single-valued indicators, such as the ones based on aggregated values for a certain period (totals for inflow, backlog, closed cases, amounts collected), can however still be useful both for the period new specifications for data to be electronically stored were not implemented and in the future to allow for comparison with the past and with other countries.

With regard to comparison with other countries, it needs to be noted that the motivation of a self-employed enforcement system might not (always) be parallel with a State driven system as is the case (presently) in Azerbaijan. Priorities may differ; e.g. money collected vs. the number of closed cases. Therefore, the necessary changes in behaviour in order to try to optimize the indicators may differ significantly.

4.3. Performance indicators

A performance can be measured taking into account the objectives that must be achieved. Creditors' interest is obviously to have their claim satisfied in full, within the shortest possible time and with

advancing for enforcement costs an amount as low as possible. Time, success and cost are the three areas of interest.

Time

1. Average (or, better, median) length of proceedings for closed cases

This indicator takes into account the number of days between the day an enforcement case is initiated and the day when it is closed.

This is relevant information. However, it would be misleading to believe that the value of this indicator only would be of direct interest for any party in the enforcement case.

> *If, for example, out of 100 received enforcement cases only one case would be solved in 7 days (leaving all others pending), certainly this would not provide any indication about the possibility for an enforcement case to be completed in a week.*

The use of only such indicator, besides, would encourage enforcement agents to work preferably on the newest cases, since closing an older case would increase the median (or average) length of enforcement proceedings of the closed cases and hence seemingly indicate a poorer performance on their side. There would not be the risk of such behaviour only if all cases would have the same age, i.e. in the absence of any backlog.

Therefore, it is necessary to combine this indicator with the following indicator.

2. Average (or, better, median) age of open cases

This indicator takes into account the number of days between the day a case is initiated and the day when the measurement is done.

> *In the previous example, the age of the 99 still open cases would continue to grow every day, indicating the existence of a problem.*

Using this indicator will encourage enforcement agents to close older cases first, since this will lower the age of the remaining cases. In combination with the previous indicator it is possible to see if efforts are focused on a reduction of the backlog: the two indicators will have similar values. If there is no significant improvement this might be caused by the size of the backlog or by the newest cases (diverging values).

Both the indicators 1 and 2 can be easily calculated by the e-Enforcement Information System.

3. Average (or, better, median) length of proceedings until the first payment

Creditors might be interested not only in the age of open cases, but also in the number of days between the case initiation and the date of the (partial) payment: how much time passes until the first payment

is received. After all, from such date they will start compensation of the enforcement costs they advanced.

Pending cases

Not all cases will be finished successfully; in a large number of cases the enforcement debtor is insolvent, or assets cannot be traced. Experience from other countries learns that in such case, the creditor has an interest to keep the case pending as long as possible.

As a consequence, any indicator linked to the length of proceedings or to the existence and/ or size of a backlog might not be so relevant for the assessment of the efficiency of the performance of the enforcement system: a backlog might well depend on the insolvency of debtors combined with the wish of the creditors to keep cases pending, hoping for better times.

If strict targets are applied for such indicators this might lead to undesired behaviour, such as the premature closing of an enforcement case. This could be contrary to the interests both of the creditors and of the enforcement organization. The more since in Azerbaijan, the DGE does not have a competence for debt collection and limited powers for "soft" enforcement.

For this reason, we propose to make a distinction between situations in which a (at the end) successful recovery took longer because the debtor has been insolvent for a certain period and those cases in which enforcement was prolonged due to a lack of enforcement actions due to a lack of retrievable assets.

This might imply changes in the legislative framework to include the possibility for enforcement agents who are carrying out the enforcement to issue a decision stating that a case is "on hold". Such decision should be issued after having exhausted all possible means to retrieve the debtors' assets.

Of course, this should not enable the creditor, at any time, to provide further information or request new enforcement actions for such an "on hold case". Besides, at any time the enforcement agent could seek information or initiate new enforcement actions for an "on hold case". The idea is not to give a break to the debtor (whose obligations remain unchanged) but to introduce a distinction which is useful for creditors to better monitor what happens to their cases and to make a distinction with other unsuccessful cases.

Within such a framework, it would be possible to exclude from the calculation of the indicators 1-3 as proposed above such cases which have been considered as "resting" (on hold). Based on such system, the two following indicators could be added:

4. Average length of proceedings until the "on hold" decision is issued

This indicator takes into account the number of days between the initiation of a case, and the issuance of a decision to put a case "on hold".

5. Average age of "on hold" cases

This indicator takes into account the number of days between the issuance of a decision “on hold” of the case and the date of measurement.

Success rate

6. Success rate

The success rate can be defined for cases which had been received in a set date, as the ratio among the number of those cases that are successfully closed at the day of measurement and the total number of cases which have been received in a the set date (or period). It is a universal indicator which can be used also for non-monetary claims.

The main problem associated with the use of this indicator is that partial collection or partial fulfilment of the obligations is not taken into consideration. This means that a case for which regular payments are collected is counted as a case for which nothing has been collected and not as a case in which the debtor already partially met the obligations.

This leads to the introduction of the following indicator number 7.

7. Collection rate

This indicator is applicable only for monetary claims. It refers to cases that have been received on a set date: the ratio among the collected amount at a certain date (at the day of measurement) and the total value that has been received on a set date (or within a certain period).

The problem mentioned under indicator 6 is overcome: partial payments are acknowledged, as they should.

However, another problem is associated with the use of this indicator: it cannot distinguish among collection of big amounts in a few high-valued cases and the collection of smaller amounts from a large quantity of smaller-valued cases.

To overcome this obstacle, we propose to use following indicators:

8. Collection per claims-value ranges and age of claim

This set of indicators is applicable only to monetary claims. It makes visible the sums collected during a certain period according to different ranges of values of claims and the age of the claim. It is defined as the ratio among the amount collected in a certain period for claims belonging to a certain range of value and which have been submitted after a certain time and the total amount collected in that period.

In case the Azerbaijan fee structure foresees in different ranges, we propose to use the same ranges as defined by such fee schedule. Another alternative that could be used is to use the same ranges as used for the determination of the court fees.

The values for the age of the case can be chosen based on practical interest (e.g. first 3 months, every semester until 2 years of age, during the third year, or more).

The age of the claim refers here to the date of initiation of enforcement, which does not reflect the date in which the right to the claimed amount was acquired (i.e. the date of the enforceable document).

Thus, the following table can be developed:

Amounts collected in the period since date1 to date2								
	age of the claim							
range of the claim (€)	0 – 3 months	3 – 6 months	6 – 12 months	12 – 18 months	18 – 24 months	24 – 36 months	> 36 months	Any age
0 – 250								
250 – 1.000								
1.000 – 5.000								
5.000 – 20.000								
20.000 – 100.000								
> 100.000								
All claims								100,0%

[100% = total amount collected in the period]

This table indicate what was mostly collected in the period of interest; it enables the comparison of the collection and the amount of the claim; it gives information on the age of the (un)enforced claims.

9. Collection rates per claims-value ranges and age of claim

This set of indicators is applicable only for monetary claims, and is defined, for cases which had been received in a set date (or period), as the ratio among (1) the amount collected at a certain date for claims submitted in a certain period, for claims of an initial value which falls into a range and has been submitted before a certain time) and (2) the total amount collected at a certain date for all claims submitted in a certain period).

Amounts collected for claims received since date1 and date2 on date3								
	age of the claim at collection date							
range of the claim (€)	0 – 3 months	3 – 6 months	6 – 12 months	12 – 18 months	18 – 24 months	24 – 36 months	> 36 months	Any age
0 – 250								
250 – 1.000								
1.000 – 5.000								
5.000 – 20.000								
20.000 – 100.000								
> 100.000								
All claims								

[100% = total value of claims received since date1 and date2 for every range of claim]

Note: In order to compile the two tables (indicator 8 and 9) it is sufficient to record the following information: Amount collected, Date of collection, Date of claim, Value of claim.

Indicators related to success and collection, if used to determine the possible future allocation of cases, the evaluation of enforcement agents or other relevant impact, might lead to undesired behaviour. It might jeopardize the impartiality of the enforcement agent!

10. Closing rate

Defined, for cases which had been received in a set date, as the ratio among the number of those closed cases (with or without success) at the day of measurement and the total number of cases which have been received in a set period or on a set date.

Costs

Creditors are interested in the amounts of costs to be advanced; debtors (and society) in the total amount of costs to be recovered from the debtor (including possible performance fees).

11. Ratio among cost and value of claims, i.e. percentage of average cost to average value of the claim.

This indicator is obtained by dividing the total amount of advanced costs by the total value of claims.

This indicator is sensitive to higher values of claims and costs, and less representative for claims of minor value.

12. Average of cost as percentage of claim

The cost of each claim is divided by its value, and then the overall average (or median) is calculated.

13. Advanced cost per claims-value ranges and age of claim

This indicator can be defined as the ratio among (1) the amount of advanced costs in a certain period for claims belonging to a certain range of value and which have been submitted before a certain time and (2) the total amount of the claims submitted in that period for that range of amount).

Case revolving indexes

Another set of indicators is defined exclusively on the basis of aggregate values, without references to the case they belong. They can be a combination of the classical measured variables:

- The accumulated backlog at the beginning of the measuring period;
- The inflow of cases during the period;
- The number of cases closed during the period;

- The unsolved cases at the end of the period (which is dependent from the variables above since it can be obtained adding up the first two and subtracting the third).

As mentioned, the use of this type of indicators is the only one feasible without making use of electronic means, and they might provide misleading pictures.

The main combinations among the mentioned variables lead to the following indicators:

14. Closed cases/ Inflow: Clearance Rate (CEPEJ)

This indicator (as the following) has been proposed by the Commission for the Efficiency of Justice of the Council of Europe (CEPEJ) as one of the main indicators to measure the efficiency of a judicial system.

The ratio among (1) the number of cases solved during a period and (2) the number of incoming cases during the same period, indicates the trend in the backlog size; a value larger than one indicates that the number of unsolved cases at the end of the period will be less than the number of backlog cases at its inception.

15. Unsolved / Closed: Disposition Time (CEPEJ)

The ratio among (1) the number of unsolved cases at the end of the period and (2) the number of closed cases during the same period, gives meaning to the size of the backlog; its value corresponds to the number of periods of the same length which would be necessary to dispose of the backlog assuming a constant closing rate and no new cases.

16. Backlog / Inflow: Backlog Index (Poland)

The Polish Law on the enforcement agents and the execution (1997) introduced the concept of backlog index. The law does not allow an enforcement agent to take new cases if his backlog index for enforcement cases exceeds 6 months.

The backlog index is calculated[12] "*dividing the number of unresolved cases in the last half of the year by the monthly average incoming cases in the previous 6 months, excluding the case of the execution of repeated benefits".* Repeated benefits in this respect refers to the attachment on salary or other periodic incomes, which are hence not calculated as unresolved.

The backlog index represents the number of months, which, assuming a constant monthly inflow of cases equal to the average of the last 6 months, would be necessary to create a backlog if no case would be solved.

Such indicator may be problematic when dealing with creditors (like for example utility companies) which massively send cases once or twice a year: a large number of unsolved cases will be

[12] Article 8.8. Polish Law on Enforcement.

accumulated, followed by months with very small inflow in which paradoxically the enforcement agent would have to refuse new cases (i.e. different customers) because the backlog index will be too high.

In such case, the maximum length of enforcement should be, if necessary, regulated by law rather than regulated by such complex backlog index.

Indicators as tools to identify bottlenecks

Another range of indicators that might be of use is aimed at determining the length and efficiency of certain phases in the enforcement process.

These might include:

17. Time-lapse for Courts to decide on objections

18. Time-lapse for successful service to debtors

19. Number of sales of movable property, and their success rate

20. Number of sales of real property

21. Sale price of real property as percentage of the estimated value

22. Number of offers in the sale of real property if by auction

5. Recommendations for the use of performance indicators in the Azerbaijan enforcement system

The Azerbaijan authorities should consider the introduction of a set of indicators for the enforcement system. The indicators should allow for comparison of performances among different actors within the system, for example courts (objection procedures), the central enforcement division and departments and individual enforcement agents, comparison over time in order to monitor progress or emerging issues, and of course provide data which are necessary in order to make well-founded decisions – either by policy makers or by actors within the system (which also includes the creditors). The indicators could also be used to monitor and control the efficiency and effectiveness of the (overall) enforcement system.

The set of indicators needs to be defined in cooperation between all relevant stakeholders. For each indicator there should be a clear-cut definition, and a description of the modalities to be used for measuring it.

The indicators should relate to: case related information (case flow figures: figures (backlog at the beginning of the period, received cases, closed cases, number of enforcement actions, amounts of claims, amounts recovered, type of creditor, type of enforcement document) and performance indicators (including length of proceedings, success rate and costs).

The following multi-level indicators might be considered*:*

Efficiency indicators		
1	***Average (or, better, median) length of proceedings for closed cases***	This indicator takes into account the number of days between the day a case is received and the day when it is closed.
2	***Average (or, better, median) age of open cases*** *[excluding "resting" cases]*	This indicator takes into account the number of days intercurring among the day a case is received and the day when the measurement is made. *(This indicator has to be seen in combination with indicator 1)* Using this indicator will also encourage enforcement agents to close older cases, since this will lower the age of the remaining cases. In conjunction with indicator 1, it is possible to see if efforts are being concentrated in reduction of the backlog (the two indicators will have similar values – if there is no sensible improvement this would then depend on the size of the backlog or mostly on newest cases (diverging values).
3	***Average (or, better, median) length of proceedings until the first payment***	The date of first payment is most probably not recorded so far, but it would be very easy to do it since there is a centralised case-management system.

4	***Average (or, better, median) length of proceedings until the "resting" decision is issued[13]***	This indicator takes into account the number of days between the reception of a case, and the issuance of a decision on resting of the case.
5	***Average (or, better, median) age of "resting" cases***	This indicator takes into account the number of days between the issuance of a decision on resting of the case and the date of measurement.
6	***Collection rates per claims-value ranges and age of claim***	This set of indicators is applicable only for monetary claims and aims at showing the distribution for sums collected during a certain period according to the different range of values of the claims and the age of the claim. It is defined as the ratio among (the amount collected in a certain period for claims belonging to a certain range of value and which have been submitted after a certain time) and (the total amount collected in that period). Values for the age are chosen so to be of practical interest (first 3 months, every semester until 2 years of age, during the third year, or more).
7	***Ratio among cost and value of claims, i.e. percentage of average cost to average value of the claim***.	It is obtained by dividing the total amount of advanced costs by the total value of claims, hence making use only of information available in aggregate form.
8	***Advanced costs per claims-value ranges and age of claim***	It is defined as the ratio among (the amount of advanced costs in a certain period for claims belonging to a certain range of value and which have been submitted before a certain time) and (the total amount of the claims submitted in that period for that range of amount).
Case-revolving indexes		
9	***Success rate***	The success rate can be defined for cases which had been received in a set date, as the ratio among the number of those successfully closed cases at the day of measurement and the total number of cases which had been received in a the set date (or period). It is a universal indicator that can be used also for non-monetary claims. The main problem associated with the use of this indicator is that partial collection or fulfillment of the

[13] For indicators 4 and 5 legislation might need to be amended in order to include the possibility for the enforcement agents who are carrying out the enforcement to issue a decision stating that a case is "on hold". Such decision should be issued after having exhausted all possible means to investigate and attach the debtors' assets, in accordance with the requests of the creditor. The decision "on hold" would be served only to the creditor, who would have the possibility to object and to indicate how he wants to proceed with the case. The "on hold cases" should be differentiated from other cases.

		obligations is not taken into consideration, so that a case for which regular payments are collected is not counted exactly as a case for which nothing has been collected. Reason to see indicator 9 in combination with indicator 10.
10	***Closing rate***	This indicator is applicable only for monetary claims, and is defined, for cases that had been received in a set date, as the ratio among the collected amount at a certain date at the day of measurement and the total value that had been received in a set date (or period).
11	***Clearance rate***	*Closed cases/ Inflow* The ratio among (the number of cases solved during a period) and (the number of incoming cases during the same period) indicates the trend in the backlog size; a value larger than one indicates that the number of unsolved cases at the end of the period will be less than the number of backlog cases at its inception. (CEPEJ)
12	***Disposition Time***	*Unsolved/ Closed* The ratio among (the number of unsolved cases at the end of the period) and (the number of closed cases during the same period) gives meaning to the size of the backlog; its value corresponds to the number of periods of the same length which would be necessary to dispose of the backlog assuming a constant closing rate and no new cases. (CEPEJ)
13	***Backlog Index***	*Backlog/ Inflow* The Polish *Law on the enforcement agents and the execution* (1997) introduced the concept of backlog index. The law does not allow an EA to take new cases if his backlog index for enforcement cases exceeds 6 months. The backlog index is calculated[14] "*dividing the number of unresolved cases in the last half of the year by the monthly average incoming cases in the previous 6 months, excluding the case of the execution of repeated benefits"* [we understand that the end of the sentence refers to garnishments of salaries and bank accounts, which are hence not calculated as unresolved, not only in alimony cases].

[14] Article 8.8. Polish Law on Enforcement.

		The backlog index represents the number of months, which assuming a constant monthly inflow of cases equal to the average of the last 6 months would be necessary to create such a backlog if no case would be solved.
Specific indicators:		
14	***Time-lapse for Courts to decide on objections***	
15	***Time-lapse for successful service to debtors***	
16	***Number of sales of movable property, and their success rate***	
17	***Number of sales of real property,***	
18	***Sale price of real property as percentage of the estimated value***	
19	***Number of offers in the sale of real property if by auction***	
20	***Number of amicable settlement through e.g. acceptance payment in instalments***	
Financial indicators		
21	***Liquidity***	
22	***Solvability***	
23	***Savings Obligation***	This is the money received from debtors minus the prepaid expenses and minus the fees on which the enforcement division is entitled. The savings obligation is supposed to be equal with the money on the bank account on which debtors have paid their claims.