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A NUMBER OF democracy building efforts that focus on judicial reform and the expansion of the rule of law are underway in the former Soviet Union and Central and Eastern Europe. Recent judicial reform projects in Armenia and Macedonia,¹ performed under the auspices of the United States Agency for International Development (USAID) and the World Bank, and in which I participated, provide interesting case studies on the role of internal judicial management for successful judicial and, ultimately, democratic reform. While many academic studies have centered on the formal arrangements by which courts are established under a constitution or other laws, the projects examined here demonstrate that the judiciary's effectiveness relies equally on its ability to independently and transparently manage its operations and build relationships with the other branches of government.

Although significant historical, ethnic and religious differences exist between the nations considered here, there are also many similarities in their histories: both were ruled by the Ottoman Empire for over 500 years, both formed part of a larger socialist nation for much of the 20th Century, and both achieved independence only very recently. Of particular relevance to enhancing the rule of law, the judiciaries of both Armenia and Macedonia have traditionally been weak institutions with little independence or accountability and very limited discretion. As in much of Western Europe, while the constitution identifies the Armenian and Macedonian judiciaries as a separate branch of government, they continue to fall administratively under the auspices of the Ministry of Justice and, thus, the executive branch. From an American perspective accustomed to the clear separation of the three branches of government, this arrangement in itself would imply that judicial independence is at risk and the judiciary is a weak institution. However, this is not necessarily the case. As pointed out by William Davis, in most Western European countries, sufficient protections for independent judicial decision making are in place and "...the trend is toward increasing the authority of the judiciary to administer its own activities ..."^{2, 3}

On the other hand, in countries where a tradition of independent judicial decision-making does not exist, the

centralization of power in the executive branch leaves the judiciary susceptible to undue government influence. Influence in individual cases can take the form of direct pressure. For example, judges may be asked to discuss cases with prosecutors (who also fall under the Ministry of Justice). More subtle forms of pressure may be applied to judges through appointment, promotion and threat of removal.

Macedonia and Armenia have come under increasing criticism for lack of transparency in judicial decision-making as well as inefficiency in judicial operations, reflected most clearly in the slowness with which cases are adjudicated. Reform in these areas is a common requirement for receiving donor funding and entering the European Union. Lacking institutional autonomy, however, the judiciary has little incentive to adopt internal reforms that would improve its effectiveness and efficiency. Treatment of the judiciary by the Ministry of Justice, which is tasked with providing managerial and policy support to the courts, ranges from benign neglect to hostility.

Underlying and compounding this weakness is the existence, or at least the public perception, of corruption in the judicial branch. Parties do not trust the courts and resolve many disputes privately. There are few, if any, avenues for the public to complain of unfair treatment by the judiciary. Lack of public confidence in the judicial system leaves the judiciary without allies to help achieve enhanced autonomy and resources. Judges and court staff themselves express a sense of fatalism, believing that improvements in the system cannot be achieved.

The Pillars of Successful Administrative Court Reform

The projects considered here focus specifically on enhancing the judiciary as an institution, viewing institutional reforms as precursors to larger changes in attitudes within and toward the judiciary. Establishing structures under which courts can operate independently, effectively, and transparently is a particular challenge in Macedonia and Armenia. Three essential pillars support these goals: (a) a comprehensive governance structure, (b) budgetary authority and competency, and (c) greater control

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over human resources. In Armenia and Macedonia, the judiciary is hampered by the absence of robust governance and management structures, extremely limited budgetary authority and resources, and unclear human resources systems. These challenges and the possibilities for reform in these areas are discussed below.

Court Governance

The United States federal judiciary and many state judiciaries have developed unified policy bodies, known as judicial councils, and centralized administrative offices of the courts to provide broad managerial and strategic direction for court operations, planning, and budgeting. In contrast, the judiciaries in Macedonia, Armenia and many other countries in the region have not functioned as unified institutions with strong internal governance. Often, no judicial management body exists. If there is one, it is weak, sparsely staffed and focuses primarily on research, with no direct control of judicial branch operations or budgeting.

In addition, because the courts are institutionally part of the executive branch, they have historically been responsible for adjudicating minor violations (such as parking offenses) and carrying out notary and customs duties that would elsewhere be handled by administrative agencies. These functions distract the courts from fulfilling functions for which they are uniquely responsible: protecting human rights and promoting economic and social stability through adjudication of criminal and civil cases. Long-term success in enhancing the reputation of the judiciary and obtaining increased appropriations requires that the judiciary communicate its vital role in a democracy and its programmatic and budgetary needs to the other branches of government and to the public. Developing and communicating this strategic vision requires a strong central administration.

Lastly, the Armenian and Macedonian judiciaries lack coordination in areas that would benefit from economies of scale or uniformity in policy, such as automation, human resources, and formalization of best practices.

Approach

In order to enhance the capacity and authority of judicial management bodies, we developed the structure, staffing and training plans for an administrative office of the courts. This office would have overall responsibility for (a) representing the judiciary in relations with executive branch and legislature, (b) preparing and defending the

branch's budgetary requests, (c) creating common human resources policies, and (d) collecting statistics to conduct research into court practices and means of improvement. Determining the optimal organizational structure of the office required us to clarify the judiciary's proper role relative to other parts of government, and to consider economies of scale and the importance of policy consistency in determining the degree to which functions should be centralized.

The Macedonian judiciary made great strides by establishing a legal framework for judicial independence through the Court Budget Act and the creation of a branch-wide Court Budget Council (CBC). By creating a budget council with broad representation from the courts, the judiciary has ensured a stable basis for instituting significant budgetary and programmatic reforms. While it will initially focus on the budget process, the CBC has the potential to become a significant policy making body for the judiciary.

In Armenia, we developed a centralized capacity in the judicial management body to manage public information and educate the public about the importance of the judiciary. The project provided models from the United States and European Union member nations, in which the judiciary prepares an annual report detailing past accomplishments and future goals. The project also created plans for the organization and staffing of a public information office. Other recommended educational efforts included inviting legislators and representatives of the executive branch to visit the courts to see court operations and conditions first hand.

We also developed court-user surveys to assess perceptions of court access, equal treatment, and ease of understanding of court procedures. By collaborating with local law students, we were able to administer the survey to all parties leaving the courthouse during a one-day period. The results of the initial surveys served as a baseline to evaluate the impact of reforms made in the courts and provide a continuous and regular measurement of court performance. In order to encourage the courts to actively use the surveys as part of a continuous improvement strategy, and not view them as a tool to be used by the executive branch to criticize the judiciary, we shared the results for each court solely with that court and provided only a summary to the Ministry of Justice. This in itself was a radical departure from the 'normal' top-down relationship of the judicial and executive branches.

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Budgeting

The Armenian and Macedonian courts have inadequate budgetary authority and severely constrained resources to carry out their functions. The courts lack funds to purchase even basic supplies and have very limited flexibility in the use of appropriated resources, impacting their ability to function effectively. For example, funds in Armenia are inadequate even to replace toner cartridges, requiring staff to replicate documents by hand. Law clerks do not have computers to conduct legal research, draft verdicts, or perform other appropriate duties on behalf of judges. In other courts, inadequate funds require that judges personally pay for much of the cost of postage and telephones, and unpaid debts are carried forward from year to year. These shortages persist despite judicial branch efforts to rectify them because budget requests are often significantly reduced by the Government without explanation.

Several factors contribute to the judiciary's ineffectiveness in budgeting. Most critically, the judiciary has limited ability to influence decisions concerning its funding since it has no opportunity to discuss budget requests with the Government or National Assembly. This function is instead performed by the Ministry of Justice. The judicial management body, where it exists, does not monitor or analyze the courts' fiscal status throughout the year, reducing its ability to advocate court needs, detect patterns in expenditures or create economies of scale. Instead, each court is treated as an individual budget user whose budget requests, annual and monthly financial expenditure reports, and fund transfer requests are submitted directly to the Ministry of Finance.

Budgeting is a critical input into, and an integral part of, long-term strategic planning. Properly implemented, budgeting complements strategic planning by developing agreed-upon performance standards of effectiveness and efficiency, analyzing impediments to meeting these performance standards, and proposing enhancements to remove those impediments. From this perspective, several impediments to effective budgeting in these countries emerge:

- The next year's budget submission is essentially a recap of the current year. There is no process for reflecting changes in workload or increased jurisdiction. When bankruptcy adjudication (a concept that did not exist under socialism) was

added to the court's jurisdiction, a corresponding budget increase was not entertained. Even unequivocal instances of increased resource needs do not result in budget increases. A court in Armenia, for example, is moving to a new facility with 30 additional offices to be heated, furnished, and cleaned, but there is no evident process for making a formal request for these increased costs.

- The budget is not set within the framework of strategic goals and there is little multi-year planning. Critically, in the case of Macedonia, the budget did not explicitly consider the reform efforts required for entrance into the European Union.
- Little or no narrative or supporting performance data is presented with the budget. Without these, the justification for increases is weak.
- There are no means for seeking mid-term budgetary increases under exigent circumstances.

Local court staff also lack training in budget preparation and expenditure monitoring, and there are no automated financial tools. The courts need more analytical strength to fulfill the expanded management responsibilities envisioned for the judiciary.

Approach

Several avenues were pursued to bolster the judiciaries' budget processes. The projects first worked with the judiciaries to enhance their autonomy in the budgetary arena, including proposals for direct judicial branch budget submission to the legislature, judicial representation in the budget process, and protections against reductions in salaries and already allocated funds. Other approaches focused on the method by which the judiciaries prepare their budgets to increase the likelihood of receiving additional funds and improve the internal controls over their use. These included:

- Determining priority needs in the areas of current expenses, workload growth and new initiatives. These priorities will be used to inform budget submissions and make organizational changes. Ongoing strategic planning capacity must be built into the leadership organization.

- Linking practical and measurable performance measures to budget requests. Performance indicators focusing on three key areas were developed: 1) how efficiently cases are adjudicated (e.g., cost per resolved case), 2) how quickly cases are adjudicated (time to disposition) and 3) how effectively cases are adjudicated (number of reversals; satisfaction of employees and customers assessed through surveys).
- Developing workload measurements. Unlike performance measures, which seek to measure outputs (how well an organization is performing), workload formulas measure the inputs in the budget process, for example the number of cases filed per judge or available resources such as staff per judge. These formulas were introduced in addition to, and not as a replacement for, outcome performance measures.
- Creating a narrative describing the benefits of budget requests.
- Developing systems to project costs nationally, compare costs across courts and make mid-year budget adjustments, without which the central authority cannot exercise its authority effectively.

Finally, we assessed specific training needs in strategic planning, budget preparation, expenditure monitoring, and the use of automated financial tools through a survey of court managers. Checklists for budget development, budget review and budget monitoring were provided to ensure budget submissions were complete and adequate.

Human Resources Management

Although civil service reform has swept the former Soviet Union and Central and Eastern Europe, including Armenia and Macedonia, the judiciary has been largely overlooked in these reforms. Most executive branch political, professional, and support positions have been clearly

separated and defined. Criteria for admission to and withdrawal from the civil service and job descriptions have been established for these positions. The judiciary, on the other hand, continues to lack merit or salary protections, defined job descriptions, formal recruitment, selection and evaluation procedures and training programs.

For example, in Armenia, court employees fall outside the broad umbrella of the State Service. There is no legislative framework for court employment that provides employee protections or guarantees maintenance of existing salaries (such as have been established for State Service employees). Each year, the government sets the salary levels for court staff by decree; there is no provision prohibiting the government from reducing court staff salaries. Absent a principle of general parity between judicial and executive branch staff salaries, judicial salaries fall far below those of the other branches. As pointed out by the Armenian Poverty Reduction Strategy, “The main prerequisite for successful reforms in public administration and judicial systems, as well as the most important

factor to mitigate corruption in these sectors, is the increase of salaries for the sector employees.”²⁴ Additionally, there may be no disciplinary rules or code of conduct for court staff, also increasing the likelihood of corruption.

One mandate of rule of law projects is to identify functions that could be effectively devolved to staff from judges, who are overloaded with case management and administrative duties at the expense of timely hearing of cases. In both countries, it was estimated that judges spend as much as 50% of their time on administrative matters. The courts suffer from a stultified reporting structure, under which most staff report directly to the President Judge, and there is reluctance to change this. Professional court administrators are rare and there is a general perception that the administrators that do exist are not capable of absorbing management responsibility for the court.

Approach

A number of significant reforms have been achieved in human resources management, in particular in Armenia where corruption in the government service was considered a particular problem. These included:

Each year, the government sets the salary levels for court staff by decree; there is no provision prohibiting the government from reducing court staff salaries.

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- Legislation to provide employment protections to court staff
- Job descriptions for all staff, and clarification of reporting relationships between judges, managers and staff
- Linkage of judicial branch compensation to that of similar positions in the executive branch, and provision of a statutory basis for salary setting and salary increases.
- Creation of uniform recruitment, selection and disciplinary procedures.
- Introduction of training programs for new and continuing staff.
- Implementation of a uniform code of conduct for court staff.

The Future

Developing a cadre of professional administrators who are seen as leaders in the justice system is a long term prospect. In both Armenia and Macedonia, however, we created and worked with a core group of court executives to make and present recommendations on court governance, budgeting, and human resources management to national officials. These working groups provide the nucleus of a total quality management approach to court improvement. This may be the most important legacy of the projects as it sets the stage for ongoing reform.

Endnotes

¹ Officially known as the Former Yugoslav Republic of Macedonia (FYROM), the United States recently announced it would refer to FYROM as Macedonia.

² The Role of Court Administration in Strengthening Judicial Independence and Impartiality," William Davis, in *Guidance for Promoting Judicial Independence and Impartiality*, United States Agency for International Development, January, 2002. Davis goes on to point out that both Spain and Italy created judicial councils in the 1980s and the French judges' association recently adopted a resolution supporting the separation of judicial from executive branch functions.

³ The legislative branch also does not provide an adequate counterweight to the executive branch in the countries considered here. For example, in Armenia, while the draft budget is forwarded to the National Assembly, the legislature is a weak participant in the budget process, having no staff and operating under a requirement that it vote on government budget proposals within 24 hours. Any objection to the budget constitutes a "no-confidence" vote in the government and carries serious consequences.