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ACTIVITY**

Analysis of Closed Commercial Cases 2006 - 2008
in the Basic Courts Skopje 1, Skopje 2 and Veles

Skopje, June 2009

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Analysis of closed commercial cases from 2006 to 2008

Executive Summary

Background

The Reform of the organization of the court system and the introduction of the general jurisdiction of the courts in accordance with the Law on Courts since 1995, has considerably contributed towards the improvement of the efficiency in disposition of the cases and reduction of the huge backlog of cases. The statistical data for the period from 1996 – 2005 shows that the courts with basic jurisdiction have managed to reduce the backlog of commercial cases inherited from the three specialized regional commercial courts that existed until then by 76% or from 45,570 to 11,013 cases out of which 5,002 were bankruptcy cases. Within the period 2004 – 2007 a number of system and process laws have been adopted and harmonized with the EU Legislation, in accordance with the National Strategy for Reform of the Judicial System of the Republic of Macedonia, with the aim to increase the efficiency and effectiveness of the judiciary. The laws that were taken into consideration during the preparation of this analysis are: The Law on Courts (58/06 and 35/08) the Law on Civil Procedure (79/05 and 110/08), The Law on Modifications and Amendments of the Law on Contractual Relations (18/01,4/02,5/03 and 84/08), Law on Trade Companies (28/04,84/05,25/07 and 87/08) and Law on Bankruptcy (34/06).

In May 2006, Macedonia has passed a new Law on Courts which came into force in January 2007. The drafting of the law, upon request of the Ministry of Justice, was supported by USAID by conducting an extensive study of all types of cases processed by the Macedonian courts from 2000 to 2005. The study served as the basis for determination of the most effective court system organization and structures. The study has shown that on the basis of the number of commercial cases there was no need for establishing one or more specialized commercial courts, but that the most effective solution for resolving commercial disputes is the establishment of specialized departments within the courts with extended jurisdiction. According to the results from annual World Bank's "Doing Business" report for 2007 and 2008, the system with specialized departments in the basic courts has proven to be efficient. Namely, the average time needed for closing of a commercial case (from filing to disposition) is 385 days, out of which the duration of the court procedure itself is 365 days. Such grade puts Macedonia among the countries with efficient judiciaries as compared to the countries from the region as well as compared with the more developed countries including the member states of the Organization for Economic Cooperation and Development (OECD) where this process lasts 443 days.

Nevertheless, the efficient resolution of commercial cases in all countries in transition is of an undisputable significance for attracting foreign and domestic investments and strengthening the economic basis of the society. As such, it presents one of the priorities of each government. There is always space for improvement of the results from the work of the courts and for increasing their efficiency. For the purpose of resolving the dilemma whether there is a need in the structure of the Macedonian courts for establishment of specialized commercial/trade courts or the existing structure of the Basic Courts with extended jurisdiction should be preserved, containing the specialized

departments, USAID's Judicial Reform Implementation Project and the Business Environment Project, upon previous approval given by the Ministry of Justice, started the designing of an analysis of commercial cases, closed within the period 2006 – 2008.

Methodology and objectives of the analysis

The analysis of the closed commercial cases within the period 2006 – 2008 focused on determining the effects from the application of the Law on Courts and Law on Civil Procedure in regards to the efficiency of resolving the commercial cases. Subject of analysis were the commercial/trade cases in two courts, the Basic Court Skopje 2 and the Basic Court Veles, which were selected as courts with the largest workload, backlog and diversity of commercial case types.

The analysis was conducted from April 5th to May15th, 2009 by using the methodology and guidelines for analysis of closed cases and collection of data developed by DPK Consulting, the organization implementing the USAID Judicial Reform Implementation Project in Macedonia. To date this methodology has been used several times for conducting of such analysis in pilot courts in many countries including Macedonia, during which, its reliability and accuracy have been tested and confirmed. The data collection form was adjusted to suit the rules of the procedure and the terminology that is used in the basic courts in Macedonia.

Twenty volunteers, young lawyers were engaged by the USAID Judicial Reforms Implementation Project to enter data electronically for a total of 9,679 closed cases. From 1.1.2006 to 31.12.2008 there were **7,072** cases closed in the Basic Court Skopje 2, and **1,203** cases in the Basic Court Veles. In addition, 1,404 cases from the Basic Court Skopje 1, which had the jurisdiction to resolve commercial cases until 1st April 2007, were also subject of the analysis.

In accordance with the methodology, a representative sample of cases was selected from the total number of cases processed in these courts. The representative sample was determined by applying the statistical formula that is used for conducting such analysis (<http://www.surveysystem.com/sscalc.htm>) with a margin of error +/- 5 %. The representative sample for this analysis included 342 cases from Skopje 1 and 2, and 44 cases from the court in Veles.

The analysis also included interviews with 17 judges who work on resolving commercial cases. A standardized questionnaire was used for the interviews, which enabled gaining an overall picture of the scope, type, complexity and duration of the proceeding and disposition of these cases.

The purpose of the analysis was to get an answer to the following questions:

1. Does the existing organization of the courts that includes specialized departments in the basic courts with extended jurisdiction, provide an effective framework for disposition of the commercial/trade cases or there is a need for introduction of new specialized court (s)?
2. Are there procedural impediments (bottlenecks) in the Law on Civil Procedure (LCP) that could be addressed by amendments to the Law in order to increase the efficiency of the procedure?

We believe that the findings and recommendations from the analysis have completely responded to the questions.

Findings and recommendations

1. Basic Court Skopje 2 resolves commercial disputes in two separate departments: Department for Commercial Cases with 15 judges and a Bankruptcy Department with 5 judges. Such organization provides for the judges to constantly upgrade their knowledge of matters they cover and to attend trainings with special focus related to their specific area of specialization, thus ensuring higher level of expertise and faster disposition of cases. In the Basic Court in Veles, there is only a Department for Commercial Cases in which all four judges work both on the commercial and bankruptcy cases.

Recommendation:

Establishment of separate departments for resolving commercial cases in all basic courts with extended jurisdiction is recommended. In the courts with larger number of bankruptcy cases, establishing departments for bankruptcy cases or sub-specialization of several judges for hearing these types of cases is desirable. While assigning judges to these departments, it is desirable that they are selected from the judges with longer judicial experience, especially the ones that work in the commercial field.

2. In the Basic Court Skopje 2 in the Commercial Department there is a big inflow of cases. In the course of 2008 on average each judge worked on 374 cases. The workload considerably affects (determines) the pace of the proceeding and scheduling hearings. In the interviews some judges pointed out the inability of scheduling the preparatory hearing within the deadlines stipulated with the Law on Civil Procedure, because the first available term in their calendar is 3 to 4 months after the new case has been assigned to them. In that sense they cannot meet the deadlines stipulated in Article 269 paragraph 2, Article 270 paragraph 3, and Article 271 of the Law on Civil Procedure.

Recommendation:

We recommend assigning judges from other basic courts with extended jurisdiction that have a lower workload or judges from the Appellate Courts to Basic Court Skopje 2 temporarily in order to help this court reduce its workload until reducing the backlog. The temporary assignment of judges from other courts would be conducted in accordance with Article 39 point 9 of the Law on Courts.

3. The statistical data about the total number of commercial cases on the level of the Republic of Macedonia, as well as the trend of constant decrease in the total number of cases indicates that the current court organization provides an efficient processing of commercial cases and that there is no need for introducing new specialized court(s). With the proposed changes of the Law on Civil Procedure, which are expected to shorten the deadlines and increase the efficiency of processing commercial cases (according to the plan of the Ministry of Justice the amendments will be adopted by September 2009) and with the implementation of the recommendations from this analysis, we can rightfully expect the declining trend to continue.

The establishment of new court(s) will significantly impact the court budget as it will encompass costs for setting up the necessary facilities, procurement of equipment and employment of new

staff. Also, the time required to transfer cases from the existing commercial departments of the basic courts to the new court(s) besides creating costs, will also have a negative impact on the efficiency of the courts and will increase the backlog of commercial cases that the new court(s) will inherit.

The existing specialized commercial departments in 11 courts with extended jurisdiction enable greater access to justice for the businesses because they are closer to the main offices and to the areas where they do their business. New court(s) will negatively impact the access to justice and will move it away from the areas in which the businesses are based and operate, and will create additional costs for them to travel to one or more locations where the new commercial courts will be located. This would be unfavorable for small and medium businesses.

Recommendation:

It is recommended to maintain the existing court organization with specialized commercial departments in the courts with extended jurisdiction as regulated with the Law on Courts (58/06).

4. The analysis of the cases in both courts has shown that the service of process problem not been resolved, despite the modifications of the Law on Civil Procedure adopted in September 2008. The improper serving of summons and writs to the clients is the main reason for continuances and postponements of hearings. The service is performed by court couriers during the official working hours of the courts (8:30 to 16:30), which overlaps with the working hours of the parties. This results with inability of serving summons and writs in person which is a condition for the court hearings to take place. This practice is a result of the inconsistent application of Article 135 paragraph 1 of the Law on Civil Procedure. On the other hand, it has been determined that the delivery to the legal entities is most often not possible during working hours, because the owner and/or the manager of the firm are not at the address at which the legal entity was registered in the Central Register (in practice legal entities are registered at the home address of the owner). In case the service, in accordance with Article 129 paragraphs 1 and 2 from Law on Civil Procedure, fails, the judges are making more attempts through the plaintiff and the Central Register to get the accurate address of the main office of the legal entity. The Analysis has shown that in such cases the judges do not immediately use the possibility for posting the summons and other documents on the bulletin board of the court, which additionally extends the procedure by rescheduling hearings two or three times. This causes a delay of 6-8 months, while still the documents have not been properly delivered to the parties. This problem can be resolved by consistent application of Article 129 paragraphs 3 and 4 of the Law on Civil Procedure.

The delivery of lawsuits to legal entities and/or individuals to their office/temporary residence abroad, i.e. the delivery through diplomatic means is often the biggest factor for the long duration of the proceedings in such cases. From the interviews with the judges we found out that the shortest period for delivery of writs in cases with a foreign element is six months. Unfortunately, in most of the cases, even after many interventions, the courts do not succeed to get feedback whether the service has been properly executed.

The analysis has shown that the long duration of the bankruptcy proceedings is due to the provision from Article 89 paragraph 2 of the Law on Bankruptcy. It is required that the bankruptcy trustee sends the special chart with reported claims to each creditor for review and eventual objection. From the actual review of the cases, the analysis and judges' statements it was

concluded that this legal provision impacts the duration of the procedure and does not contribute to the cost-effectiveness of the proceedings. The judges had specific proposals for overcoming this problem, which are included in the following recommendation.

Recommendation:

We recommend establishing a special summon delivery service with trained couriers. It should be organized as a separate business or profession. Article 125 of the Law on Civil Procedure makes the establishment of such a unit possible. Until such unit is established, it is recommended that the delivery services in the courts are organized in two shifts, i.e. the delivery to be performed within the legally prescribed timeframe from 6:00 - 21:00 hrs., in accordance with Article 135 paragraph 1 from the Law on Civil Procedure. It is also recommended that the judges use the other legal possibilities, i.e., delivery of court writs through the notaries and enforcement agents, which would lead to a higher percentage of successfully delivered items (the experiences from the countries where such way of delivery is applied are significantly better and reach an incredible level of 90%).

For the purpose of overcoming the usual problems with the delivery to legal entities, it is recommended that after two failed attempts for delivery at the address of the legal entity that is specified in the complaint or in the Central Register, the delivery to be performed by announcing of the writ at the bulletin board of the court.

Advancement in the way of delivery is recommended by using the Information technology, i.e., the delivery to be conducted electronically to the parties which are legal entities, as well as to the attorneys/legal representatives of the parties.

For overcoming the determined problems in the bankruptcy and liquidation proceedings it is recommended that the delivery of the special chart (scheme) of claims by the creditors to be announced at the bulletin board of the court. The creditors will be notified about the announcement of the chart by an advertisement published in the Official Gazette and at least one daily newspaper. The advertisement should contain a call for the creditors to do an insight into the chart of claims and use the right for objection in regards to it, if deemed necessary. For the realization of this recommendation, Article 89 paragraph 2 of the Law on Bankruptcy, needs to be amended.

5. It can be concluded from the analysis of the closed cases and from the interviews with the judges that in both courts in that for every second or third case the judge orders expert witness testimony ex officio. This practice is unfavorable and contrary to the principle according to which, the burden of proof falls on the parties. This principle was introduced with the Law on Civil Procedure from 2005. The decision of the judge to apply expert witness testimony poses a direct violation of Article 235 paragraph 2 of the Law, because the practice has shown that the exception has become a rule. Namely, the judge discloses the evidence by him/herself and only on the basis of that expert witness finding and opinion he/she makes his/her decision. The evidence provided through expert witness testimony has the same weight and value as all the other evidence that the parties are obliged to submit/present to the court. The expert witness testimony has a considerable influence on the delay of the proceeding. This is especially emphasized with the bankruptcy cases, where some expert witness procedures last for more than a year.

The decision to apply expert witness testimony means postponement of the proceeding for at least three months, and that is the case only if there is no objection to the expert witness finding and opinion. If there is an objection, or a request for supplementing the expert witness testimony or obtaining superior expert witness testimony, the proceeding is postponed for at least 9-12 months. From the statements of the judges in the Basic Court Veles, the Bureau for Expert Testimonies in most of the cases does not submit the expert witness finding and opinion in time. In a large number of cases the expert witness finding is not complete, so after the objection by the parties it is requested to supplement the expert witness testimony or to obtain a superior expert witness testimony.. On the other hand, the expert witness finding and opinion drafted by private expert witnesses are of a higher quality, completed in a timely fashion and contribute to the cost effectiveness of the proceeding.

Recommendation:

The judges should consistently apply the provision for disclosing evidence by the use of an expert witness testimony (Article 235 paragraph 1 from the Law on Civil Procedure).

It is recommended that the Ministry of Justice checks the work of the Bureau for Expert Testimonies and proposes adequate measures for reforming of this institution, if the above mentioned findings are confirmed.

6. The Basic Court Skopje 2 and the Basic Court Veles were selected for implementation of the analysis because of the large number of pending cases. Namely, in the Basic Court Skopje 2, the total number of pending cases in the commercial / trade department was 1,050 on 31.12. 2008. The oldest 17 cases have been pending since 1996. In the Department for Bankruptcy and Liquidation in the same court the total number of pending cases is 414 out of which 26 since 1996.

The situation with pending cases in the Basic Court Veles at the end of 2008 was the following: 1,029 commercial/trade cases, out of which 2 date from 1998; and 66 bankruptcy cases, out of which the oldest case dates from 2001. The court in Veles received / inherited the old trade/bankruptcy cases from other courts (Gevgelija and Kavadarci) which have become courts with basic jurisdiction in accordance with the Law on Courts (58/06) and stopped acting upon these cases. The Department for trade cases has designed a plan and program for backlog reduction. All judges in the trade department are in charge for implementation of the plan, and a report is submitted at the monthly meetings about what has been finalized. The judges stated that it is expected that all cases are closed by the end of the third quarter of 2009.

Recommendation:

It is recommended that the Heads of the Trade and Bankruptcy Department, in the Basic Court Skopje 2 design a plan and program for disposition of the old cases with deadlines and dynamics for backlog reduction. Consistent implementation of the designated plan and program is needed, as well as monthly monitoring and notification regarding the progress in regards to the disposition of old cases. If the recommendation from Basic Court Skopje 2 for acquiring assistance from delegated judges is realized, the disposition of old cases is expected to provide good results in a very short time.

Establishing committees and designing a plan and program for monitoring and backlog reduction of old commercial/trade and bankruptcy cases is recommended in all the basic court with extended jurisdiction..

7. The analysis of the closed cases in the commercial courts that cover the bankruptcy procedures in Basic Court Skopje 2, in which the creditors or eventually the bankruptcy trustee were directed to initiate a procedure for determination of the contested claim, shows that they are not treated as urgent cases in the commercial section because of objective reasons, and they are not completed within the shortest possible deadline. As a consequence the bankruptcy procedure can last for a long time because the bankruptcy trustee of the liquidation manager will not be able to complete it until the disputable cases are not resolved.

Recommendation:

It is recommended that one or more judges are separated from the commercial department to work exclusively on resolving of these cases, depending on their number. These judges will be allocated in the bankruptcy department and the cases will be resolved urgently, which would considerably shorten the duration of the bankruptcy procedure. The analysis of the bankruptcy cases in Basic Court Veles, has shown that this way of work provides successful results.

8. The introduction of a mandatory response to a complaint with the Law on Civil Procedure was supposed to actively involve the parties in the case. The defendant has the possibility to challenge the facts in the complaint and propose evidence by him/herself. If the defendant does not submit or submits a response not in due time, there will be legal consequences, or the court will pass a judgment which accepts the request of the plaintiff, if the conditions stipulated in Article 319 paragraph 2, in regards to Article 269 of the Law on Civil Procedure are met.

The analysis has shown that holding a preparatory hearing as a phase in the procedure, is not sufficiently used by the judges, thus missing the opportunity to have control on the proceeding even in the initial phase. The court imposes to the clients during the preparatory hearing, to bring all written evidence before the first hearing of the trial the latest; otherwise the judge can reject the complaint. The judges in both courts where the analysis was conducted inconsistently apply the provisions from Article 269 paragraph 2 from the Law on Civil Procedure. Namely, together with the invitation for filing a response, summons for the hearing of the trial are handed to the defendant. Here the exception has become a rule and the judges also use it in other cases when it is not related to issuing a temporary measure. Due to the workload, in regards to the cases when issuing of a temporary measure is requested, the judges schedule a hearing in the first available term (most often after three-four months in the Basic Court Skopje 2), and in this way, the judges do not respect the deadline for urgent proceeding upon the request for issuing a temporary measure. As a result they do not prevent the occurrence of damaging consequences. Such situation has a strong impact on the dynamics of the procedure and postpones the procedure for issuing a temporary measure.

Recommendation:

It is recommended that the judges more often apply the provisions from Article 319 paragraph 1 of the Law on Civil Procedure and pass judgments due to non-filing a response to a complaint, whenever the conditions for that have been fulfilled.

It is recommended that the court obligatorily schedules a preparatory hearing in order to previously resolve all facts that are significant for the further course of the proceeding.

Findings based on the direct interviews with the judges and the statistics from the Department for bankruptcy in Basic Court Skopje 1, Skopje 2

In addition to Basic Court Skopje 2, Basic Court Skopje 1 also had the competence to resolve bankruptcy cases in the course of 2006 and the first quarter of 2007. Within this period three judges in Basic Court Skopje 2 resolved the bankruptcy cases, while two judges resolved this type of cases in Basic Court Skopje 1. In 2008 only Basic Court Skopje 2, which took the two judges from Skopje 1, had the competence to resolve the bankruptcy cases, so as a result 5 judges worked on these cases.

In regards to the answers of the first question – *How many years have you been engaged as a bankruptcy judge* – it appears that the most experienced judge has 13 years of experience and the youngest one has 3 years of experience. It can be concluded out of this that these cases have been resolved by experienced judges in both courts, with the average experience of 6 years in the particular field. 16 specialized trainings (about the new Law on Bankruptcy (2006), Law on Civil Procedure, Law on Contractual Relations and Trading Contracts) have been organized for the needs of the bankruptcy judges within the period of 2006 – 2008. It is evident that by founding the Judicial Training Academy (March 2007), the level of specialized trainings has been improved and the bankruptcy judges attended three trainings a year. It is necessary that periodic consultations with the judges and evaluation of the needs for continuous specialized trainings are conducted. The current practice is that trainings are conducted just upon passing new laws that regulate the area of responsibility covered by the individual judge.

In regards to the second question – *What was your workload in the course of 2008 and whether you managed the inflow of new cases* – the judges could not give a precise answer. It has been determined from the data in the intake office that the five judges in the course of 2006 have worked on 568 cases on average. The number of cases in 2007 was 407, and in 2008 there were 301 cases. Out of this, it results that there is a constant decrease of the number of new bankruptcy cases within the analyzed period, so in 2006 the number decreased from 1807 to 1331 or to 892 in 2008. The constant decrease of the inflow of new cases, gave the possibility to the judges to focus on resolving the old cases. The backlog in both courts at the beginning of 2006 was 1035 cases and it was decreased at the end of 2006 to 705 cases or for 31%. This trend of giving priority in scheduling and closing the old cases because of objective conditions (lost precious time during the period of moving to the Basic Court Skopje 2, as well as during the summer holidays) did not continue with that dynamics in 2007. The change of the competence and transferring of judges in Basic Court Skopje 2 has lead to a certain delay in processing of the cases. The full logistics regarding the transfer of cases on 01.04.2007, re-registering the cases in the registers in court Skopje 2, the new distribution of cases in order to reach equal workload for each judge cause considerable slowing down of the dynamics for resolving of the cases. The working conditions of the judges in the court worsened. Namely, the five judges currently have only two courtrooms available and they schedule the hearings in two shifts, 9-12:30 and 13-15.30 hrs. The other concerning issue is the fact that none of the bankruptcy judges has a legal assistant. In 2007 there is a backlog reduction from 705 – 613 cases or only 13%.

In the course of 2008 the judges adjusted to the new working conditions, consolidated their capacities and by establishing a new organizational structure the results were more than evident. In the course of this year, the judges reduced the backlog from 613 to 414 cases or in terms of percentage it was reduced for 32%. These excellent results of the judges with certain measures for improvement of the working conditions, and better logistic support can lead to complete closing of

the old cases and full efficiency of the Department. The judges requested employment with open-ended contracts for legal assistants for each judge (currently, they are supported by three volunteers for five judges). The volunteers stay in the department from 2-5 months on average. The employment of legal assistants would considerably release the pressure from the judges for performing the administrative work in processing of the cases. Delegation (redeployment) of two experienced judges from other courts for a maximum period of one year would lead to closing of the old cases. The recommendations for overcoming of these problems that the Bankruptcy Department in the Basic Court Skopje 2 is facing are given in the further text under number 1, 3, 4 and 6.

In regards to the third question – *What is the number of pending cases, how many of them are older than 1 year and which is the oldest case*, the judges could not provide an answer. We found the answer to this question in the Department's intake office.

On a Department level all five judges have a total of 133 old cases. The oldest cases are 25 since 1996; 5 since 1997; 5 since 1998; 2 since 1999; 12 since 2000; 5 since 2001; 18 since 2002; 29 since 2003; 7 since 2004; 17 since 2005; and 8 since 2006. 115 cases initiated in the course of 2007, are not considered to be old because the period from 1.5 to 2 years, after which according to the current norms the cases are considered to be old, has still not expired.

In regards to the fourth question – *Whether on a Department level you have a plan for dealing with the backlog*, all judges answered that there is no written plan for resolving of the old cases and backlog reduction. There is a consent that the old cases are scheduled within a shorter time frame (30 to maximum 40 days from one to another hearing) when there are conditions for that. Look at recommendation **no. 6** regarding this issue.

In regards to the fifth question – *Were the necessary documents submitted or was it requested that they are additionally completed / clarified before the beginning of the proceeding* – the judges answered that in most of the cases the completion/clarification is needed. This results in delay in case processing, at the very beginning for 30 days at least.

In regards to the sixth question – *In how many cases the bankruptcy procedure was not conducted, because there was a lack of means for covering the advanced expenses related to the previous procedure*, replies of the judges differed. We have determined from the statistical data that within the analyzed period 128 cases were rejected because of non-payment or lack of advanced payment of the expenses.

In regards to the seventh question – *Is the court fee paid along with the submission of the files or is it paid upon the request of the judge for completion/clarification of the request, or forced payment is required through the Public Revenue Office (for cases submitted before September 2008)*, the answers of the judges were identical. Until 2008 the tax was paid after the request of the judge for completion/clarification of the proposal, and after September, the proposal was submitted with the court fee already paid.

In regards to the eighth question – *How much time is needed for the bankruptcy trustee and the expert witness to determine whether the debtor is not able to pay*, we received identical answers that this is closely related to the skill/competence of the bankruptcy trustee, but on average 1 to 2 months.

In regards to the ninth question – *whether the temporary bankruptcy trustee most often continues working as a bankruptcy trustee when confirmed by the Creditors' Board*, the answer was “Yes”.

In regards to the tenth question – *How long does it take to select a new permanent bankruptcy trustee by the Creditors' Board*, the answer was immediately. Two judges did not have such a case in their practice.

In regards to the eleventh question – *Whether and in how many cases the bankruptcy trustee has been replaced because of non-professional / dishonest work? Is this due to the insufficient training of the bankruptcy trustees?*, the judges answered that this rarely happens in practice. The bankruptcy trustees are usually dismissed upon their request, after the judge reacts about their work. All judges agree that bankruptcy trustees need a lot of training.

In regards to the 12th question – *How much time is needed for the appointment of a new bankruptcy trustee*, all judges answered that a new trustee is appointed right away; there is only one case where long time has passed.

In regards to the 13th question - *How much time is needed for preparation and how long is the examination/verification hearing* the judges answered that it lasts equally long two or three months for each. For that hearing, the bankruptcy trustee should prepare the scheme of claims for each of the creditors and submit it to each creditor in person. Sometimes the delivery of the scheme lasts up to a year (see recommendation 4). The procedure is additionally complicated or postponed if the creditors have objection on the amount of the determined claim. Objections by creditors are frequent.

In regards to the 14th question about *the cooperation with the Creditors' Board and how many times the judge has replaced a board member*, three judges had experience with such cases. This is a problem because a new member of the board should be appointed immediately, and most frequently it does not occur in practice. The creditors, especially from the Pension, Disability and Health Insurance Funds are inert.

In regards to the 15th question *about the duration of the inventory and appraisal of the bankruptcy assets*, the judges answered that it lasts most often from 1 to 2 months.

In regards to the 16th question – *How much time is needed in order to get a report regarding the condition of the property*, the judges answered that it lasts longer for the more complex cases, and for the simpler ones up to 2 months.

In regards to the 17th question – *whether other institutions cooperate with the court (for example, the Cadastre, State Attorney, Bureau for Expert Testimonies)*, the judges pointed out to the need for improvement of the cooperation. One judge proposed to suggest the institutions to appoint a separate person that will have the task to cooperate with the bankruptcy trustee/judge.

In regards to the 18th question – *What kind of problem is the determining/collection of the property of the enterprise in bankruptcy*, the judges answered that the problem is big. Part of the guilt falls to the creditors which are non-active and do not help the court/bankruptcy trustee in detecting the property mass. Acquiring the documentation from the companies is difficult, and in many cases the companies hide the documentation or destroy it. In most of the cases the companies have alienated the property “in time”, before the court issues a temporary measure for limiting the possession of the property. From the answers obtained from the studies and the statistical

documentation appears that in 1249 cases the initiation of the bankruptcy procedure comes from the debtor/the enterprise that does not possess property. In these cases the issue is whether it is worth-while for the judges to ask the debtor to pay the expenses for the previous procedure in advance. Namely, if it appears from the request and the attached documents that the account of the company has been blocked in the bank for more than a year and the company does not have movable property or real estate, the procedure should be stopped. In the judicial jargon these cases are known under the name open/close. Most often the judges proceeding upon these cases open a previous procedure (which takes approximately six months together with the vacancy announcement and one scheduled hearing). The bankruptcy trustee/or the expert witness will determine that there is no property after the opening of the bankruptcy procedure and at the next hearing the judge will make a decision for stopping the procedure due to lack of property. It is suggested that such proposals from the enterprises which do not possess any property and have stated that in the request for initiation of a bankruptcy procedure, to be stopped immediately so that valuable time in court is not wasted on them.

In regards to the 19th question – *Whether the creditors are familiarized and know how to protect their rights*, we received an unanimous answer that the creditors do not know them and they need education in this regard. One of the judges pointed out that lately the larger companies, that appear most frequently as creditors send their lawyers for education regarding the novelties in the laws on bankruptcy, obligations etc. It would be desirable that this good example becomes a practice or the Chambers organize such specialized educational activities.

In regards to the 20th question – *How is the property of the debtor sold; by public auction, or by sales through collection of closed offers? Most often the property is sold at a lower price than the assessed one, for ____ %.*, the answer was that it is conducted most often by a public call and collection of closed bids. The price which is reached during such sales is lower up to 30% from the estimated one.

In regards to the 21st question – *whether the sales with direct agreement are frequent and whether there is a possibility for misuse*, the answer was “no”.

In regards to the 22nd question *whether and in which percentage the creditors are paid off from the bankruptcy mass*, the judges answered that this is very rare. Usually the companies do not have property and if something is found it is most often used for covering of the expenses for the procedure or compensation for the bankruptcy trustee. In those few cases the creditors had been compensated up to 20% from what has been claimed.

The answer of the 23rd question – *How long does the bankruptcy procedure last*, the judges answered that in most of the cases the procedures are opened and closed, due to lack of property of the debtor. If there is property, the procedure lasts from 1.5 to 2 years.

In regards to the 24th question – *What is the number of cases when the procedure is stopped because there is a lack of property (open – close cases)*, the judges did not have precise data. These data were provided by the intake office of the department. The procedure has been stopped because the debtor did not possess any property with 1249 cases.

Analysis of the statistical data

The team that conducted the analysis expresses its appreciation for the cooperation with the chiefs of the intake offices and manager of the Bankruptcy Department in the course of the collection of statistical data. We express the same appreciation to the employees in the Department for Courts, Public Prosecutor's office and other judicial bodies of the Ministry of Justice for providing the access to the judicial reports and the confirmation/comparison of data received by the courts.

In 2006 the three judges in the Basic Court Skopje 2 had 1574 pending cases out of which, they disposed a total number of 1185 cases or 524 cases per judge. During the same year the court had the inflow of 967 bankruptcy cases and the judges managed to dispose 1185 cases, thus managed the inflow in its entirety and succeeded in resolving 218 old cases. These results led to the decrease in the backlog for 35.9%.

Within the same period in Basic Court Skopje 1, both judges had 1268 pending cases, and resolved 952 cases in total or 474 cases per judge. The Court had an inflow of 840 new cases, and in the end of the year 952 cases were resolved. By doing this, the judges have not only managed the inflow, but they succeeded in closing of 112 old cases. The efficiency of the judges has led to backlog reduction of 26.2%.

The efficiency is bigger and the difference is evident in disposition of the bankruptcy cases by the judges from Basic Court Skopje 2.

In 2007 the three judges in Basic Court Skopje 2 had 1564 active cases out of which they have disposed 951 cases in total or 317 cases per judge. The Basic Court Skopje 1 had the competence to work on civil / bankruptcy cases until the 31st March 2007. Within this quarter both judges had 472 active cases and succeeded in resolving 180 cases in total or 90 cases per judge. From the collected results regarding the efficiency of all the judges in the course of 2007, it appears that the five judges worked on 2036 cases or 407 cases per judge. The judges at the end of the year succeeded in disposing 1131 cases in total or 226 cases per judge. We could not provide and compare data in regards to whether the inflow has been handled, how many old cases have been disposed and what is the backlog reduction compared to last year, because of the change of competence of the Basic Court Skopje 1, which decided upon bankruptcy cases only in the first quarter of this year.

In 2008, the five judges in the Basic Court Skopje 2 had 1505 active cases in total or on average 301 case per judge. The judges disposed 1091 case in total or 218 cases per judge. During the same year, the court received 892 new cases, and the judges disposed 1091 cases in total. This shows that the judges have not only managed the inflow, but they succeeded in disposing 199 old cases, thus they have decreased the backlog for 32%.

Findings based on the direct interviews with the judges and the statistics of the Department for bankruptcy in Basic Court Veles

In regards to the answers of the first question – *How many years have you been engaged as a bankruptcy judge* – it appears that the most experienced judge has been engaged since 1990, one since 1996 and one since 2009. It can be concluded out of this that in this court these cases were resolved by experienced judges, with the average experience of 11 years regarding this legal area.

In regards to the second question – *What was your workload in the course of 2008 and whether you managed the inflow of new cases* – the judges could not give a precise answer at the moment the discussion took place. The answer of this question was received from the intake office of the Commercial Department. The three judges worked on 135 cases in total or 45 cases to each judge. The judges did not manage to overcome the inflow this year.

In regards to the third question – *What is the number of pending cases, how many of them are older than 1 year and which is the oldest case*, we have also found the answer to this question in the Department's Intake office because the judges could not provide precise data. The judges worked on 135 cases in total, out of which 16 cases were older than 1 year, while the oldest case is from 2001.

In regards to the fourth question – *Whether on a Department level you have a plan for dealing with the backlog*, judges answered that they have a plan and program for dealing with the backlog cases, as well as monthly sessions on a department level, at which the realization of the plan and program is monitored for each judge individually.

In regards to the fifth question – *Were the necessary documents submitted or was it requested that they are additionally completed / clarified before the beginning of the proceeding* – the judges answered that editing of the necessary documents is rarely required because in 90% proper documentation is submitted. The properly submitted documentation with the proposal saves at least 30 days of the duration of the procedure.

In regards to the sixth question – *In how many cases the bankruptcy procedure was not conducted, because there was a lack of means for covering the advanced expenses related to the previous procedure*, we received a reply that the judges from this department did not have such cases in their practice. The advanced payment of the expenses for the previous procedure when the notice was submitted by the bankruptcy trustee is done by the Manager of the Debtor as a physical person.

In regards to the seventh question – *Is the court fee paid along with the submission of the files or is it paid upon the request of the judge for completion/clarification of the request, or forced payment is required through the Public Revenue Office (for cases submitted before September 2008)*, the judges replied that the court fee is regularly paid with the submission of the proposal.

In regards to the eighth question – *How much time is needed for the bankruptcy trustee and the expert witness to determine whether the debtor is not able to pay*, we received an answer that the bankruptcy trustee and the expert witness usually need 15-30 days in order to determine debtor's inability to pay.

In regards to the ninth question – *whether the temporary bankruptcy trustee most often continues working as a bankruptcy trustee when confirmed by the Creditors' Board*, the answer was "most often Yes".

In regards to the tenth question – *How long does it take to select a new permanent bankruptcy trustee by the Creditors' Board*, two of the judges answered that they did not have such a case in their work at all, and if there is a need a new permanent bankruptcy trustee is selected at the first session of the Creditors' Board.

In regards to the eleventh question – *Whether and in how many cases the bankruptcy trustee has been replaced because of non-professional / dishonest work? Is this due to the insufficient training of the bankruptcy trustees?*, we got the reply that only one of the judges replaced a bankruptcy trustee because of this reason, only in one case.

In regards to the 12th question – *How much time is needed for the appointment of a new bankruptcy trustee*, all judges answered that a new trustee is appointed right away.

In regards to the 13th question - *How much time is needed for preparation and how long is the examination/verification hearing* - the judges answered that usually the preparation and duration of this hearing lasts 1-2 months.

In regards to the 14th question about *the cooperation with the Creditors' Board and how many times the judge has replaced a board member*, it can be concluded that the practice of the judges is different. One judge had frequent problems with the Board members from the Public Revenue Office and the Funds. One of the judges did not have such problems and changed a member of the Creditors' Board only once.

In regards to the 15th question *about the duration of the inventory and appraisal of the bankruptcy assets*, the judges answered that the duration of the appraisal of the bankruptcy assets lasts from 15 – 20 days and that the designated deadlines are respected.

In regards to the 16th question – *How much time is needed in order to get a report regarding the condition of the property*, the judges answered that this deadline usually lasts up to 30 days and it is not delayed.

In regards to the 17th question – *whether other institutions cooperate with the court (for example, the Cadastre, State Attorney, Bureau for Expert Testimonies)*, the judges pointed out that the other institutions cooperate with the court, but still this is not sufficient. Problems most often occur with the Agency for Real Estate Cadastre of the Republic of Macedonia. The Judges concluded that after the notification of the Cadastre Agency that a previous procedure is being conducted regarding the bankruptcy debtor and attachment of the real estate was registered, modification of the real estate is conducted based on the submitted notary acts, or contracts. The judges also had a remark regarding the speed and quality in proceeding upon the submitted cases for expert witness testimony in the Bureau for Expert Testimonies.

In regards to the 18th question – *What kind of problem is the determining/collection of the property of the enterprise in bankruptcy*, the judges agreed that this is a big problem. Most often, this is a result of the not completed documentation, as well as the insufficient cooperation with the Public Revenue Office, The Central Register and the Agency for Real Estate Cadastre.

In regards to the 19th question – *Whether the creditors are familiarized and know how to protect their rights*, we received an answer that the creditors are familiarized with their rights, and in most of the cases they engage lawyers, who represent them in the bankruptcy procedure.

In regards to the 20th question – *Is the property of the debtor sold by public auction, or by collection of closed bidding offers? Most often the property is sold at a lower price than the estimated one for ____%*, the judges answered that the property is most often sold by public auction and in rare cases by direct agreement. One of the judges had a case with 4 unsuccessful

attempts for public auction and in the end the property was sold by direct agreement. Most often the sale price is lower than the estimated one, for 10-30%.

In regards to the 21st question – *whether the sales with direct agreement is frequent and whether there is a possibility for misuse*, the answer was that this is not a frequent case and there is no possibility for misuse if the sale is conducted in lawful manner.

In regards to the 22nd question *whether and in which percentage the creditors are paid off from the bankruptcy mass*, the judges answered that the creditors have been compensated very rarely, only 5-20% of the claimed sum. Most often the assets from the bankruptcy mass are sufficient for covering the expenses of the bankruptcy trustee.

In regards to the 23rd question – *How long does the bankruptcy procedure last*, the judges answered that with the smaller cases the bankruptcy procedure lasts up to 4 months, and with the more complex ones 1-2 years.

In regards to the 24th question – *What is the number of cases when the procedure is stopped because there is no property (open – close cases)*, the judges did not have precise data, but they replied that the procedure is stopped because of this reason in most of the cases. The number of cases where the procedure was opened and at the same time closed because there was no property was 16, and in regards to the completely resolved 69 cases it is 23.1%.

Analysis of the statistical data

In the Basic Court in Veles three judges worked on bankruptcy cases in 2006. They had a total of 61 case, out of which 27 cases pending from 2005, and 34 newly received cases. Each judge worked on 20 cases. The judges resolved 37 cases in total or on average 12 cases each. This shows that the judges have managed the inflow and decreased the backlog for 3 cases. Out of total 37 closed cases in this year, in 16 cases the procedure was closed because there was a lack of property, or in 43% of the cases.

At the end of this year the overview of old cases is as follows: out of 13 cases, the oldest one is since 2001, 2 cases since 2002 and 10 cases since 2004.

In the course of 2007 the number of new bankruptcy cases has been increased. Only two judges worked in the department this year. They had a total of 139 cases, out of which 24 old cases pending from 2006 and 115 newly received ones. On average, each judge had a total of 70 cases, and they resolved 46 cases each. Within a short period of time one judge was assigned to help them and he resolved five cases. This year the judges resolved 98 cases in total, by which they did not managed the inflow and consequently the backlog increased for 17 cases. By monitoring the efficiency of the judges it appears that this year they have resolved (4,5 times) more cases compared to the last year, but because of the decreased number of judges (one less) and the increased inflow of new cases for three times, they could not be focused on resolving old cases. Within this period only 8 old cases were resolved.

Out of 98 resolved cases during this year, with 27 cases the procedure was closed due to lack of property, or in 27.5% of the cases.

By monitoring the situation with the old cases it can be concluded that only 9 cases remained: 1 case since 2001, 2 cases since 2002, 5 cases since 2004 and 1 case since 2005.

In the course of 2008 the situation is as follows: Three judges worked on the bankruptcy cases in the Commercial Department. They worked on a total of 135 cases, out of which 41 old cases pending from 2007 and 94 newly received cases. Each judge worked on 45 cases, and resolved 33 cases. Again, as last year, the judges did not manage to manage the inflow and they increased the backlog for 25 cases.

The number of cases where the procedure was opened and at the same time closed with a decision due to the lack of property was 16, and in regards to the total number of disposed 69 cases it is 23.1%

During the same year the judges did not dispose a single old case which means the overview of the old cases is the same as at the end of 2007.

Findings based on the direct interviews with the judges and from the statistics of the Department for Commercial cases in Basic Court Skopje 1, Skopje 2

In addition to Basic Court Skopje 2, Basic Court Skopje 1 also had the competence to resolve bankruptcy cases in the course of 2006 and the first quarter of 2007. Within this period six judges in Basic Court Skopje 2 worked on commercial cases, while ten judges worked on this type of cases in Basic Court Skopje 1. In 2008 only Basic Court Skopje 2, which took all ten judges from Basic Court Skopje 1, had the competence to resolve the commercial cases.

In regards to the answers of the first question – *How many years have you been engaged as a bankruptcy judge* – it appears that these cases were resolved by experienced judges, each of them has 13 years of experience in this field. Eight specialized trainings from the area of trade law, trading contracts and contractual relations have been organized for the needs of the judges that work on commercial cases, after JTA was created. It can be concluded from the participation of the judges at these trainings that they attended on average three trainings per year.

In regards to the second question – *What was your workload in the course of 2008 and whether you managed the inflow of new cases* – the judges could not give a precise answer. During this year, each judge worked on 681 cases. Within the same period he/she resolved 276 cases, by which the inflow on the level of a department was not managed.

In regards to the third question – *What is the number of pending cases, how many of them are older than 1 year and which is the oldest case*, the judges could not provide an answer. We found the answer to this question in the Department's intake office.

Out of 5667 pending cases at the end of 2008, there are 1050 cases older than one year, as follows: 17 cases since 1996, 22 since 1997, 17 since 1998, 19 since 1999, 26 since 2000, 35 since 2001; 64 since 2002; 114 since 2003; 107 since 2004; 179 since 2005; and 450 since 2006.

In regards to the fourth question – *What is the average duration of the proceedings in cases of high/low value*, it is concluded that the duration of the low value cases is 6 months, and for the high value cases is 1-2 years.

In regards to the fifth question – *Is there a plan on a department level for dealing with the backlog* – the judges replied that there is no a written document, but still they have a verbal agreement to give priority to the old cases, so that they are scheduled on a shorter time limit. One of the judges replied that s/he did not have backlog at all.

In regards to the sixth question – *What is the most frequent legal ground for the commercial cases? For which legal ground does the proceeding last longest*, - it is concluded that the most frequent ground is debt, and the other grounds that appear more frequently are: determining of ownership, compensation of damage, acquiring possession without any legal ground, construction agreements and use of construction land etc. The procedure is longest in regards to the ownership cases.

In regards to the seventh question – *does the service of process influence the proceeding and which are the most frequent problems in the delivery of the court writs*, all judges agree that the service of process has a great influence on the speed of the proceeding. The problem becomes more complex because often the defendant does not report the change of address in the Central Register. In addition, the court couriers can not perform the service of process only in the course of the working hours, and during that time the legal entities whose seat of the head-office is registered at the home address of the founder, cannot be found at the given address. The judges recommend training for the court couriers, especially when it comes to commercial cases because the service of process for the legal entities is special.

In regards to the eighth question – *Do you have the practice of scheduling a preparatory hearing in the procedures upon the high value cases*, we received an answer from 5 judges that they regularly practice scheduling of a preparatory hearing, and two of the judges rarely use this phase of the procedure and immediately schedule a main hearing.

In regards to the ninth question – *Is the deadline for scheduling of the preparatory hearing respected, do you use this phase in order to manage the proceeding and accelerate it from the very beginning*, the judges replied that due to the excessive workload it is difficult to respect this deadline. The hearing is usually scheduled two months after the response is received.

In regards to the tenth question – *How many hearings are needed on average in order to complete the main hearing*, it can be concluded from the answers that regarding the low value cases 1-3 hearings are needed, and when it comes to more complex cases 5-6 hearings.

In regards to the eleventh question – *In what percentage of cases you apply expert witness testimony and in which period it is completed*, it can be concluded that the practice for applying expert witness testimony differs with all the judges. Some of them apply expert witness testimony in 60% of the cases, some in 30%, while one judge answered that s/he practices expert witness testimony only in 5% of her/his cases. The judges agreed that the expert witness testimonies are usually completed in 1-2 months.

In regards to the 12th question – *What is your opinion regarding the influence of the legal basis of the case (for example, fulfillment of a contract, determining of the ownership, transferring of possession, determining of a temporary measure, etc.) on the course and speed of the proceeding*, the judges agreed that the legal basis has influence on the course of the proceeding. See answer to the question **No. 6**.

In regards to question 12 b – *Does the value of the case influence the course and speed of the proceeding*, the judges think that this factor does not have a big influence and does not have an effect on the course of the proceeding.

In regards to question 12 c – *Do you think that if the defendant is a state body, it affects the course and speed of the proceeding*, it can be concluded from the received answers that this factor sometimes has influence. It was mentioned that the State Attorney (who represents the state in the court cases) has difficulty in providing evidence from the Ministries.

In regards to question 12 d *regarding the influence of expert witness testimony on the course of the procedure*, all the judges agreed that this factor has an impact and as a result of that, the proceeding is postponed for at least 1,5 – 2 months. See answer to the question **No. 11**.

From the answers of the question 12 e *whether the inspection on site and depositing financial means for it, influence the postponement of the proceeding*, the judges think that this factor does not have any influence. Most often, the parties pay for the inspection, after it has been conducted.. Sometimes expert witnesses are engaged for the inspection.

In regards to question 12 f – *was interruption of the proceeding applied upon the request of the parties for the purpose of resolving the dispute by mediation, and whether it influences the speed of the proceeding*, the judges think that interruption of the proceeding in regards to this ground is very rarely applied.

In regards to question 12 g – *Does the interruption of the proceeding due to initiating a bankruptcy procedure influence the course of the proceeding*; the judges agree that this factor has influence, because the proceeding continues only if the claim of the creditor in the bankruptcy procedure is not acknowledged. In addition to that, the creditors often forget to inform the court that the claim in the bankruptcy procedure has been acknowledged, in order the commercial case to be finalized faster.

In regards to the 13th question – *Can the legal deadlines set forth in the Law on Civil Procedure for finalization of the proceeding be respected and what are the needed preconditions for that*, we received an answer that not all deadlines can be respected, due to the large workload, as well as the insufficient technical equipping. According to the judges the following deadlines cannot be respected: the deadline for holding of the preparatory hearing (because of the large workload); the deadline for writing of the judgment / drafting of the decision (more judges share one court clerk), as well as the deadline of 45 days for holding of the main hearing in case the court of second instance abolished the decision and returned the case for repeated trial at the court of first instance (because of the large workload, the judge does not have a free term to schedule a hearing for resolving the returned case).

In regards to the 14th question – *On the basis of your experience from the implementation of the Law on Civil Procedure, since the end of 2005, what are your specific proposals for improvement of the efficiency for the purpose of respecting the deadline for resolving of this type of cases*, some of the received recommendations are the following:

- The schedule of trials to be organized differently, i.e., not to have trial every odd date, which is the current practice in Basic Court Skopje 2. For instance, in Basic Court Skopje 1, there were trials every day, except on Friday, which was reserved for writing of the judgments;
- Mandatory proposing of the evidence before the first hearing for the trial;

- Increasing of the number of judges in this department, or more adequate allocation of the judges between the commercial department and the department for civil cases, which has three times less workload, and has almost three times more judges (40)
- Increasing of the number of court clerks in the commercial department;
- Introducing of mandatory payment of the court fee for appeal and other extraordinary legal remedies, because often the case is put on hold sometimes even for six months before it is submitted to the court of second instance, because the court fee was not paid..
- The delivery via diplomatic mail poses a great problem. There are cases since 1996 where the service of process has not been conducted properly.

Analysis of the statistical data

In 2006 the six judges in the commercial department of Basic Court Skopje 2 worked on 1913 cases in total, out of which 378 pending on 01.01.2006 and 1535 newly received cases. Each judge has worked in the course of the year on 318 cases on average, and closed 185 cases. The judges in the course of this year resolved 1111 cases in total; 802 cases remained as pending. It can be concluded from this that the judges did not manage the inflow, i.e., they resolved 424 cases less and increased the backlog compared to 2005 from 378 to 802 cases.

During the same period in Basic Court Skopje 1, 10 judges worked on the commercial cases. In the course of 2006, they worked on a total of 5596 cases, out of which 2941 cases left over from 2005 and 2655 newly received cases. At the end of the year 2647 cases were resolved. It can be concluded from these results that the judges have not only managed the inflow, but they managed to reduce the backlog for 11.27% or for 294 cases compared to 2005.

In 2007, the commercial department of Basic Court Skopje 2 started with a backlog of 802 cases. Until March 31st 2007, 697 new cases have been received. The judges worked on 1499 cases in total or 250 cases per judge. By the end of the first quarter the judges finished 381 cases or 64 cases per judge. This decreased efficiency led to the increase of the backlog for 316 cases. It can be concluded that the backlog of the court continuously grows.

In 2007 the Basic Court Skopje 1 had the competence for resolving of commercial cases until March 31st 2007. Within this period the ten judges worked on a total of 3333 cases, or 2647 cases left over from 2006 and 686 new cases. During this quarter, each judge worked on 333 cases. By analyzing the efficiency of the judges in this period, we concluded that they resolved 772 cases, or 77 cases per judge, thus have managed the inflow completely and at the same time have reduced the backlog for 86 cases.

The following results are evident from the annual report for the work of the Basic Court Skopje 2 in 2007. In the course of the year, 5342 new cases were received, a number that includes the cases transferred from Skopje 1. The ten judges that worked in Basic Court Skopje 1 by then, continued to work in Basic Court Skopje 2. Each judge worked on 384 cases, and managed to dispose on average 136 cases. The judges disposed 2176 cases in total or 3166 cases less than the inflow. With such decreased efficiency the backlog increased from 802 to 3968 cases.

In 2008, 14 judges worked in the commercial department of Basic Court Skopje 2. They worked on 9540 cases in total, out of which 3968 cases left over from 2007 and 5572 new cases. Each judge on average worked on 681 cases, and resolved 276 cases. It is evident that the judges not only failed to manage the inflow of 5572 cases, but they disposed only 3873 cases and increased the backlog for 1699 cases. On 31.12.2008, 5667 pending cases remained.

Analyzing the results from the efficiency in the last three years, the question was imposed how to overcome this situation. Namely, the backlog constantly grows and at the end of 2008 compared to 2006 it was increased by 60%. This is due, above all, to the increased inflow of new cases every year, and the same or decreased number of judges that worked on these cases.

Table 1: Commercial cases

Court	Year	Old cases	New Cases	Disposed cases	Back log	Number of judges	Number of cases per judge	Efficiency of the judges
Skopje 1,2	2006	3319	4190	4060	3449	16	469	253
Skopje 1,2	2007	3449	5342	2176	3968	16	549	136
Skopje 2	2008	3968	5572	3873	5667	14	681	276

It can be seen from Table 1 that the efficiency in disposition of the cases in 2007 (transition year, when the Basic Court Skopje 2 got its full jurisdiction for dealing with civil cases) compared to 2006 has decreased for 54%. On the other hand, following the efficiency of the work of the judges in 2008 it can be noticed that it has been increased for 103%, compared to 2007, although the department had 2 judges less. This situation is very similar to the results from the work of the judges in the bankruptcy section in the transition year 2007. (See page 2). The team, bearing in mind the statistical data and the interviews / discussions with the judges recommends that the deployment of the judges within the departments is reassessed. The answers from the judges resulted with the proposal that five to ten judges from the civil department are transferred to the commercial department. Having in mind the statistical data for civil cases, a comparison is made supporting this proposal.

Table 2: Civil cases:

Court	Year	Old cases	New Cases	Dispo sed cases	Back log	Numb er of judge s	Numbe r of cases per judge	Efficien cy of the judges
Skopje	2006	11471	10796	11091	11176	45	494	246

1,2								
Skopje 1,2	2007	11176	7270	8876	9570	39	472	227
Skopje 1, 2	2008	9570	9046	8984	9632	40	465	224

Comparing the results from the inflow of new cases, the number of active cases for each judge and the efficiency of the judges, it can be concluded that the number of new cases from 2006 to 2008 has been decreased for 24.5%. This trend of a lower inflow continues, so the judges have a smaller number of cases or workload every year. On the other hand the fact that the efficiency of the judges in this department drops every year, causes concerns.

Findings based on the direct interviews with the judges and the statistics of the Department for Commercial cases in Basic Court Veles

In Basic Court Veles, 6 judges had the competence of resolving commercial cases in the course of 2006, and in 2007 and 2008, 8 judges had this competence.

In regards to the answers of the first question – *How many years have you been engaged as a judge for resolving commercial cases* – it appears that one of the judges from this department works on commercial cases since 2002, and the others worked since 2007, 2008 and 2009.

In regards to the second question – *What was your workload in the course of 2008 and whether you managed the inflow of new cases* – the judges answered that the inflow of new cases is being managed.

In regards to the third question – *What is the number of pending cases, how many of them are older than 1 year and which is the oldest case*, the judges could not provide an answer. The answer to this question is received on the basis of the statistical data from the department’s intake office.

From the analysis of the work of the judges, three judges exclusively worked on the commercial cases and they had a total of 1655 cases, while the other five judges had 115 cases. The department has a total of 22 old cases out of which 2 cases since 1998, 1 case since 2000, 1 case since 2002, 6 cases since 2004, 3 cases since 2005 and 9 cases since 2006.

In regards to the fourth question – *What is the average duration of the proceedings in cases of high/low value*, it is concluded that the duration of the low value cases is 1-6 months, and for the high value cases is 3 months to 1 year.

In regards to the fifth question – *Is there a plan on a department level for dealing with the backlog* – the judges replied that they have a plan and program for scheduling of the old cases, which are reviewed monthly on department’s level; at which level the realization of the plan and program is monitored for each judge individually.

In regards to the sixth question – *What is the most frequent legal ground for the commercial cases? For which legal ground does the proceeding last longest*, it is concluded that the most frequent grounds are debt and compensation of damage, and the procedure last longest with the cases related to ownership, contesting of legal actions and abolishing of notary acts.

In regards to the seventh question – *does the service of process influence the proceeding and which are the most frequent problems in the delivery of the court writs*, all judges agreed that the service of process has a great influence on the speed of the proceeding. A basic problem is the service of process which is conducted through the other courts, for example often delivery receipts are not returned from the Basic Court Gevgelija. In addition to that, the judges think that the court couriers need education on the service of process to legal entities.

In regards to the eighth question – *Do you have the practice of scheduling a preparatory hearing in the procedures for the cases with higher amounts*, it can be concluded that the judges from this department rarely schedule a preparatory hearing, and instead, they immediately schedule a main hearing.

In regards to the ninth question – *Is the deadline for scheduling of the preparatory hearing respected, do you use this phase in order to manage the proceeding and accelerate it from the very beginning*, the judges replied that in cases when preparatory hearing is scheduled, this deadline is mainly respected.

In regards to the tenth question – *How many hearings are needed on average in order to complete the main hearing*, it can be concluded from the answers that regarding the low value cases 1-3 hearings are needed, and when it comes to more complex cases 3-5 hearings.

In regards to the eleventh question – *In what percentage of cases you apply expert witness testimony and in which period it is completed*, it can be concluded that the practice for applying expert witness testimony differs with all the judges. Some of them apply expert witness testimony in most of the cases, and some very rarely. When subject of the case is debt and when the plaintiff submitted evidence supporting the grounds of the complaint, expert witness testimony is not applied. With the judges there is consent that the expert witness testimonies are usually completed within the deadline determined by the judge from 15 to 30 days.

In regards to question 12 a – *What is your opinion regarding the influence of the legal ground of the case (for example, fulfillment of a contract, determining of the ownership, transferring of possession, determining of a temporary measure, etc.) on the course and speed of the proceeding*, the judges agreed that the legal ground has influence on the course of the proceeding. See answer to the question **No. 6**.

In regards to question 12 b – *Does the value of the case influence the course and speed of the proceeding*, the judges think that this factor does not have a big influence and does not have an effect on the course of the proceeding. In this court most of the cases are of a low value.

In regards to question 12 c – *Do you think that if the defendant is a state body, it affects the course and speed of the proceeding*, it can be concluded from the received answers that this factor sometimes has influence, in cases when the state body is involved in the proceeding as a third person who has a legal interest.

In regards to question 12 d *regarding the influence of expert witness testimony on the course of the procedure*, all the judges agreed that this factor has an impact on the course of the proceeding. See answer to the question **No. 11**.

From the answers of the question 12 e *whether the inspection on site and depositing financial means for it, influences the postponement of the proceeding*, the judges think that this factor does not have any influence. Judges rarely use this tool for providing evidence, and when inspection is applied, the parties usually pay the expenses after the inspection is conducted.

In regards to question 12 f – *was interruption of the proceeding applied upon the request of the parties for the purpose of resolving the dispute by mediation, and whether it influences the speed of the proceeding*, the judges said that they did not have interruption of the proceeding in regard to this ground in the course of their practical work.

In regards to question 12 g – *Does the interruption of the proceeding due to initiating a bankruptcy procedure influence the course of the proceeding*; the judges agree that this factor has influence, but the cases in this department are immediately dealt with and continue as urgent, because the same judges work both on bankruptcy and commercial cases.

In regards to the 13th question – *Can the legal deadlines foreseen in the Law on Civil Procedure for completion of the proceeding be respected and what are the needed preconditions for that*, we received an answer that the deadlines prescribed with the Law on Civil Procedure could be respected, if there is a lower workload and only if the service of process is improved. Precondition for respecting the legal deadlines is good examination/analysis of the case.

In regards to the 14th question – *On the basis of your experience from the implementation of the Law on Civil Procedure, since the end of 2005, what are your specific proposals for improvement of the efficiency for the purpose of respecting the deadline for resolving of this type of cases*, some of the received recommendations are the following:

- It is necessary that the service of process is improved, so that the hearings can be scheduled in time. A particular problem is the service of process to legal entities, and in that sense education of the couriers is needed. The judges recommend that electronic delivery is used, which would contribute to the fast and efficient resolving of the cases;
- The delivery of the writs via diplomatic mail poses a problem; it should be faster and simplified.

Analysis of the statistical data

In 2006, six judges worked on commercial cases in the commercial department of Basic Court Veles. They worked on 395 cases in total, out of which 82 cases left over from 2005 and 324 newly received cases. In this court, cases returned from the second instance court for repeated procedure are registered as new cases, so according to this in the course of the year, 313 new cases were received and 11 cases have been returned for processing. Each judge worked on 67 cases and resolved 43. During this year the judges did not manage the inflow, but they increased the backlog for 66 cases.

At the end of 2006, the commercial department had 32 old cases: 3 cases since 1998, 3 cases since 2000, 3 cases since 2001, 4 cases since 2002, 12 cases since 2003 and 7 cases since 2004.

In the course of 2007 the cases were resolved by seven judges, while one judge provided assistance and resolved 12 cases. The judges had a total of 964 cases, out of which 148 cases left over from 2006, 809 new cases and 7 returned for repeated processing. According to this, a total of 964 cases were active (12 cases that were resolved by a judge who assisted the department on a temporary basis are not included in the total number) or on average 136 cases for each judge. At the end of the year 534 cases were resolved or 282 cases less than the inflow. The judges did not manage the inflow of 816 cases, but they have also increased the backlog. Although the efficiency per judge this year was 74 cases and on average it was increased compared to 2006 for 72%, still the department finished the year with a backlog of 430 cases.

At the end of 2007 there are 30 cases in total, out of which: 4 cases since 1998, 2 cases since 2000, 2 cases since 2001, 2 cases since 2002, 5 cases since 2003, 7 cases since 2004 and 8 cases since 2007.

Eight judges worked on commercial cases in the course of 2008, but with a different workload. Namely, three judges worked on 1655 cases, while the other five judges altogether had 115 cases. The commercial department worked on 1770 cases in total, out of which 430 cases left over from 2007 and 1340 new cases. At the end of the year only 741 cases were resolved, and 1029 cases remained pending. The three judges that worked on 1655 cases resolved 670 cases or on average 223 cases. The five judges that worked on 115 cases resolved 71 cases or 14 cases on average. Out of the total number of resolved cases, the number of old cases was reduced to 37%.

The team did not make comparison regarding the efficiency in the work of the judges in 2008 as compared to the previous year, because it realized the large difference in the number of judges and the workload per judge during these two years.

At the end of 2008 there are 22 old cases out of which: 2 cases in 1998, 1 case since 2000, 1 case since 2002, 6 cases since 2004, 3 cases since 2005 and 9 cases since 2006.