RULE OVER LAW

OBSTACLES TO THE DEVELOPMENT OF AN INDEPENDENT JUDICIARY IN BIH

ICG Report N° 72
Bosnia Legal Project Report N° 1
5 July 1999

Table of Contents

Annexes:

- **About the International Crisis Group**
- **List of Selected ICG Reports**
- **List of Board Members**

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EXECUTIVE SUMMARY

ICG, with the support of the European Commission, has established a project to promote justice in Bosnia and Herzegovina. With the assistance of 8 partner organisations based all over BiH, ICG will monitor individual cases and general trends to highlight and promote the development of a judicial system in BiH up to the standards of a modern, European judiciary. This first, introductory report examines the factors preventing the development of an independent judiciary, and outlines steps necessary to promote judicial independence.

The BiH judiciary is in transition. In the former SFRJ system, the judiciary ceded much control to the police to determine guilt in the field of criminal justice investigation, thus reducing elements of their authority in the legal process. Furthermore, Communist Party officials often interfered in the justice system. This interference has continued and even increased under the multi-party system.

Two separate legal systems in BiH exist, with only ceremonial and appeals institutions and functions at the State level, in spite of the BiH Constitution which allows for the formation of more State court institutions. Within the Federation, loopholes in the legislation on the Supreme Court allow Croat-majority cantons to refuse to recognise the authority and the jurisdiction of the Supreme Court, thus containing all court functions within the jurisdiction of that Canton. Weak roles for Public Prosecutors, plus anomalies in the legislation which make it hard for strong, Federation-level judges to try cross-cantonal crimes, leave highly autonomous Cantonal Courts open to political influence from ruling parties.

These factors are compounded by the judicial selection process, in which the power to appoint and dismiss judges at whim is in the hands of the ruling political parties, including, in the Federation, party leaders at the Cantonal level. The judicial budgeting system leaves the economic, as well as professional, well-being of judges answerable to the wishes of the ruling nationalist parties. Because of the war, the disappearance of many competent, pre-war judges has rendered the judiciary almost exclusively mono-ethnic, with in-experienced, underpaid judges appointed on ethnic, political grounds, or, more bluntly, appointed on the basis of how much they can be trusted to be "loyal" to their own ethnic group. Poor distribution of proper legal instruments and laws, including BiH State laws, makes it more difficult for young, eager judges to assert their independence. On the other hand, the presence of legal commentaries from neighbouring countries, with political paymasters in large parts of the country looking to Zagreb and Belgrade, frustrates the development of an indigenous BiH judicial culture. Poor material resources harm motivation and lead judges to leave the profession.

The close relationship between the political power structures and organised crime and corruption results in pressure being placed on judges to overlook the crimes of known criminals and of those in power. Judges themselves are not immune from abusing their positions for personal gain, or from political and ethnic prejudices. Media reporting which glorifies judicial figures and infamous criminals interferes with judicial independence before cases get to court.

Many steps are necessary to promote the development of the independent judiciary demanded by the Madrid Peace Implementation Council document. The following steps, including some already underway at the behest of the international community in BiH, will help to free the judiciary from the dictates and interference embedded in the political culture of Bosnia and Herzegovina:

- removing the authority from Cantonal and Municipal political structures to appoint and dismiss judges;
- vesting authority in judicial selection, appointment and dismissal in the parliamentary assemblies of both entities on the recommendations of a State-level Judicial Service Commission; judges to be appointed for renewable five-year terms with the approval of the Commission;
- establishing clear parameters and guidelines, in the parliamentary assemblies of the entities, on the financing of the judiciary. RS courts to be financed to the same set levels per head of population and case-load; Federation Cantons to finance their judiciary within set percentage ranges of the Cantonal budgets;
- international community resourcing to upgrade courts depending on progress in establishing multi-ethnicity;
- drafting strong roles for the Prosecutors in the new RS Criminal Code, giving them authority to prosecute crimes down to the Basic Court level;
- strengthening the role of the Federation Prosecutor by creating a section of the Supreme Court to try cross-cantonal crimes; promoting the authority of the Federation Prosecutor over the Cantonal Prosecutors;
- adopting legislation to implement CRPC decisions;
- investigating and removing officials who are failing to implement Human Rights Chamber and Ombudsperson decisions;
- establishing strong roles for Judicial Police, in both entities, to enforce court decisions;
- investigating and removing locally-elected officials who investigate with the judiciary; preventing those elected officials who interfere with the judiciary from running for the April 2000 Municipal elections;
- removing corrupt judges.

Without these, and similar reforms, there is a danger that the BiH judiciary will never come out from under the influence of the nationalist power structures entrenched in Bosnian society. Without these reforms, the Judicial Reform Strategy cannot hope to succeed to restore dignity to the judicial process and profession, so often misused as an instrument of ethnic cleansing during the war.

Sarajevo, 5 July, 1999

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I. INTRODUCTION

This report is the first in a series funded by the European Commission[1] under the title "Promoting Justice in Bosnia and Herzegovina". Through the monitoring of court proceedings, and the close examination of the workings of the legal system at the local level, ICG will analyse the legal environment throughout the country and regularly assess progress towards establishing the rule of law. Especially important issues are:

- the level of independence enjoyed by the judiciary;
- the proper due process of law;
- the application of the rights and freedoms from the European Convention of Human Rights and other ratified international instruments which are enshrined in the Constitution of Bosnia and Herzegovina (BiH) in Bosnian courts;
- the position of individuals towards the state and the conditions necessary for the legal system of BiH to come closer to its citizens and to provide legal security to all its subjects;
- examples of discrimination against an individual before the law, regardless of on which ground the discrimination is based.

Regulations on the organisation of the judiciary, the selection of judges, the financing of the judiciary, as well as factors from its organisational-technical side, can have a decisive influence on the quality and integrity of the work done on individual cases in the courts. The inefficiency of legislative and executive bodies, the latent blockade of the state and entity institutions, and the under-developed democratic procedures in the political life of BiH put the judiciary in an unenviable position. Exposure to political pressures, threats of organised crime, and the influence of the financially powerful are all part of the environment in which the courts work.

Furthermore, effective and efficient instruments of law enforcement, and the enforcement of court decisions, are crucial in the legal system. A precise and good reasoning of a judge is often compromised by an inefficient procedure of implementation, especially regarding the repossession of property or in labour law cases.

ICG has established a network of partner organisations for the project based in 8 Bosnian towns, covering both western and eastern Republika Srpska, and the following Federation cantons: Sarajevski (no. 9), Srednjobosanski (6), Hercegovacko-Neretvanski (7), Zenicko-Dobojski (4) and Canton no. 10.[2] Additional consultants, for the purposes of this report, have also been employed for Uno-Sanski Canton (1) and within Canton 7. All the partner organisations are local and employ only Bosnians. The recommendations in this series of report therefore reflect the views of Bosnian professionals already working in the legal environment, as well as international analysts.

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[1] DG 1A *Phare* project

[2] The name of Canton 10 is a cause of some controversy, as Bosniac Canton Assembly members will not agree to the name that was proposed by the Croat members - "Herceg-Bosanski". The issue has yet to be resolved.

"Promoting Justice in Bosnia and Herzegovina" complements the work of the Office of the High Representative (OHR) Judicial Reform Programme and the United Nations Mission in Bosnia and Herzegovina (UNMiBH) Judicial System Assessment Programme (JSAP), but works independently of both.

II. OVERVIEW OF THE (13) BIH LEGAL SYSTEM(S) - THE PULL OF THE HOMELANDS AND THE POWER OF THE CANTONS

The General Framework Agreement for Peace in Bosnia and Herzegovina[3] put one of the main prerogatives of any state - administration of justice - into the hands of the two entities, leaving BiH without any responsibilities in establishing the judicial system (and therefore law enforcement) at the State level.[4] Consequently, BiH is a state with two, quite separate, legal systems and two judiciaries that rarely meet at the central level, except for very few and extraordinary procedural matters.[5] There exists not even an Association of Judges (or prosecutors) at the State level.[6]

The Peace Implementation Council, meeting at Madrid in December 1998, set 31 December 1999 as the deadline for legislation on inter-entity judicial co-operation to be passed in both entities. The continuing lack of effective inter-entity legal co-operation between law enforcement, administrative and judicial authorities of both entities is an ongoing impediment to the strengthening of the judiciary and judicial independence. Cross-entity organised crime and accessing documents from the other entity are still two areas where there must be an increase in co-operation. The proposed measures would include the strengthening of the Inter-Entity Legal Commission, a body established by the BiH Presidency,[7] which will, it is hoped, be the organ through which the Memorandum of Understanding on Inter-Entity Legal Assistance, signed between both entity Ministers of Justice,[8] will be realised.[9]

As far as access to justice for citizens of BiH is concerned currently, however, it stops at the entity borders.[10] [11] In Republika Srpska the Supreme Court acts as the last

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[3] GFAP, known colloquially as the Dayton Peace Agreement, or Dayton Peace Accords (DPA), initialled in Dayton, Ohio on 21 November, 1995 and signed in Paris on 14 December, 1995.

[4] Article III(a) of the BiH Constitution. The only joint legal institutions are the BiH Constitutional Court and the Human Rights Commission. The Constitutional Court's main jurisdiction, however, is to examine whether individual entity laws contravene the BiH Constitution (Article 6(3)a), therefore it is not part of the procedural judicial structure for individuals seeking justice in the criminal, civil law fields, etc.

[5] For example, when an entity law can be brought before the Constitutional Court, where its constitutionality can be challenged.

[6] OHR-led negotiations are underway to at least create a joint framework in which to present a BiH Judges Association, made up of all three Associations of Judges and Prosecutors, on the international stage. Furthermore, OHR-led discussions are formulating a standardised Code of Ethics throughout BiH with all three Associations.

[7] On 2 February 1998, respecting the wish for such a body expressed by the Bonn PIC in December 1997.

[8] On 20 May 1998. The MoU foresaw co-operation on issues such as re-enactments, serving subpoenas and the tracing of witnesses, as well as foreseeing further facilitated ad hoc co-operation.

[9] UNMiBH's JSAP programme give more details on inter-entity judicial co-operation, Report for the Period November 1998 to January 1999, page 10. From another source, the Municipal Court in Vlasenica has accepted initiatives for (inter-entity) co-operation with the Municipal Court in Olovo, and the President of the Municipal Court in Tuzla has proposed a meeting with his opposite number in Vlasenica to discuss problems of implementing court verdicts, processing cases that have been stuck in files from before the war, problems of expiry of statutory limitations, etc.

[10] The Commission on Democracy Through Law, the Venice Commission, of the Council of Europe is a body which advises countries in transition on ways to bring their constitutional frameworks into line

instance of the regular court procedure, whereas in the Federation a two-tiered system applies - the Supreme Court acts as the court of last instance in the Bosniac-majority cantons only. After the appeals process through the courts, there is left just the appeal process of the Human Rights Commission.[12] [13]

These dualities in justice, that of two separate legal systems,[14] are further (and greatly) complicated within the Federation, by the large amount of autonomy the Cantons possess in formulating their own laws. In the Croat-majority cantons (Cantons 2, 8, 10 and the "HVO half" of Canton 7), there is no recognition of the authority and jurisdiction of the Federation Supreme Court, meaning that there is no appeal beyond the Cantonal Court. The Cantonal Courts are the courts of last instance. This has obvious consequences if questions of ethnic bias come into play, for example if a Bosniac is convicted of a serious crime in a Croat-majority canton. If the same defendant was convicted in a Bosniac canton, then he could appeal that decision to the Federation Supreme Court.[15] Cantonal legislation to make the Supreme Court the final instance in criminal/ human rights cases must be amended.[16]

On top of the other major issues of individual cantonal approaches to appointing and funding the judiciary, there is a serious problem in both entities of the level of influence local power structures can have on a judiciary that is answerable to a bureaucracy with far higher levels of devolved power than in western democracies. To put it into perspective, the entities in BiH enjoy a far greater level of autonomy than was envisaged for Kosovo at Rambouillet, as they retain total control over all aspects

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with Council of Europe and other European standards. The Commission believes that the BiH Constitution allows for the formation of court institutions at the State level which would adjudicate on electoral and other matters such as the legal basis for certain acts of BiH State officials. The Madrid PIC document supported the formation of such court institutions. It is also envisaged that the BiH Constitutional Court could adopt some of the responsibilities of the Human Rights Chamber following the end of its mandate in 2001, should the entities decide not to extend its mandate as per the DPA, Annex 6, Article 14.

[11] For a better understanding of the problems of the judiciary and its eventual harmonisation with European legal standards, it is important to keep in mind that citizens of BiH, strictly speaking, are primarily under the jurisdiction of the entities, and are under the jurisdiction of the State only insofar as the State formulates laws additional to those of the entities. This makes it very difficult to offer the same level of equality before law for all the individuals of the country, where even a law on criminal procedure does not exist on the State level.

[12] The Human Rights Commission, established under Annex 6 of the DPA, comprises of two bodies - the Human Rights Chamber and the Office of the Ombudsperson. The Commission is an appeals organ, rather than an instance court. There have been serious problems surrounding the implementation of Human Rights Commission decisions, which are well-documented, most notably in "Human Rights Protection Mechanisms in Bosnia and Herzegovina: The Effectiveness of the Human Rights Commission" by the International Human Rights Law Group, Sarajevo, 17 May, 1999.

[13] The Human Rights Court of the Federation, envisaged in the Federation Constitution, has never been established, as the Council of Europe, responsible for appointing its international judges, feel it to be an unnecessary court. As it needs at least one international judge to have a quorum, the Court cannot operate without the Council of Europe's consent.

[14] The Federation court system consists of the Constitutional Court, the Supreme Court, the Cantonal Courts, 49 Municipal Courts and 74 Minor Offence Courts, and 7 Appeals Courts for Minor Offences. Republika Srpska has a Constitutional Court, a Supreme Court, 5 District Courts with appellate jurisdiction over 26 Basic Courts, and 42 Minor Offence Courts, over whom the 5 District Courts have appellate jurisdiction.

[15] Provided the decision handed down a sentence of at least 10 years imprisonment.

[16] Which will bring those Cantons into line with the European Convention on Human Rights, which forbids limitations on the right to appeal.

of their destiny, with the exception of foreign policy, customs policy, the Central Bank, and a small number of specified other matters.[17]

A consequence of this is that Republika Srpska (RS) and parts of the territory of the Federation formerly known as (and still called by some) Hrvatska Republika Herceg-Bosna (HR HB) have looked to their larger "homelands" when formulating new laws since the signing of the DPA.[18] Having a Federal Republic of Yugoslavia (FRY)-based legal system affects the RS judiciary in that they are open to influence of Yugoslav legal practices and standards. For example, RS more or less adopted the Criminal Code of FRY.[19] Its general principles were not changed and contain identical provisions as in the FRY Criminal Code. Its operative paragraphs have been slightly modified but still retain all the provisions from the former Criminal Code of the Socialist Republic of Bosnia and Herzegovina. Commercial and property transactions in RS are still covered by SFRJ[20] relevant laws, because RS did not adopt any new legislation in this area. The Basic Law on Property Transactions, dating from 1980 and 1990,[21] is still applied by all courts in RS.

Although the Federation parliament has passed a dozen or so laws regulating the work of the judiciary throughout the Federation,[22] the Croatian legal system affects the Federation Croat Canton judiciary in that they are influenced by Croatian legal patterns. For example, the Municipal Court in Capljina drafts decisions in the form and manner that is used in Croatia. Furthermore, there is a serious issue, in former HR HB areas, of symbols, emblems, flags and practices announcing the court systems in these areas as belonging to a parallel mini-state (Herceg-Bosna), which was officially dissolved in February 1994. For example, and in the most extreme case, Capljina Municipal Court, which, like many other courts in Herzegovina, flies the old Herceg-Bosna flag above its entrance, has a plaque identifying itself under the title "Bosna i Hercegovina, Hrvatska Republika Herceg-Bosna" and with the shield of Herceg-Bosna. This shield is on the walls of every room in the building, and is sharing wall space, in the Court President's office, with the illegal[23] shield of Capljina Municipality, and a large photograph of the President of Croatia.[24] These phenomena are not unique to the legal sector in these cantons, but affect all aspects of official life, and discourage non-Croats, or Croats who believe strongly in the State of BiH and the Federation as an entity in BiH, from seeking justice.

A further "pull to the homelands" arises from poor distribution of legal commentaries, Official Gazettes and laws of the other entity and of BiH. In such circumstances, many courts find it easier to continue to subscribe to publications originating in

[17] Article 3 (1) of BiH Constitution. In reality, however, they enjoy even greater autonomy than that, in that there are little if any sanctioning mechanisms in place to punish the entities should they decide to formulate their own policies in the foreign policy arena, for example.

[18] In the Federation, although the laws passed by the Federation parliament are in force throughout the entity, Cantons have the authority to add their own specific regulations to those laws, and it is in this sphere that the Croat-majority Cantons (2, 8, 10 and their "half" of Canton 7) have adopted Croatian legal patterns.

[19] Sluzbeni Glasnik Republike Srpske, No. 12/93, 19/93, 26/93 i 3/96.

[20] Socijalisticka Federalna Republika Jugoslavia (Socialist Federal Republic of Yugoslavia).

[21] Zakon o osnovnim svojinsko-pravnim odnosima, Sluzbeni list SFRJ, No. 6/80 and 36/90.

[22] For example, Law on the Federation Supreme Court, Law on the Federation Prosecution, Law on the Federation Public Defence, Law on the Court for Human Rights, Law on the Procedure of the Constitutional Court, Law on Misdemeanours, Law on Criminal Procedure, Law on Executive Procedure, Law on Administrative Procedure, Law on Civil Procedure.

[23] The Federation Constitutional Court handed down a decision in 1998 that Articles 5, 6, 7 and 8 of the Statute of the Municipality of Capljina are against the constitution of the Federation. One of the articles relates to the shield of the Municipality. "Sluzbene novine Federacije BiH, br. 32/98".

[24] In the window of the High Court in West Mostar, there is a large photograph of the deceased Minister of Defence of Croatia, Gojko Susak, who died in 1998.

Zagreb and Belgrade for guidance. Coupled with the prejudices of some judges who may deliberately wish to follow foreign judicial practices, the independence of the BiH judiciary is eroded from within.

III. SPECIFIC ISSUES AFFECTING JUDICIAL INDEPENDENCE

The Madrid Peace Implementation Council called for the "creation of an independent, impartial and multi-ethnic judiciary" in BiH, and identified "rule of law" as a "top priority" for 1999.[25] The OHR Judicial Reform Programme is drafting a comprehensive Judicial Reform Strategy, which is due to go to the PIC Steering Board, and following that, to the entity governments, as soon as possible. The plan will, "among other things", include "the adoption...of legislation to achieve an independent and impartial judiciary, focusing on judicial and prosecutorial appointments, adequate salaries and....the promotion of a multi-ethnic judiciary throughout BiH".[26] These are but a number of factors which affect judicial independence in BiH. They, and others, deserve closer examination.

A. Selection and appointment process for judges and prosecutors

More than any other factor, the selection and appointment process for judges in BiH impinges on their ability to act independently. The control over the issue of judicial appointments is in the hands of the Justice Ministries, at both the entity and cantonal level. Nominees for the Supreme Courts are put by the Justice Ministers of each entity to either the Federation House of Representatives or the RS National Assembly. In RS, the Justice Minister also proposes the judges for the 5 District Courts to the RSNA, while in the Federation, the Cantonal Presidents, with the agreement of their deputies (in many cases, from the ethnic minority in that Canton) put their nominations to the various Cantonal Assemblies.[27] In turn, the President of the Cantonal Court appoints all judges in the Municipal Courts, upon the authorisation of the Mayor of the municipality.

The Law on the Organisation of Courts of the RS (Zakon o redovnim sudovima, Sluzbeni glasnik Republike Srpske, No. 22/96) gives wide powers to the executive branch, more specifically to the Minister of Justice. According to Art. 44, the Minister alone forms the list of candidates for election of judges. Even more to the point of influencing the judiciary, he is the only official who can request the dismissal of a judge (Art. 62). In both cases, the initiative may come from the President of the Court, but the RS Assembly will receive the proposal from the Minister. In the wider context of the composition of the courts in the RS, it is notable that 97% of all judges in the Entity are of Serb nationality. Although the RS Constitution states in Art. 33 that all citizens are guaranteed the right of access to all public functions, including their election as a judge, the executive power of the Minister in practice makes this provision empty. This situation is even more complicated by an obligation of public officials to take an oath. The practice of taking an oath is obviously meant to exclude non-Serbs from taking a public office, as the oath is always administered before Serbian Orthodox priests, although no law in the RS requires their participation in this act.

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[25] Article 12.1, Declaration of the Peace Implementation Council, 16 December 1998.
[26] Article II, 3, Annex: The Peace Implementation Agenda, Reinforcing Peace in BiH - The Way Ahead, 16 December 1998.
[27] Federation Constitution Articles IV.C.6, V.11(2) and VI.7(3), and RS Constitution Article 130.

In other words, judicial appointment is in the hands of the political parties. In a "mixed" Canton such as Srednjobosanski Kanton, the effects of this can be most graphically seen. Because of their stand-off in the Canton (they both control a number of Municipalities) SDA and HDZ have evolved an uneasy arrangement whereby all judicial positions throughout the Canton, in both the Cantonal and Municipal Courts, are shared between them and them alone. Not only, therefore, are judicial appointments in the control of the parties, they are exclusively in the hands of the two ruling nationalist parties, and a further consequence of this is that all judicial positions are occupied exclusively by Croats and Bosniacs, with no Serb judges having been nominated by either party, in spite of heavy pressure from the OHR that the composition of the judiciary should reflect the 1991 census. In short, a judge cannot become a judge in Srednjobosanski Kanton without the approval of both SDA and HDZ.

In this sort of environment, therefore, it is obvious that political patronage and the appointment of "our man" will be prevalent, particularly in a society with such a culture of nepotism as exists in BiH. Furthermore, an aspiring judge will be sorely tempted to be seen to be "pro-regime" if (s)he is to be called to the bench, whatever that regime may be, i.e. at the cantonal or entity level. The temptation to sell oneself as "loyal to the party", in a country where loyalty to the party, rather than loyalty to the state, was the benchmark against which one was measured for so many years, should not be under-estimated when questioning a particular judicial appointment. It is unfortunate that this system of values has eliminated many judges of high professional and moral integrity who refused to follow the trend of political allegiance.

In a situation where keeping one's job in the judiciary depends on the relationship with one's political overlords, a certain arrogance develops amongst the political hierarchy towards the judiciary. A recent case in Canton 10 illustrates this. When the President of the Municipal Court in Livno, Ms. Katica Tadic, resigned, the judges of that court met on 20 April 1999 to accept her resignation. They elected Mr. Mirko Bralo, a judge of the same court, as the new President. Mr. Bralo was then threatened by the Poglavarstvo Opcine Livno (Municipal Council, HDZ-controlled), that if he signed the mandate for enforcing court decisions in his capacity as President of the Court, he would be dismissed as a judge of the Municipal Court in Livno. Since the work of that court has been completely blocked by this incident, the judges invited the Cantonal Minister of Justice, Mr. Stipo Babic, to a meeting. He refused to accept the invitation and replied to the judges in a letter,[28] warning the judges to stay out of staffing policy, though by not accepting the authority of Mr. Bralo as the new President of the Court[29] he was condoning a violation of the Law on the Organisation of the Courts of Canton 10 by the Livno municipality.[30]

Recommendations

The need for reform in this vitally important area has long since been documented by the international community. Measures to draft legislation on

[28] No. 04-1-194/99 of 14 May 1999.

[29] "Narodne novine Hercegbosanske zupanije", br. 1/97, Article 53 stipulates that judges elect their own President by secret ballot.

[30] After the ruling (in November 1997) of the Constitutional Court of the Federation that provisions accepting Croat insignia only in the Canton 10 Constitution are not in conformity with the Federal Constitution (Sluzbene novine Federacije BiH, No. 24, 17.06.1998), the same Cantonal Minister of Justice said on the local Livno radio station that the ruling is unacceptable because it was passed by a “group of senile people in the Constitutional Court." Needless to say, the ruling has never been implemented.

the appointment of judges, which may include a form of Judicial Service Commission in each entity, have been taken.[31] Both entity drafts are similar, in that they draw heavily from the Slovenian law on judicial selection.[32] The legislation (initially envisaged to be ready by the end of June under the orders of the Madrid PIC) should soon be presented to the entities, [33] although the RS draft has yet to be examined in detail by Council of Europe experts.

1. The Cantonal and Municipal roles in appointing judges should be abolished. All appointments of judges, from the Supreme Courts down to the Misdemeanour Courts in both entities, should be made by the Federation House of Representatives and the RS National Assembly respectively, upon the proposals of a Judicial Service Commission. This will require a chain of changes in the relevant legislation and in the Federation and RS Constitutions, but it is a crucial start in making judges "extraterritorial" from local political structures and in encouraging them to build their independence and integrity.
2. The Judicial Service Commission should be a body established at the State, and not at the entity, level. It would consist of 2 members each of the RS and Federation Supreme Courts, 2 members proposed by the RS National Assembly (at least one of whom must be elected by the Croat and Bosniac members of the RSNA) and 3 proposed by the Federation House of Representatives (at least one of whom must be elected by the Serb members of the Federation House of Reps.), the Justice Ministers of both entities, and an international judge, proposed by the High Representative, who would either be a sitting international member of the BiH Constitutional Court or someone else of the HR's own choosing, who would hold the Chairmanship.
3. In all cases above, the members of the Judicial Service Commission would be able to nominate deputies to act in their place in case of absence from sittings of the Commission, which should be at least once every two months.
4. Any candidate proposed to be a judge in either entity must get at least one vote from the representatives of the other entity on the Commission. The entity parliaments would not be allowed veto any more than two candidates for any judicial position presented to them by the Commission.

a) Timescale of judicial appointments

Judges in BiH are not appointed for unlimited time periods. There are no set number of years for which a judge may sit as a judge, nor is there any formal procedure for dismissing judges. The result of this is that new Justice Ministers can appoint, re-appoint and dismiss judges at their whim, as long as they have the backing of their respective Assemblies.

[31] RS has already presented a draft Law on Regular Courts, in which is envisaged the creation of a High Court Council which would be made up of 3 judges of the Supreme Court of RS, one judge from the sphere each of the District Courts, the Justice Minister and 3 experts. The Minister, or alternatively the National Assembly, would nominate the experts to the Council, and it would be on the proposals of the Council that judges would be appointed by the National Assembly. The draft states that all judicial positions would be advertised.

[32] The Federation draft was presented to a meeting of the Cantonal Ministers of Justice in Neum in April.

[33] See OHR Anti-Corruption Strategy, pg. 24, as well as Madrid PIC statement Article 12.1

Recommendations

1. Article II, 3 of the Madrid Annex called for "the adoption of judicial and prosecutorial codes of ethics as well as the establishment of a disciplinary and dismissal system based on these standards."[34] The Judicial Service Commission should have exclusive jurisdiction over applying the standards in the judicial code of ethics and the disciplinary/dismissal system. The entity parliaments, who would retain authority over the dismissal of judges and prosecutors, should however only be able to start a procedure to remove a judge when the Commission recommends this course of action to the entity. Judges and prosecutors should be sanctioned only when the Judicial Service Commission has conducted an investigation into malpractice, and when a majority vote of the Commission decides.
2. Judges appointed by the entity parliaments on the recommendation of the Judicial Service Commission should be appointed for a renewable five-year term.

B. Financing and Resourcing of Judiciary

Financing and resourcing of the judiciary has been correctly identified by the Madrid Peace Implementation Council, by the UN JSAP Programme, the OHR Anti-Corruption Strategy and other previous studies as a key priority in establishing an independent judiciary. The OSCE Judicial Survey and surveys conducted by JSAP have highlighted poor financing of the material needs of the courts (e.g. buildings, fax machines, copiers, inadequate number of rooms, heating bills, etc.) as well as the issue of salaries for judges and court workers which are well below the levels at which positions of this nature are compensated in developed western societies. Indeed the OHR Anti-Corruption Strategy identified a number of steps necessary to rectify the issue of poor resourcing.[35] The effect poor resourcing has on judicial independence is manifold. However the most serious issue, which is structural in nature, relates to how, and not how much, the judiciary is funded.

a) Budgeting for the judiciary

The court systems (again, with the exception of the BiH Constitutional Court) in both entities are funded out of the entity budgets. The Federation Justice Ministry proposes, in the person of the Minister, a budget for the Federation Supreme Court, in the same way that the Cantonal Justice Ministers propose budgets for the Cantonal and Municipal courts within their cantons on behalf of the Cantonal Justice Ministries. In RS, the Justice Ministry proposes budgets for the Supreme Court, the Basic Courts and the District Courts. The budgets for the Misdemeanour Courts (Courts for Minor Offences) are paid for out of the Municipal budgets.

[34] Madrid PIC Annex, loc. cit.
[35] These include finalising the draft of the Judicial Compensation Law with the Council of Europe with a view to it being presented to and passed by the entity governments by July 1999. Other measures included identifying a funding programme, by June 1999, to resource the judiciary materially to cover the shortcomings identified by JSAP and the OSCE Judicial Survey.

The main result of such a system, besides the obvious anomaly that the entities and various cantons finance their own court systems to very different levels, is that judges are wholly dependent on politicians, not only for their courts' survival, but for their own economic survival as well. Judges and Justice Ministries both know that, if the latter favour certain decisions, hints of a smaller or larger budget can help persuade a judge to please the ministry. In short, judges must be obedient to the current authorities to be sure of receiving a fair hearing when it comes to applying for next year's budget.

b) Poor salaries

The major concern relating to poor salaries is that judges are far more easily tempted to supplement their incomes with bribes. Once bribery has crept into the judiciary, it risks becoming endemic. In BiH even before the recent war the judiciary was contaminated by corruption in political institutions under the SFRJ system. More recently a spreading climate of corruption has encouraged the attitude: "Everybody else is doing it, why can't I?" Those known to be corrupt have openly profited. It is public knowledge in Bihac that one of the senior judges in Uno-Sanski Canton (Canton 1) openly accepts bribes in return for favourable court decisions.

A further effect of poor salaries is the effect they have on motivation and morale within the judiciary.[36] When this is coupled with poor material resources, then the effect on judicial independence is multiplied.

c) Poor material resourcing

JSAP has identified the serious shortcomings in material resources with which all courts in BiH must operate on a daily basis.[37] Stories of courts, particularly Courts for Minor Offences, sharing telephone lines, and in some instances not having a telephone line at all,[38] mix with stories of courts, particularly RS courts, without photocopiers (85% of Basic Courts in RS), fax machines (46% of RS Basic Courts) or computers (85% of RS Basic Courts). Many courts are badly housed in small, unsuitable buildings where sometimes cases have to be heard in the judge's private office.[39] Some are too poor even to pay power and heating bills.

Poor financial resourcing of the judiciary results in low standards among judges in their professional judgement. A judge who is working in a damp building, without access to proper office equipment, without a separate court-room to hear his cases and trials, may well lack a sense of dignity in his or her own work. This makes it harder to resist outside influence. Sometimes an unfavourable decision has resulted in

[36] A Comprehensive Anti-Corruption Strategy for BiH, OHR Economics Dept. Anti-Fraud Unit, February 1999, pg. 25.
[37] Report for the Period November 1998 to January 1999, Judicial System Assessment Programme, UNMiBH, April 1999, pg. 16-17.
[38] Ljubinje (RS) Sud za Prekrsaje
[39] JSAP, ibid., pg. 16

the loss of potential funds to modernise a court. A recent case in Sarajevo (Autumn 1998) resulted in the loss of a promised computerisation of a municipal court building by the relevant Justice Ministry when a decision, handed down by the Court President, did not go the way the Ministry had wanted.[40]

d) Backlog

Poor resourcing of the judiciary inevitably leads to backlogs.[41] Cases pile up for the lack of judges and because the time necessary to get through a case is prolonged by poor office equipment, shoddy communications and over-reliance on expert witnesses. Once a case backlog mounts up, as for example in Zenica Municipal Court,[42] judges are forced to be selective in deciding what cases are tabled and what cases are left to gather dust. Once it is known that a party may have to wait perhaps years for their case to be heard, the temptation grows to contribute a financial "backhander" to speed the process up. Again, poor salaries may make such an offer very tempting to a de-motivated judge.

Recommendations – Centralisation

1. In Republika Srpska, a Commission of the RSNA should draft a law specifying an exact percentage of the entity budget to be allocated to the judiciary each year.[43] A system would be worked out whereby all funds for the judiciary would be divided equally between the various District and Basic Courts depending on population, numbers of cases coming before all courts, etc. Misdemeanour Courts would be financed out of the same entity budget, with Municipalities, who currently fund them, paying more in taxes to the entity budget to compensate.
2. In the Federation, a Commission of the House of Representatives would set a percentage of the cantonal budgets to be set aside for the judiciary. Each canton could be allowed a "window" of, for example, two percentage points each side of the mean figure. This would end current disparities: Posavina Canton, for example, spent approximately 10% (2,019,135 KM) of its budget on the judiciary in 1998, over twice as much as a proportion of the total as Canton 10, where the figure was approximately 4% (903,530 KM). [44]
3. Funding to properly resource the material needs of the courts must be identified urgently. But release of funds should be always conditional upon the prior achievement of a number of simple and cost-free reforms by the host authorities, such as:

[40] The case referred to an eviction ordered by the Court President of a family of a dead soldier who were illegally occupying an apartment.

[41] For example, Municipal Courts I and II in Sarajevo Canton had between them 37,158 undecided cases by the end of 1998. (figures from JSAP Report, pg. 11). In Zenica-Doboj Canton, 1997 ended with 18,528 unfinished cases, while in 1998, 37,980 new cases were accepted. Of the 56,428 cases, therefore, that were in the "order book" of the courts throughout 1998, 38,072 cases were decided, or in other words, 172 cases more than were accepted throughout the year.

[42] where it is estimated, by the Federation Ombudsmen's office in Zenica, that three years would be needed to work through the backlog of 4,000 cases without accepting a single new case.

[43] The figures quoted by JSAP show 9,357,333 KM, or 2% of the Republican budget, allocated to the judiciary in 1998.

[44] Both sets of figures quoted in JSAP Report.

- progress in attracting back pre-war judges to their positions;
- proper symbols, emblems, flags, stationery, etc., being displayed at court buildings. No international community support should be given to any court that displays illegal or incomplete signs, flags, emblems, etc. No public official, or flag, or variation of a flag, of a foreign state should be displayed at any court in BiH. Indeed OHR, on the basis of information supplied by JSAP/ OSCE, should instruct all courts throughout BiH on the removal of illegal emblems, plaques, flags, etc;
- progress in transforming the courts into multi-ethnic organs, as requested in the Madrid document;
- positive reports from JSAP investigators that judges are not subject to improper influence from local political or financial powers.

C. Culture of lawlessness/ lack or respect for institutional authority

Many have highlighted the culture of lawlessness, the lack of respect for institutional authority, and the prevalence of mafia-style "gangsterism" which pervades BiH society since the slide into war in 1992, summed up by Transparency International in 1998.[45] The closely-related issue of corruption is a cause of serious concern to international actors in BiH, so that OHR's Anti-fraud Unit, on the instructions of the Peace Implementation Council, have developed an Anti-Corruption Strategy to combat it. Recent commentaries on BiH corruption have come from senior figures such as the US Ambassador.[46] Local gangland powerbrokers, many of whom are closely linked to ruling political parties, are ready to threaten judges, prosecutors, police officers, lawyers or witnesses with violence, or even death, to act in a particular way.[47]

As an example of a case to illustrate this point, the judiciary and police in Vlasenica are impotent to tackle the activities of local self-styled powerbroker Mr. Rajko Dukic.[48] Currently, there are about 20 criminal charges pending where he is involved, the most recent incident of which happened on 5 May 1999. Mr Dukic personally led his (privately established) “industrial police” as they beat an employee of “Boksit” at her home. Her husband was thrown out and rushed to the Police station to seek protection. The police failed to intervene in time, the victim was beaten unconscious and her belongings were thrown out into the street and looted. The police did not bring charges against the offenders, and the victim had to file a private charge to the municipal Public Prosecutor. The Public Prosecutor has not raised the indictment yet.

a) The cosy relationship of politics and organised crime

[45] "..rampant corruption and profiteering which...flourished during the war, creating criminal centres of power and influence - smuggling organisations and links throughout the region that remain intact and busy today..", Transparency International Preliminary Report on visit to BiH, Pope, Biallas, March 1998.

[46] "We are very worried about corruption in BiH, because corruption endangers implementation of the Dayton Agreement...frightens off foreign investment and slows down the process of privatisation". Ambassador Richard Kauzlarich, speaking at a meeting of the Association of Independent Intellectuals Circle 99 in Sarajevo on 20th June, 1999, as reported in *Oslobodenje*, 21st June, 1999.

[47] For example, a recent case where the apartment of a judge of Novi Travnik Municipal Court was doused in petrol and set alight during the night, as his family slept inside. They escaped injury. No-one has been convicted for this crime, nor has anyone been convicted for the burning of a prominent Travnik lawyer's office in recent months.

[48] Director of the “Boksit Mine” in Milici.

The political environment in BiH today is not able to protect the judiciary from organised crime. The dual functions - politician and gangster - which seemed so inevitable and common throughout the war, have not been tackled adequately in the post-war years. A naive registration system for political party candidates, administered by the OSCE upon the instructions of the Provisional Election Commission, has consistently failed to investigate the backgrounds of party candidates for anything other than citizenship and whether or not they have been indicted by the International Criminal Tribunal for Former Yugoslavia (ICTY). The result of this is that local warlords today occupy elected positions with the stamped approval of the international community, an uncomfortable situation which has been documented by groups such as Human Rights Watch.[49] The inability of the international community to prohibit suspected mafia warlords from running for public office is one of the major reasons why organised crime is still so prevalent today in BiH.

b) The failure of law enforcement institutions to enforce court decisions

Failure of enforcement seriously erodes the independence of the judiciary. Police forces, often mono-ethnic and headed by local strongmen appointed to co-ordinate ethnic cleansing during the war,[50] are slow to enforce unpopular court decisions, such as evictions of majority ethnic group members to re-instate minority ethnic group members into their apartments. Depending on the personalities involved, the relationship between the courts and the police in such instances can range from uneasy to hostile. Knowing that the police do not want to do "their dirty work" for them, judges may feel pressured to find in favour of the current occupant of the apartment, whatever the merits of the case. Thus law enforcement institutions protect local power structures rather than the rule of law.[51]

c) The Judicial Police and enforcement of court decisions

The Federation Law on the Judicial Police was passed in October 1996. It created separate Judicial Police forces, to be established at the Federation and Cantonal levels, to "carry out court orders", amongst other tasks. At the moment they are operational only in two Cantons[52] and at the Federation level. However there is confusion as to the correct role of the Judicial Police, and the issue of duplication of jurisdiction with Cantonal police forces has been raised, which has slowed down the introduction of the forces. But in general the role of

[49] HRW's Report on the war histories of those involved in organised crime in Doboj and Teslic, in November 1996, reads like a "Who's-Who" of Doboj and Teslic Municipal Assemblies. Many of those accused of organised war crime activities by HRW, such as Milan Ninkovic, Boro Paravac, Predrag Markocevic and Savo Knezevic, have all held, or continue to hold, elected positions under the OSCE-administered, Dayton-created elections system.

[50] For example, former fugitive ICTY-indictee and Prijedor police chief Simo Drljaca, shot dead by SFOR while resisting arrest in 1997.

[51] OHR Anti-Corruption Strategy, pg. 23

[52] Tuzlansko-Podrinjski and Sarajevski cantons. They are soon to be established in Uno-Sanski and Srednjobosanski Cantons, as well as in Canton 10.

the Judicial Police is to enforce court decisions and develop related roles such as protection of witnesses, judges and prosecutors.

Recommendations

1. The role of the Judicial Police forces in the Federation needs to be clarified by OHR/ UNMiBH. Legislation to create a Judicial Police force for Republika Srpska should be drawn up urgently. IPTF should monitor these forces, and should recommend sanctions for cantons who fail either to a) establish the force, b) support it to an adequate level materially, c) let it work free of interference, d) respect actions undertaken by it in carrying out its duties;
2. JSAP investigators, on the basis of information provided to them by Return and Reconstruction Task Forces (RRTF's), OSCE and UNHCR Field Offices, should compile a list of local functionaries who are known to have influence over, or have pressurised, local judges, in certain cases, and these functionaries should be forbidden from running for public office in the Municipal elections of 8 April 2000. Regulations to execute such a course of action should be added to the Rules and Regulations of the Provisional Election Commission.[53]

D. Human resources

a) Lack of adequate cadre

Because of the war, many pre-war judges are either dead (killed because they represented the intelligentsia of a particular minority ethnic group), expelled from their hometown community (living in exile), or have emigrated to a third country (when they can find professional work there). The impoverished cadre of judges available for selection and appointment to the judiciary, therefore, results in the appointment of politically-connected lawyers.

b) Poor training

Many inexperienced judges were called to the bench during the war and shortly after, to fill the gap vacated by those expelled, dead, etc., which necessitated, in some cases, anticipating their qualifications. Judges have been appointed to Misdemeanour Courts, in certain instances, without having passed their final examinations, and some have been appointed on condition that they pass their final examinations within a year of taking up their seats at the bench.[54] Law schools in BiH during the war did not hesitate to produce lawyers, although it was impossible to organise consistent classes, the brain drain amongst the faculty lecturers was dramatic, books and periodicals were not available and basic facilities were devastated. In the same period, and under the same circumstances, many lawyers sat and passed bar exams. With the inherited backlog and current in-flow of cases, inexperienced and inadequately trained judges are tempted to improvise.

[53] If its mandate is extended to have jurisdiction over formulating the Rules and Regulations for the April 2000 elections.
[54] For example in Cantons 3 and 4, JSAP Report, pg. 15

A result of this fast-tracking of inexperienced judges to the bench is that many of these judges are professionally insecure due to lack of legal skills, which makes them more susceptible to political influence.

c) Intimidation of inexperienced judges

Politically influential figures can intimidate inexperienced judges, who may feel out of their depth, especially when they are brought in from outside to judge controversial cases. A case in West Mostar High Court resulted in the well-known gangsters Mladen Naletelic Tuta and Vinko Marinkovic Stela and some of their associates "monitoring" the trial to make sure it was "fair". The defendant was acquitted of murder of some members of his own ethnic group in central Bosnia. The judge, brought in from central Bosnia to judge the case because of safety measures to protect the judges in the relevant Canton (the case was tried outside the Canton in which the crimes were committed, also for security purposes), was rumoured to be terrified.[55] The acquitted defendant was one of the first people indicted by the ICTY and is still at large.

d) Scarcity of legal materials

Lack of access to educational materials leaves judges less secure in their decisions. This has an obvious effect on their independence, as insecurity in their decisions may lead judges to seek the easier way out of a technically difficult, possibly controversial, court decision. JSAP have documented the haphazard manner in which Official Gazettes and legal commentaries are distributed,[56] as well as the appalling inconsistency in the availability of basic international legal instruments such as the DPA and the European Convention on Human Rights in many Bosnian courts.[57]

The Organisation for Security and Co-operation in Europe's (OSCE) Rule of Law Programme[58] has financed and published law commentaries (through the Legislation Commentary Project) and distributed a compendium of up to date BiH laws, including the laws of both entities (through the BiH Law Book Project). They have also financed and distributed thousands of copies of the DPA and the 16 Conventions annexed to the DPA, and, along with the Council of Europe, are the lead agency in the field of dissemination of legal information to judges and prosecutors. In association with the American Bar Association/ Central and Eastern European Law Initiative (ABA/ CEELI), they have started a Judges' Newsletter in co-ordination with the Federation Judges' Association, and this instrument may become a cross-agency publication. All these measures combat

[55] The case was tried in 1996.
[56] For example, judges in south-eastern RS have reported that they only had RS Official Gazettes from 1992
[57] UNMiBH JSAP report, pg. 17
[58] within the Democratisation Branch of the OSCE Mission to BiH

the ignorance of judges and prosecutors in the field who are denied the proper information with which to work.[59]

Recommendations

1. The Madrid PIC document called for "the training of legal professionals through the establishment of Judicial Training Centres as well as the supporting materials and resources."[60] Legislation to create these Centres in both entities should be passed as soon as possible, with the promise of international funding to be linked to the readiness in both entities to have as much of a cross-entity organisational structure as possible.
2. Training such as that carried out under the OSCE Rule of Law Programme should be made compulsory throughout BiH, in the Judicial Training Centres, initially under the auspices of the OSCE. The text of the European Convention on Human Rights should be included in the reading list for the Bar exam, and incorporated into the oath/solemn declaration that judges are bound to take.[61] [62]
3. A greater effort should be made to attract back pre-war judges, in the context of a general improvement in conditions of work and pay.
4. Justice Ministries in both entities should be held accountable, to UNMiBH's JSAP programme, for punctual and consistent delivery of Official Gazettes, copies of laws of both entities and the State, plus a set of legal materials, periodicals, etc., specified in advance by JSAP, to all courts down to Municipal Court level, the regularity to be decided by JSAP. Spot checks by JSAP teams would confirm that materials have been delivered, with financial penalties for Ministries which fail to deliver. JSAP would decide which relevant commentaries from the opposing entity would be distributed.
5. Alternatively, the possibility of having such materials e-mailed, or even available on the Internet, should be explored.

E. Institutionalised ethnic separation

A curious spin on the type of "affirmative action" policies popular in many US states has continued in Bosnia and Herzegovina since the end of the conflict. Although this practice was popular before the war in Yugoslavia, the continuation of practices whereby certain percentages of public positions have to be filled by the different "constituent nations" has been probably inevitable since the international community institutionalised this idea for the tri-partite BiH Presidency at Dayton, and is a far more politically-charged issue than it was pre-war. All over the Federation, there are quotas of positions in the judiciary which have to be filled by Bosniacs, Croats and "Others", which, post-

[59] The Council of Europe have financed the translation of numerous European Convention on Human Rights precedent cases, and OSCE, in association with the International Human Rights Law Group and the International Police Task Force (IPTF), have conducted a series of training seminars on chapters of the ECHR for judges, attorneys, prosecutors and police officers in both entities.
[60] Madrid PIC document Annex, Article II(3).
[61] OHR could insist that the practice of oath-taking be brought into line with the DPA, in that religious references be taken out of all oaths, and that a statement calling for aspiring judges to give allegiance to the State of BiH, the BiH Constitution and its annexed international instruments, including the EHCR, be inserted in the oath.
[62] Defence lawyers should also be obligated to undergo training on the ECHR and its protocols because they are in a better position to initiate its provisions in the proceedings before a court than a judge.

war, usually means, in the Federation, Serbs.[63] Leaving aside the very real problem of there being usually an absence, in mono-ethnically controlled regions, of qualified minority candidates to take up the positions, this practice has other obvious effects on judicial independence.

a) Institutionalised favouritism?

Quotas for Croat/ Bosniac/ Serb judges in each Canton create a culture where judges of a particular ethnic background feel obliged to defend the interests of defendants/ plaintiffs of the same ethnic background. Although quotas can be powerfully-argued as a measure to re-instate an administration which reflects the 1991 census for that area, they also reveal a belief, among those who thought up the system, that if a Croat is to get a fair trial in a Bosniac-majority canton, then (s)he must have the opportunity to have the case heard before a judge of his or her own ethnicity. Why? Because, as it is accepted that an accusation of bias will be levelled against a judge who judges against a minority ethnic group member, it is also accepted that a minority judge will be more "fair" than the tyrannical, majority-ethnic-group judge.

b) Political courts

The existence of "political" courts (e.g. Canton 6) simply for the reason that "A Croat can't get a fair trial in a Bosniac court", simply institutionalises this ethnic division further. Put simply, there are too many Municipal courts in cantons such as the Middle-Bosnia Canton, simply in order that a Croat court can defend the interests of Croats, and the same for Bosniacs. De-centralising, and reducing, the authority of Municipal courts by setting up as many new courts to cover mono-ethnic Municipalities, erodes judicial independence. If a court has been established to be "softer" on defendants of its own ethnic group than a "rival" court in the Municipality next door, then the position of a judge who decides against the defendant or plaintiff of his or her own ethnic group becomes difficult.

c) "Tit-for-tat?"

A result of the above is that if a Croat is convicted (or acquitted, depending on the case) of a crime x in Municipality or Canton A, when it is suspected that the decision was handed down because the court is biased against (or sympathetic towards) that Croat, then it is predictable that a Bosniac will be subjected to the same treatment for the same crime in Municipality or Canton B. The vicious cycle continues, and the pressure on the judges to act this way only reinforces itself.

[63] Such quotas do not exist in Republika Srpska, where 97% of all judges are Serb.

d) Who's a good "one-of-us", then?

Because of institutionalised ethnic separation in the judiciary, the level of "Croat-ness" of Croat judges will always be examined by Croat parties, and the same will be for Bosniacs. Whenever controversial decisions are handed down, which go against the plaintiff or defendant of the judge's own ethnic group, eyebrows will be raised and questions asked by the power structures of the same ethnic group. In post-war Bosnia, when so many questions about refusal to implement various aspects of GFAP are responded to with counter-questions and counter-statements of "Why must we do it first? After what they did to us, we'll do it when they do it", the pressure on public officials to be "good" Croats, "good" Bosniacs or "good" Serbs is ever-present. If an aspiring judge, or a judge looking to be promoted to a higher court or position, wants to be able to present his or her credentials to those in the Justice Ministries who decide on judicial appointments, then (s)he is going to have to be able to show, in the current system of all-powerful nationalist parties, that (s)he has a history of being "loyal" to his or her own ethnic group. The effect this has on judicial independence is obvious.

Recommendations

This is a very hard cluster of problems to resolve. Certainly multi-ethnic judiciaries are preferable to mono-ethnic ones, so for the time being it is necessary to continue with quotas. Judges and prosecutors of one's own ethnic group living and working as minorities could provide one incentive to returnees to make the bold step to decide to return to territory where they are in the minority. However, wherever possible, the proposed Judicial Service Commissions should select minority judges on professional merit, rather than simply because they are minorities. Minority judges with a tradition of being impartial, both ethnically and politically, should be proposed, wherever they exist.

F. Influence of international community

The development of the role which OHR has played in post-war BiH has ironically, in certain circumstances, played into the hands of the ruling nationalist parties. The increasing powers of the High Representative to impose legislation, mandated in the Bonn, and to a lesser extent Madrid, PIC statements,[64] have led to a situation where, when the issue of aid is not central to the problem,[65] the ruling parties can make little effort to reach agreement, knowing that their refusal to act will not harm them. By following the mantra of "This will be unpopular with our hard-core support. Let's wait for Westendorp to impose", face can be saved. Inability to compromise can actually be exacerbated by the High Representative's greater powers.[66]

One of the effects on the judiciary is the stagnation in the work of the Justice Ministries, and in the legislative process. Hence the judiciary stands by helplessly, unable to enforce measures it feels necessary. Commentators

[64] available from OHR, or on the OHR Website, www.ohr.int
[65] For example, the issues of passports, emblems, common driving licence, etc.
[66] For a full discussion of this, see ICG report No. 66: "Kosovo – Let's Learn from Bosnia: Methods and Models of International Administration," 17 May 1999.

have noted that, to their surprise, many judges are both dynamic, in their desires to see the judicial systems reformed and freed from political influence, and frustrated by the "go-slow" nature of their executive and legislative paymasters.[67]

The international community has been following a reactive approach towards the judiciary since the end of war for a number of reasons. Initial failure to foresee how difficult "building the peace" would be, together with lack of co-ordination between international agencies working independently of each other with different agendas,[68] left a power vacuum where the "parties to the conflict" could easily adopt a "wait and see" approach before actually implementing non-military aspects of the DPA. Casualties have included the Human Rights Commission and the Commission for Real Property Claims, whose decisions, systematically and repeatedly, go unimplemented.[69] This undermines the authority of the international community in BiH, as "the parties" see little being done to punish those who fail to implement. In a culture where decisions of the international community are not being respected, and where the agencies established by it are treated with contempt, local politicians can take advantage of the poor "watchdog" effect that the internationals are having in the legal arena, and can pressure local judiciaries with impunity.

a) Sold a bad deal?

The international community has sometimes been lured by the ruling nationalist power structures into agreeing to create ethnic judicial structures where they are not necessary. For example, as part of the decision by the High Representative to impose a Law on the Organisation of the Courts in Hercegovacko-Neretvanski Canton (Canton 7)[70] after a failure of the authorities there to do so, the Mostar authorities were given the authority to create Municipal Courts for all 6 Mostar Municipalities, plus the Central Zone, who's population of hundreds hardly warrants a school, let alone a court. Prior to the war, there was just one Municipal Court for all of Mostar. Still today the Cantonal Court for Canton 7 does not exist.[71]

Recommendations

1. The Madrid PIC document demanded "immediate and full implementation of all decisions that have been issued by the Human

[67] UNMiBH JSAP Report, pg. 19
[68] ICG op. cit.
[69] The Office of the Ombudsperson, rather diplomatically, commented in May of this year: "Numerous recommendations (of the Ombudsperson) were respected through legislative changes, or by concrete actions. However, the authorities are still reluctant to follow the recommendations in full." Newsletter of the Office of the Ompudsperson, Volume 1, Issue 1, May, 1999. As of October 31 1998, the Office of the Ombudsperson had more than 50,000 provisional files opened, and the Chamber had registered 1,224 cases.
[70] 3 August 1998, published in Official Gazette of Hercegovacki-Neretvanski kanton br. 5, 23 October 1998.
[71] This is in spite of the Swiss Government having financed the renovation of a suitable building, located within the Central Zone, for the purposes of housing the Cantonal Court. Two "High Courts" still exist, one on each side of the Neretva, which function as the "Cantonal" Courts for the Croat and Bosniac Municipalities in the Canton respectively. The "Croat" High Court is housed in the building where the Cantonal Court should be.

Rights Chamber, as well as compliance with the reports of the Ombudsperson and Federation Ombudsmen, and the application of standards set forth in the European Convention by an independent judiciary."[72] Sanctioning measures, with support of OHR, must be introduced against those obstructing the implementation of these decisions. JSAP, through close co-operation with the Office of the Ombudsperson and the Federation Ombudsmen, are in the best position to recommend which local officials, either in local administrations or within the legal system itself, should be removed by OHR for consistent failure to respect the authority of these agencies. This practice of removing obstructive local officials by OHR, under the extended powers afforded to the High Representative in the Bonn document, should continue until the Judicial Police forces are established throughout RS as well as in rest of the Federation;

2. Legislation to implement decisions of the Commission for Real Property Claims[73] must be enacted straight away, with relevant property legislation amended to reflect the priority given to decisions of the Commission.[74] As mentioned elsewhere in this paper, proper enforcement mechanisms must be enshrined in practice;
3. Senior Justice Ministry officials in Canton 7 should be given a short deadline of approximately two weeks in which to fully implement the Law on the Courts of Herzegovina-Neretva Canton imposed by the High Representative in 1998. The Cantonal Court in Mostar must be up and running within the same two-week deadline, with concrete evidence, to be examined by JSAP or OSCE, that both parties in Mostar are giving full support to the Court. Upon the establishment of the Cantonal Court, neither "High Courts", in West and East Mostar, should still exist. Measures to remove Justice officials, and possibly even to remove the mandates of elected canton officials or Cantonal Assembly delegates, should be considered by OHR.

G. Direct influence of political parties/ figures

BiH is a country in which senior political figures in the ruling nationalist parties are "untouchable". There is a culture of instructing the judiciary on an almost daily basis that is a hangover from the days of when judges would be quite used to telephone calls from the Communist Party Central Committee in Sarajevo or local party bosses "helping" them to make decisions. That this practice continues today is not in doubt, but the extent to which it takes place can only be guessed at.

When the judiciary is as closely connected to political structures, and as much a part of the municipal/cantonal political establishment, as it is in BiH, even very professional judges may find it difficult to retain independence. They are, for example, seen as part of the local political elite by ordinary people. It is difficult to imagine that the judiciary, appointed and paid in the way that it is, could avoid being involved in day-to-day political interests, tensions and compromises between leading political parties (in cantons and municipalities) that base their respective political strategies on ethnic criteria.

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[72] Madrid PIC document Annex, Article II(5).
[73] The Commission, according to its press release from 21 May, 1999, announcing the opening of its offices in Zagreb and Slavonski Brod, has issued over 35,000 decisions in respect to over 143,000 relating to over 183,000 properties.
[74] Also demanded by the Madrid document Annex, Article 3(5).

Accusations of interference by politicians in the workings of the courts abound, even from senior members of the international community. The outgoing head of the UN Mission in BiH (UNMIBH), Elisabeth Rehn, has said in an interview that politicians in BiH protect the mafia, and that senior Bosnian politicians have blocked investigations into high level crimes.[75]

One sector where the likelihood of direct political interference with the judiciary is undoubtedly prevalent is in the area of alleged war crimes. Under the Rome Agreement's "Rules of the Road"[76], BiH citizens can only be detained on accusations of war crimes if the detaining entity can prove that a dossier file on the accused has already been sent to the ICTY in The Hague, and the ICTY has deemed the document to be "consistent with international legal standards". Yet BiH citizens have continued to be arrested in individual cases and detained on war crimes charges. In such instances, judges are subjected to fierce pressure to find the accused guilty.

H. Media

It has become common practice that criminal charges against certain notorious individuals are pending for months, even years, without public prosecution making formal moves to try them. On the one hand, they attract much publicity before they even get to the court, while on the other hand public officials (public prosecutors, police officials, political leaders) become involved in public debate in the media with alleged criminals. This sends two very negative messages to the public: first, that authorities have no credibility to handle those cases via the due process of law because eventually they have to try to protect their own illegal activities;[77] and second, alleged criminals are denied the right and opportunity to preserve the presumption of innocence in court. The case of Hazim Vikalo, dismissed as Governor of Tuzla-Podrinje Canton for corruption, is an obvious example of a highly-publicised and political case which never got to court. Another current “debate” involves the Interior Minister of Sarajevo Canton Ismet Dahic and his public denunciation of Nijaz Karkelja-Nisko, Ismet Bajramovic-Celo, Ramiz Delalic-Celo and others, which can be followed in all Sarajevo daily and weekly papers.[78] The Sarajevo Canton Prosecutor's office decision to bring criminal charges against a number of current and former senior public enterprise officials for alleged abuse of their public functions (28 June 1999) has resulted in Minister Dahic being talked up as a kind of Elliot-Ness-like crusader against organised crime.[79]

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[75] "In this particular case (that of "Celo" Delalic) it could be said that certain Bosniac politicians are involved...He is one of many who live under the protection of powerful people, including people in the political leadership." On the investigation into the murder of Federation Deputy Minister of the Interior Jozo Leutar: "....We were blocked by some Croat officials who didn't display the readiness to co-operate in certain segments of the investigation into that case", as reported in *Dnevni Avaz*, 30th June, 1999.

[76] 18th February 1996, published in "Bosnia and Herzegovina - Essential Texts (revised and updated edition), OHR, May 1997.

[77] Nijaz Karkelja, as reported in *Oslobodenje*, 19 June, 1999, accused Interior Minister of Sarajevo Canton Dahic of criminal activities of a similar nature than that which he himself is accused of.

[78] For example, *Dani,* 18 June, 1999. It is reported that that many charges, totalling 75 in all for 14 named suspects, have been gathering in the Public Prosecutor's office dating back to 1991 in some instances.

[79] For example, *Dnevni Avaz*, front page, 29 June 1999 "Dahic's new criminal charges".

I. Legislative measures to limit independence of judiciary

At the RS National Assembly session of 9 December 1998, the Assembly, on the proposal of the government, passed a resolution[80] prohibiting the evictions of displaced persons, pensioners and the families of killed soldiers from apartments during the winter months. This decision was taken irrespective of whether the courts had established that those apartments were being illegally occupied or not.[81] This an example of the legislative arm of government making decisions to limit the authority, and therefore independence, of judicial decisions handed down under existing legislation.

Another example is the revocation of Article 180 of the SFRJ Law of Obligations by the RSNA.[82] It is quite obvious that the Public prosecution of the RS refuses to process cases where non-Serbs were intimidated and ethnically cleansed during the war and after the Dayton agreement. As a consequence, individuals are left with the possibility to make a private claim in a civil procedure for loss of property, but the entity now avoids any responsibility after such cases. Traditionally, claims for damages after such events would be directed towards the state and its institutions for compensation, under the previous Law of Obligations. It appears that individuals as well as their property are not protected from violation which may occur as a result of "public manifestations", violent attacks, acts of terrorising people and looting their belongings.[83]

Recommendations

1. Wherever it is clear that entity parliaments are going to pass legislation or decisions which impinge on the rights of the judiciary, such as was the case in the RSNA from 9 December, 1998, a full case for the proposed move should be presented, in advance, to OHR legal experts, for them to approve. OHR will then be in a position to either approve the draft texts, suggest amendments, or forbid them being passed.

J. Self-imposed bad work practices/ institutionalised judicial corruption

There sometimes also exist intra-court tensions within Bosnian courts, for whatever reasons, be they political, ethnic or otherwise. Furthermore, there are still judges and prosecutors who deliberately use their positions to carry out their own policies of either ethnic hatred, political cronyism, or who, like the aforementioned case of the judge in Uno-Sanski Canton, abuse their function for personal gain. That the public suspects corruption within the judiciary is

[80] No. 02-1491/98, Sluzbeni Glasnik Republike Srpske br. 38, 11 December 1998.
[81] Although the decision made an exception for those people who had alternative accommodation to enter, these evictions could have been ordered by the courts under numerous legal instruments, yet the decision abolished the judge's authority to strike down judgements under RS law, through an invoking of Article 70, paragraph 1, point 2 of the Constitution of RS, and Articles 116 and 121 of the Rules of Procedure of the RS NA.
[82] Law of Changes to the Law of Obligations, entered into force 9 March 1996, Sluzbeni glasnik RS, 3/96.
[83] This follows a pattern in Republika Srpska, from its inception until recently, to take power away from the judges and give it to the administrative organs, where it is easier for political parties to gain and retain control.

not in question.[84] However the courts should not contribute to this perception by following archaic work practices which impinge on their own integrity.

a) Judicial corruption

RS Prime Minister Milorad Dodik summed up the feeling which is held by many members of the public, the international community and indeed certain politicians towards the judiciary: "We thought that we should give them a chance to, in a reasonable period of time, show a growing neutrality and objectivity, but in many cases, we made a mistake."[85] In an interview with the head of UNMIBH Dodik was more graphic: "Prime Minister Dodik recently more or less openly said that the majority of judges in RS are corrupt."[86]

b) Collusion of judges

Individual cases can illustrate prejudices of judges, or a "collaborating" role with institutional, administrative discrimination. In the case of MC,[87] the court speedily resolved the case by refusing MC claim for repossessing his home, ruling that the current apartment (where he moved in after being evicted) is “big enough for him and his family”. In fact, in this case the court took the role of an administrative organ, but avoided discussing the merit of the claim. In many cases of this kind which came before the Banja Luka courts, needless to say, all claimants were Bosniacs seeking justice before a Serb chamber. It is important to point out that the role of the court President is crucial in securing expediency of cases that have been filed, but the practice of discrimination which can be illustrated by many similar cases (as above) leads to the conclusion that the highest court officials are following either political instructions or their own prejudices, rather than the fair trial principle.[88]

In Mostar, without the knowledge of those who have been forced to abandon their homes, over 2,000 cases have been presented to the Municipal Court in West Mostar, where a lawyer, appointed by the Municipal authorities, represents the departed. He argues that they voluntarily left their apartments, and that their whereabouts are now unknown. This practice is carried on throughout the Canton.[89] The courts would not be able to defend this anti-ECHR practice, and thus anti-BiH law, if they were not following their own prejudices. Further examples of judicial prejudice from Mostar can be seen from decisions handed down which repealed the occupancy rights of persons deemed

[84] For example, *Dani*, 18 June, 1999, pg. 15 "This problem ("the catastrophic security situation in the capital") reaches its real escalation in the Sarajevo prosecution and courts, where sit a good deal of party and nationally sympathetic, professionally incompetent, corrupt, petrified judges and prosecutors".
[85] Interview in *Extra* magazine, no. 71, 3 June 1999
[86] As reported in an interview with Elizabeth Rehn, *Dnevni Avaz*, 30 June 1999.
[87] Osnovni sud Banja Luka, No. P-681/98
[88] To add to the frustration of those who had been evicted, courts in RS, like many in the Federation, refuse to apply (implement) certificates issued by the Commission for Real Property Claims (See, for example, Osnovni sud Banja Luka, ruling in the case of OA, No. I-1153/98).
[89] This is in contravention of Articles 6, 13, and 14 of the ECHR, which guarantee citizens the right to fair representation in front of responsible organs.

to have abandoned their properties, in spite of having been in their properties for the duration of the war and afterwards.[90]

In Mostar, less than 1% of applications for the return of apartments under the new laws repealing the application of the Law on Abandoned property have had decisions handed down since April 1998, though the deadline for doing so was 30 days from the receipt of the application, and in spite of the deadline for acceptance of applications being extended more than once. People take their cases to court, but the courts are notoriously slow to process cases of this kind, again suggesting political interference.

c) Case allocation

One way of undermining the judicial independence of judges who are not on good terms with other judges with in the Court, or with the Court President, is to take advantage of the haphazard case allocation system in Bosnian courts. There is no standard system of case management and case allocation throughout the court system in BiH. JSAP have identified some of the different methods in practice, whether it be allocation by the Court President according to the expertise of individual judges, or on a rotation basis, etc.[91] As a means to intimidate unpopular judges, a court President can easily assign to that judge all sensitive cases whose verdicts are bound to be controversial one way or the other. If, for example, a minority ethnic group judge is given a case where the defendant is a leading organised crime figure from the majority ethnic group, then no-one can doubt that there is pressure on that judge to acquit, or at least to impose a light sentence, even if there is no doubt as to guilt.

Recommendations

1. JSAP and OSCE Field Offices are aware of individuals within the judiciary who have shown a sustained inclination towards bias or favouritism, or who persevere with outdated work practices to promulgate their own biases. Following the removal of four members of the Tuzlansko-Podrinjski Canton Public Prosecution office by the Cantonal Assembly on the orders of OHR for failure to "transparently and thoroughly conduct an investigation into economic crime alleged to have been begun by the previous Cantonal government",[92] evidence of the seriousness of OHR to tackle this issue is more evident. Judges and prosecutors should be reminded that OHR will continue to use this

[90] Cases P-348/97 and P-800 /97 from the Municipal Court in West Mostar. From East Mostar, the courts have been "silent" to attack the bad practices of Municipal organs, for example where an apartment has not been declared abandoned, and thus was not covered by law. DM gave his case to the relevant Municipal housing authority. After 5 months, a decision was handed down where it was decided that the occupier of the apartment had no status, not refugee nor otherwise, and he had been given no permission either to stay or leave, therefore, the court argued, a decision couldn't be made under the new laws. DM went to court. 8 months later, after the intensive intervention of the Federation Ombudsman, the Serb Civic Council and other legal NGO's, no decision has been handed down. Many cases like this exist in Mostar.

[91] UNMiBH JSAP Report, pg. 12.

[92] Cantonal Governor Tarik Arapcic, referring to statements made by members of OHR, as reported in *Dnevni Avaz*, 25 June, 1999.

authority to remove those acting above, or below, the level of their authority.

2. The Madrid PIC document calls for "a strengthening of the role of entity-level prosecutors and their de-politicisation."[93] Besides the necessary legislative changes, prosecutors should be more answerable to the high standards of the international community in reasoning for the cases they decide to prosecute and those which they place on the back-burner. Similarly, a more open system of case allocation in BiH courts must be seen to be implemented, with JSAP officers shown how cases are being distributed to which judges, under what criteria, with JSAP officers having the authority to request changes in practice.

K. Weakness of the Public Prosecutors

In the former SFRJ system, there was a dominance of the police in the criminal justice system, with judges, and to a greater extent prosecutors, playing junior roles to the investigative techniques of the police in determining guilt for crimes. A result of this post-war has been that, as police forces have been gradually restructured under UNMiBH/ IPTF programmes, judges have been left with a far greater role in investigating prosecutions, which has led them into conflict with those whom they are investigating. This role would be better filled by the Prosecutors.

Another problem arising from the weak role of the Prosecutors in the Federation is the authority of the Federation Prosecutor over the Cantonal Prosecutors. For political reasons, Cantonal Prosecutors have been doing a poor job in prosecuting acts of violence committed against minorities and returnees since the end of the war, whether because of direct political pressure at the local level or of their own prejudices. So judges have not been able to mete out justice to perpetrators of violence if those committing the crimes have not been prosecuted. This is another form of obstruction of the independence of the judiciary.[94] Furthermore, the different levels of jurisdiction of the various Cantonal Courts, and their high level of devolved authority, mean that while most judges and police resources are located at the Cantonal (and lower, Municipal) level, the large amounts of crimes committed at the Federation level[95] require a strong Federation Prosecutor. Yet there is no first instance court in which to try Federation-level crimes. OHR have made proposals to the Federation to create a special section of the Supreme Court to try Federation-level crimes.[96]

Attempts to further strengthen the role of the Public Prosecutors, called for in both the Bonn and Madrid PIC documents, have been made in the revised Federation Criminal Code, passed last year by the Federation Parliament.[97]

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[93] Madrid PIC Annex, Article II(3).

[94] Article 5 of the Federation Law on the Federal Prosecutor gives the Federation Prosecutor jurisdiction over the work of the Cantonal Prosecutors in that he may give "binding instructions" to the Cantonal Prosecutors, however there have been few instances where the Federation Prosecutor has successfully imposed his authority on his cantonal colleagues.

[95] Cross-cantonal crimes, usually meaning where either the perpetrator or the victim of a crime reside in different cantons, must be prosecuted at the Federation level, i.e. by the Federation Prosecutor, according to the Federation Constitutional Court (Judgement U-13/97, 25 May 1998).

[96] which will necessitate a change to the Federation Law on Internal Affairs.

[97] On 29 July 1998, the Code was formally adopted by the Federation legislature, and on 6 November 1998 it was signed by the President of the Federation.

Similar attempts should be written into the ongoing draft revisions of the RS Criminal Code, a new version of which should be passed by the RS NA by the end of the year. Both new Codes will combat the main problem with the weak role of the Public Prosecutors which was written in the old Yugoslav Criminal Code, that of weak powers to ensure the lawfulness of police investigations.

L. Origins of the BiH legal system as Background to the current problems

Bosnia and Herzegovina inherited its legal system from the former SFR Yugoslavia. Although this system is often characterised as communist, authoritarian, totalitarian, etc., it needs to be taken into account that legal thought (doctrine), legislation and the judiciary in this region have deep roots in continental European legal history. In the countries and provinces that preceded the "unification of South Slavs" in 1918, there were a couple of far reaching codifications of civil law dating back to the mid-19th century. In Slovenia and Croatia (while those countries were parts of the Austro-Hungarian Empire), the Austrian *Allgemeine Burgerliches Gesetzbuch* (ABG, from 1811) was in force and applied. Bosnia and Herzegovina was formally bound by the Turkish Civil Code, but the influence of ABG after the Berlin Congress (1878) was very strong in case law, and was explicitly enforced, finally, after annexation in 1907. Serbia adopted its own Civil Law Code in 1844, which in fact represented a shortened version of ABG. In Montenegro, the 1888 codification of customary law was firmly based and structured according to the *Code Civile Napoleon* and German *Burgerliches Gesetzbuch*. This trend was also followed in criminal law and criminal procedure.

These origins and legal foundations were, in substance, incorporated in the new legal system of the post-Second World War SFR Yugoslavia, except for the rules and principles that were found to be incompatible with the new (communist-socialist) constitutional and economic order. It meant that one-party political rule (that of the Communist Party), social property (with very restricted private ownership) and the protection of the communist-socialist ideology in criminal law had to be adopted as a leading tenet of the new legislation and the new "rule of law". However, the system did not ignore contemporary tendencies in European law completely. As an illustration, the Yugoslav Law of Obligations (1982) borrowed heavily from the Swiss Law of Obligations, and in the late 1980's there were some serious attempts to introduce certain changes in company law and the legislation to deal with potential private and foreign investment.

Although the SFRJ looked over one shoulder to European legal standards, its successor states have had no experience of a truly democratic legal system or independent judiciary. The discrepancy between relatively modern legislation and its implementation in real life was huge and often arbitrary. The rule of law and the due process of law were hardly compatible with the unquestionable power of only one political party, which had a grip on all walks of life. Paradoxically, the judiciary was also very well organised, institutionally well structured and staffed, judges were professionally well trained, highly qualified and well paid.

Bosnia and Herzegovina inherited all this mish-mash of a long, but controversial, judicial tradition. The court system and legislation were not spared the devastation of war in this country, and the new Bosnia and

Herzegovina is finding it difficult to get rid of its legacy, but shows not enough political will to benefit from its positive remains either.

IV. CONCLUSIONS

The BiH judiciary is in transition from the former SFRJ system in which a weak judiciary ceded much control to the police to determine guilt in the field of criminal justice investigation. Post-war, the two separate legal systems in BiH have only nominal central institutions and functions, even if the BiH Constitution allows for the formation of more State court institutions. Within the Federation, loopholes in the legislation on the Supreme Court allow Croat-majority cantons to refuse to recognise the authority and the jurisdiction of the Supreme Court, thus containing all court functions within the jurisdiction of that Canton. Weak roles for Public Prosecutors, plus anomalies in the legislation which make it hard for strong, Federation-level judges to try cross-cantonal crimes, leave Cantonal Courts open to political influence from ruling parties.

The judicial selection process and the judicial budgeting system leave the economic, as well as professional, well-being of judges answerable to the wishes of the ruling nationalist parties. The disappearance of many competent, pre-war judges has rendered the judiciary almost exclusively mono-ethnic, with in-experienced, underpaid judges appointed on ethnic, political grounds as a matter of procedure. Poor distribution of proper legal instruments and laws, including state laws, makes it more difficult for young, eager judges to assert their independence. Poor material resources harm motivation and lead judges to leave the profession.

The one-party communist system has been replaced by a multi-party system which is just as bad in terms of abuse of the courts. The close relationship between the political power structures and organised crime and corruption results in pressure being placed on judges and prosecutors to overlook the crimes of known criminals and of those in power. Judges themselves are not immune from abusing their positions for personal gain, or from political and ethnic prejudices. Irresponsible media reporting, or reporting which tends to "Hollywood-ise" the cult of personality of either judicial figures or infamous criminals, interferes with judicial independence before cases get to court.

The recommendations in this report provide a comprehensive and ambitious programme of legal reform, based on the recommendations of Bosnian professionals already working in the field. Many of the reforms proposed are already being pursued by the international community in Bosnia, and are being resisted in the traditional way by Bosnian authorities. This is a pity, since without an independent judiciary Bosnia and Herzegovina cannot develop a resilient democratic society where the common citizen can rely on the laws to protect him from predators in and out of government. And without that resilience, the country has no chance of prospering or developing into a modern European state. The ghettoisation of politics is robbing Bosnians of a future in so many sectors – but Justice is one of the most important of all.