

Judicial Reform Programme

Coordination Structure:

The Constitution of Bosnia and Herzegovina (BiH) provides that BiH shall be a democratic state operating under the Rule of Law. It also obliges the state and entity governments to ensure the highest level of internationally recognized human rights and fundamental freedoms. These goals cannot be attained without an independent and efficient judicial system. The Office of the High Representative has been formally instructed to promote judicial reforms and to co-ordinate the international support to this effort within a comprehensive strategy. The Judicial Reform Unit within the OHR Human Rights and Rule of Law Department performs this work.

Although the term “Judicial Reform” has a distinctively legal connotation, this is as much a political and institutional enterprise. It is often the case that the problems which need to be addressed to move the process ahead are not legal per se, rather of an administrative or economic nature. The tools must be chosen accordingly. Judicial reform is also a matter of changing entrenched perceptions and attitudes, both “internally” within the judiciary and “externally” among political policy-makers and the general public. Without a political constituency for a fair and effective judiciary in BiH, and public confidence in the integrity and professionalism of the courts, many reforms will be in vain. A serious attempt at judicial reform further requires an empirical warrant to ensure that the problems discussed really do exist and whether the proposed remedies will actually help to solve them. This fundamental fact points to maintaining day-to-day access to the judiciary, trial monitors, and people working with related institutions, e.g. human rights institutions and the police.

The “political” dimension of the judicial reform work pursued by OHR consists of two sides: building a political constituency for judicial reform; and facilitating the use of the legal system as a means for political change. The latter includes conveying to the general public – the “users” of the system – that they through legal means can challenge political decisions and promote various socially desirable goals. This important aspect of judicial reform is not discussed as a distinct point below, but is inherent in the others (for example, the development of laws providing sanctions for non-enforcement gives the general public opportunity to challenge the political establishment with legal means and to have obstructionist officials removed).

Structural Reforms:

The involvement of OHR in structural reforms within the judicial area essentially aims at changing the principles by which the judiciary is organized and governed. The primary means to achieve this is the drafting and promotion of new legislation, typically laws on courts (and in some cases constitutional provisions regulating the judiciary). It should be noted with regard to the structure of the BiH judiciary that great achievements have been made in the recent year, notably the establishment of first-instance jurisdiction within the Supreme Court, the creation of *Codes of Ethics* and the successful promotion of judicial service laws regulating *inter alia* the appointment and dismissal of judges and prosecutors. The focus is therefore shifting to structures and norms on lower level, e.g. books of rules and other instructions regulating internal court organization and enforcement issues. Specifically, OHR will:

- Ensure the ability to transfer cases between courts when there is evidence that it will not be possible to receive a fair hearing in the original venue.
- Encourage testimony and ensure the protection of witnesses in criminal cases through the enactment of witness protection and witness anonymity laws.
- Assist in the creation of a state level judiciary in line with recommendations from the Venice Commission.
- Promote the creation of uniform norms governing court procedures and internal court organization, e.g. Books of Rules.
- Develop and regularize the process for admission to the legal profession and the ability to practice before all courts at the State and entity levels.
- Promote the establishment of Judicial Training Institutes that provide consolidated training

standards for judges and prosecutors throughout BiH.

- Work toward full implementation of the Brcko Arbitration Award and the District Statute, especially the creation of a legal and judicial structure independent of the entities but consistent with the general constitutional and legal principles of BiH.
- Assist in the establishment of a functioning unitary judicial structure for the H-N Canton and the City of Mostar (including the Central Zone) in accordance with the imposed laws on courts.

Institution Building:

Institutional reform within the judicial area essentially means providing the courts, prosecution and enforcement agencies with the tools and resources they need to adequately perform their functions. Although this work focuses on judiciary, it has relatively little to do with drafting legislation. OHR's role in this process is rather to identify areas of the judiciary and prosecution where capacity-building efforts are needed and to help donor agencies to provide support in an effective and timely manner. This means that donor agencies, both bi- and multilateral, play a crucial role as sponsors and implementing agencies. The following activities have been identified as particularly important:

- Implement the reformed judicial selection, promotion and remuneration structure provided for in the Federation and RS judicial selection laws.
- Promote and strengthen the Judicial Training Institutes so they can effectively take the lead in streamlining and consolidating training standards for judges and prosecutors throughout Bosnia and Herzegovina.
- Strengthen, legally and institutionally, the role of the prosecutors in the investigation and trial relatively the police and the investigative judge.
- Revive and expand the suspended Commission on Inter-Entity Legal Co-operation and otherwise enhance efforts to make the application of laws and enforcement of decisions consistent throughout Bosnia and Herzegovina.
- Develop and introduce better office procedures and management tools for the judiciary and the prosecution, e.g. basic computer availability and training, effective case- and staff management routines, and enhanced research capabilities.
- Make sure that the prison/corrections systems of each entity meet international standards.
- Clarify the role of the Judicial Police in both entities and promulgate relevant enabling legislation to ensure security of courts and court personnel as well as enforcement of judgments and judicial decisions.
- Reform legal training (curriculum and teaching methods) in the law schools throughout the entities.
- Increase the amount of domestic and applicable international legal information and materials available to judges, practitioners and the general public.
- Educate the public, the "consumers" of the judicial system, of the reforms taking place and their rights under law.

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