

EXECUTIVE SUMMARY - Restructuring the Court System: Report and Proposal

Introduction

On 28 February 2002 the Peace Implementation Council Steering Board endorsed the IJC's reinvigorated strategy for judicial reform in BiH, which includes a restructuring of the court system of BiH followed by a selection process for judges. The restructuring is motivated by the concern that there are too many courts and too many judges in BiH, operating with costly inefficiency. The court restructuring effort, therefore, aims to

- determine the appropriate total number of courts and judges in BiH,^[1]
- determine which courts should be merged and where,
- determine the appropriate number of judges for each court, and
- establish other aspects of court structure including subject matter jurisdiction and the establishment of specialized divisions (e.g. for commercial cases).

Court Consolidations - First Instance Courts

The prevailing concern for the court restructuring project was to establish well-defined, objective criteria for court mergers and to apply them even-handedly. Purely subjective factors were not considered; political considerations are beyond the scope of this assessment. In the end, 32 of 78 first instance courts are recommended for closure (41% overall) although 6 of these are to be perpetuated as branches of a larger court (bringing the closure rate down to 33%). Annex B contains maps depicting the configuration of courts both before and after restructuring.

Mergers of first instance courts are grounded on three primary criteria:

Caseload – Courts with a “caseload index” lower than 3.0 (i.e. a weighted caseload insufficient to support 3.0 judges) were presumptively slated for closure. Those with a caseload index greater than 5.5 are presumed to be large enough to warrant continued existence. Of the 78 courts, 38% fail this criterion, 25% satisfy it, and 38% fall in the grey area in between.

Population – Courts serving communities of less than 35,000 were considered for closure. Jurisdictions serving more than 55,000 are presumptively large enough to warrant a first instance court. Of the 78 courts, 48% fail this criterion, 29% satisfy it, and 23% fall in the grey area.

Geography – To assure reasonable public access, a court that is 45 kilometers or more from the next larger court (or from the next larger city with a court) is presumed to stay open. Courts that are 20 kilometers or less from a larger court are presumed to be unnecessary. Of the 78 courts, 12% fail this criterion, 53% satisfy it, and 35% fall in the grey area.

Secondary considerations – Some consideration was also given to local conditions (court buildings, roads, etc.) and to the opinions and suggestions of court presidents and ministers of justice, solicited during site visits to over 90 courts throughout the country.

In a few locations, where caseloads are small but where geographical distances are problematic, it is deemed appropriate to keep open a regional branch of a larger court, with the main court providing administrative support. Five-Six such branches are proposed.

Appellate Courts

Cantonal courts cannot be consolidated without amendment to the Federation constitution. Potential mergers in the Federation as well as in the RS will be considered in the future when such constitutional change can be made.

The entity supreme courts will continue as before, although like the lower courts, their size and subject matter jurisdiction may be adjusted as a part of the general restructuring (see below).

Number of Judges

The number of judges provided to each court is calculated on the basis of inflow of cases. Two working groups of judges developed projections of judicial workload burdens under the new procedure laws. Applying these projections to historical case-filing statistics in the various courts, the IJC was able to calculate an appropriate number of judges for each court. A summary of overall reductions is at Annex A.

In the end, a significant – 25% – reduction in the number of first instance judges is contemplated. The reduction in second instance judges is more modest at 15%, as the procedure law reforms envisage a larger role for those courts. Finally, it is suggested that the High Judicial and Prosecutorial Councils refrain from filling all the seats on the entity supreme courts until questions about their jurisdiction over administrative disputes (see below) are settled.

Subject Matter Jurisdiction

No change to criminal jurisdiction is proposed at this point. Differences between the entities' division of criminal jurisdiction will be reconciled at a later date.

This restructuring plan gives first instance jurisdiction for *all* civil matters – as well as bankruptcy and liquidation cases, and the enterprise registry – to the basic courts (in the RS) and the municipal courts (in the Federation).

Jurisdiction over administrative disputes, much of which now falls with the entity supreme courts, should be shifted to lower courts. Details are yet to be settled.

Specialized Court Divisions

The restructuring plan proposes the creation of a specialized “commercial division” in one first-instance court in each canton or district, with jurisdiction over *all* commercial cases (commercial civil cases, bankruptcy cases, and liquidation cases, as well as the enterprise registry) arising anywhere in the canton or district. In addition to the more efficient processing of commercial cases, this should help further the general goal of economic development in BiH, as the business community develops confidence that its disputes will go before judges with experience and expertise in commercial cases.

Implementation / Funding

The restructuring plan will generate savings, even though those savings will have to be reinvested in modernizing the judiciary for the next few years. The courts that remain after restructuring will need sufficient resources – particularly equipment, facilities, and training – to enable the judges and staff to meet the new, higher expectations.

[1] The project is limited to the municipal and cantonal courts in the Federation, the basic and district

courts of the RS, and the supreme courts of both entities. The new state court, the constitutional courts, and the minor offence courts are not dealt with in this project, nor is the court system in Brčko District.