IJC
Independent Judicial Commission

Justice in due time.

Report

Court Administration Project

Sarajevo, April 2002

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1 Executive Summary

The Court Administration project was tasked to examine the causes of inefficiency in court operations and delays in court process and to craft specific "low-cost, low-tech" recommendations. This report makes many specific recommendations, included in the text of the report and reprinted in a summary list appended to this summary. All these recommendations are based on the general findings and conclusions summarized below.

- ***Attitudes – the importance of timely and efficient delivery of court services***

The causes of delay in the courts of Bosnia and Herzegovina are complex and multifaceted. No single cause is to blame and no single reform will be sufficient. Underlying it all is the way judges, court staff, and even lawyers and litigants think about the justice system. There is too much focus on following prescribed procedures, and not nearly enough attention to producing meaningful results. Both in the procedure codes and in the minds of the people, timeliness is consistently undervalued.

The most critical reform, therefore, must come in altering the way people think about the work of the court. Individuals – court presidents, judges, court staff – must approach their work with an eye toward the ultimate results: resolving cases fairly and timely, and giving good public service. Although particular tasks may be delegated, responsibility cannot be.

Changing attitudes is a difficult reform, but many things can be done to help. The Brcko project proved that it could be done, but it will require a major shift in the status quo. The report contains many recommendations that have the potential to affect attitudes if taken seriously and implemented as part of a sweeping reform effort.

- ***Judiciary structure***

Efficient court administration requires a functional structure. In the Federation, the cantons function virtually autonomously, each with a separate Ministry of Justice. Such a dispersed structure is inherently inefficient and too expensive. If solutions are to be found and implemented for a more efficient court system, there needs to be some consistency, and some accountability entity-wide for the results.

The report contains recommendations for the role the Ministries of Justice should play in resolving problems in court administration. Particularly, the Federation Ministry's role needs to be clarified and strengthened.

- ***Court management***

Overly restrictive and detailed rules governing court operations seriously limit local discretion in court management, undermining both the potential for and interest in innovation of any kind. Court presidents must be free to manage their courts, and must be willing to assume the leadership and management role. They should be assisted by competent, empowered court staff, including a high-level court administrator to whom the court president can delegate administrative duties.

Effective court management is seriously hindered by the general inadequacy of funding. While the courts appear to be adequately staffed, the staff is poorly paid, and

they are operating in woefully deficient buildings and with inadequate office equipment. Further, the budgeting mechanism is flawed, as there is no possibility for transferring personnel funds to other more pressing needs, to allow a court to operate more efficiently with leaner staff.

The report contains numerous recommendations designed to vest individual courts with power to manage themselves more effectively. Operational rules and practices, including budget and personnel administration, must be flexible enough to allow the courts to make the best use of what resources they have. They can be held accountable for the results only if they have been afforded the local discretion and flexibility to operate in a results-oriented manner.

- ***Case management, time management, and delegation***

After financial resources, the next scarce resource is judges' time. Cases tend to bottleneck at the judges' desks. Staff can usually stay current, but the cases sit for too long waiting for hearings or other action by a judge. Accordingly, judges must learn to manage their cases and their time for maximum productivity. Changes in the procedure laws may be important in facilitating efficient case management. Local court operations must also allow court presidents and other judges to delegate administrative and minor judicial tasks to staff, to assure that their time is utilized where it is needed most.

The report includes recommendations for improving the judges' management of their own cases, eliminating wasted hearings and unwarranted delays. It comments on procedure laws that have proven problematic from an efficiency standpoint. Enforcing appearance requirements and implementing more effective methods for service of process should also have a great impact. The report also advocates more complete delegation of both administrative and judicial tasks.

- ***Goals, standards, and reporting***

The court culture is very much influenced by the data that is kept and reported, and the corresponding expectations judges have for themselves. Too many judges define their role and responsibility as a judge in terms of "meeting their quota." Goals for timely disposition of cases, and more complete reporting of the results achieved, may help focus attention beyond the "quota," and rather on delivering timely and meaningful justice for the litigants. Only by concentrating on such issues can the courts begin to address the widespread problem of case backlogs.

The report contains recommendations for more meaningful reporting, and for goals that will focus attention on the timely disposition of cases. It also recommends some approaches to clearing the courts' present backlogs.

- ***Minimum equipment***

Related to the problem of inadequate and misallocated budgets, many courts are operating without the basic equipment they need to operate efficiently. The report makes specific recommendations for what equipment is needed now for basic functionality, and what might be acquired in the future to enhance operational efficiency at the least cost.

- ***Conclusions***

There is much that can be done by the individual courts, by the Ministries of Justice, and by the respective legislatures to ease the problems of inefficient court administration in Bosnia and Herzegovina. No single player holds all the keys. Each should consider the recommendations of this report, and the role it can play, in addressing these compelling concerns. The rule of law in Bosnia and Herzegovina depends not just on the delivery of justice by its court system, but on the delivery of justice *in due time.*

Listing of Recommendations

Section 4 – Structural issues – administration of the judiciary overall

- ***The role of the Federation Ministry of Justice should be clarified with an eye toward centralizing and unifying court administration entity-wide.***
- ***Legislation that would provide adequate funding to the courts should be given high priority.***
- ***Replace the existing Books of Rules with a new one that applies uniformly throughout both entities; at the very least there should be a unified Book of Rules for the courts of the Federation.***
- ***The content of the new Book of Rules should be simpler, articulating general principles rather than specific rules, and granting the court considerable discretion in how to carry out court business (consistent with the principles articulated in the Book).***

Section 5 – Procedure laws

- ***The Working Groups on procedure laws should consider amendments that might be effective in maximizing case handling efficiency.***

Section 6 – Court management

- ***Court presidents should assume an active role in motivating the judges of their respective courts, holding them accountable for their productivity and arranging "mentoring" for those – especially new judges – who need some guidance to be productive.***
- ***Court presidents should assume responsibility for the integrity and efficiency of the court, delegating administrative details to staff (such as the new "court administrator") in order to focus on larger issues and problems in the court's operations.***
- ***A new position of "court administrator" should be created, replacing either the court secretary or head of the registry office in each court, but empowered to play a much larger role in managing court operations. The position should be compensated at substantial level, appropriate for recruitment of high-level, highly competent managers.***
- ***Courts should restructure in order to expand the use of law clerks, volunteer interns, and other legally-trained staff who can expand the productivity of***

judges. Judges should delegate their more routine work to such law clerks, wherever possible.

- ***Court presidents should delegate administrative tasks to staff and can enlist other judges to assume responsibility for special projects or ad hoc issues in the court's administration.***
- ***New legislation should be enacted that clarifies a court president's power to delegate administrative and ministerial tasks to be performed by competent court staff without direct judge involvement.***
- ***Court presidents should start improvement processes in their courts, undertaking special projects to address the court's most serious problems.***
- ***Court operations, including salaries for court staff, should be funded on a flexible basis, giving the court some discretion to reprogram its budget money from lower-priority uses to the more pressing needs and challenges in the court.***
- ***Concurrent with the decentralization of budget authority, court presidents and staff should be given training in budget administration, and appropriate controls (regular audits by the Ministry of Finance, perhaps) should be adopted to ensure against corruption or defalcations.***
- ***Consistent with independent control of budgets, courts should have flexibility to re-organize their personnel structure, i.e. how they title, define, and compensate the various positions within the court.***
- ***Absent flexibility at the individual court level, courts and Ministries of Justice should work together to reconsider the appropriateness of the current personnel structure, and to allow the courts to request exceptions that have the potential to improve court efficiency.***
- ***Even where formal reorganization is not possible, courts should make constant adjustments and reassignments of existing personnel to make best use of the staff they do have to address the courts' highest priorities and most pressing needs.***
- ***Training in court administration for court presidents and court administrators should be made a high priority in any reform effort, as these individuals must take the lead in introducing efficiency-measures into their respective court operations.***
- ***In addition to formal training, court presidents and court administrators should meet periodically to share ideas and experiences in court administration; on at least some occasions the court administrators should meet separately from the judges.***
- ***New quota standards should be introduced that reflect the expected changes in procedural laws.***
- ***Quota standards should be made unified for both entities; at least for all cantons in the Federation.***

- ***Quota standards, as a measure of minimum expected workload, should eventually be phased out and replaced by improved and transparent statistics for each judge reflecting solved cases, trial times and backlogs.***
- ***The case reporting system should be similar entity-/statewide.***
- ***Cases should retain their original case number as long as they are processed in the same court.***
- ***Reports should be designed such that more attention is drawn to the standards of performance, particularly to timeliness in the resolution of cases.***
- ***Reports should include comment on long-term trends and a description of the court's plan to address its problems, if any.***
- ***Appropriate feedback on the reports should be given.***

<u>Section 7 – Case management</u>

- ***Cases are to be allocated immediately in a random and transparent system.***
- ***Cases should be reassigned only when absolutely necessary.***
- ***New judges should be assigned fewer and simpler cases for the first few months.***
- ***The courts, in consultation with the Ministries of Justice and the Bar, should adopt standard trial times for different types of cases.***
- ***The preparatory hearing should be used for planning the rest of the process, so that it can be concluded rapidly and without interruption.***
- ***The judge should, at an early stage and continuously thereafter, explore the possibility for settlement.***
- ***Mediation should be introduced as an alternative to and/or a part of traditional court process.***
- ***Judges and lawyers should be trained in mediation.***
- ***The judge should have the court staff timely check the file to ensure that the cases are fully prepared before holding hearings.***
- ***Case folders should be amended by putting service of process information on the outside cover.***
- ***The court should vigorously utilize available tools – including tougher and more frequent sanctions, use of court police to compel attendance, and cooperation with the bar – to increase compliance with appearance requirements.***
- ***The courts, working with the Ministries of Justice, should study the various alternative approaches to service of process, including courier services, and adopt the methods that would provide the best operational performance at the lowest cost.***

- ***Case management techniques should be integrated into all judicial training, including the training planned on the new procedure laws.***
- ***New judges should for a period have an experienced judge as a mentor.***
- ***A special training course should be designed for new judges.***

<u>Section 8 – Clearing the backlog</u>

- ***Each court should develop a strategy for addressing its backlog of unresolved cases; the strategy may include any or all of the following steps –***
  - ***Analyze the backlog and compile a list of backlogged cases;***
  - ***Refer some or all of them for mediation or settlement conferences;***
  - ***Gradually introduce them into the case processing system;***
  - ***Set aside special days or weeks, reserved for backlog cases;***
  - ***Establish strict time-frame expectations for resolving these cases and communicate those to the parties;***
  - ***Make greater use of suspension procedures, and expand such procedures, to dismiss old cases.***
- ***Court presidents and Ministries of Justice should consider how experienced judges, particularly appellate judges, may be temporarily re-assigned to sit in first-instance courts with greater needs to help address severe backlog problems.***
- ***Consideration should be given to temporarily bringing back skilled judges who have retired, perhaps occupying vacant judgeships for a time, to help resolve backlog problems.***
- ***In cases when a party cannot be found, courts should make greater use of alternative procedures, such as posting the writs at the bulletin board in the court or appointing temporary representative of defendant.***

<u>Section 9 – Fostering productive work attitude among judges and staff</u>

- ***Judges should be urged, in orientation and in training, to give sufficient weight to matters of timeliness and efficiency in rendering justice; over-emphasis on the pursuit of evidence and the pursuit of ultimate truth can ultimately undermine justice when it results in excessive delay.***
- ***The court restructuring project should seize the judicial selection and appointment process as a means of impressing upon the judges the higher expectations for responsibility and productivity; commitments to adhere to these higher standards should be elicited from the candidates.***
- ***Each court should adopt a mission statement reflecting the goals and aspirations of the organization; the statement should be posted prominently and referred to in management meetings and personnel evaluations.***

<u>Section 10 – Information technology</u>

- ***A minimum-level computerization of the courts should be sought, if possible through a donor project.***
- ***A simple, computerized case management system should be developed in an entity-wide joint effort.***

2 The Project

2.1 Background

On 24 May 2000, the Peace Implementation Council (PIC) made a declaration in which it called for a truly independent and impartial judiciary to ensure the rule of law in all criminal, civil, and commercial matters. At that time, PIC reiterated its support for "the continuing efforts of the High Representative to lead the Judicial reform effort and coordinate the efforts of the international community on the issue."

In March 2001, the High Representative formally established the Independent Judicial Commission (IJC) with a mandate to promote the rule of law and judicial reform in BiH. IJC's Strategy Plan for July 2001 to December 2002, was approved by the High Representative in August 2001. One of the goals prioritized as part of a wider aim to improve the quality and efficiency of the judicial system was to oversee progress "towards increasing the efficiency and effectiveness of the courts in general and to increase public access to them by developing a strategic approach to the reform of court administration and management."

A study conducted by the UNMIBH Judicial System Assessment Programme in 2000 found that the backlogs in the courts surveyed was increasing. *The JSAP Thematic Report X: Serving the Public: The Delivery of Justice in Bosnia and Herzegovina* identified the prime cause of delays as the various procedural laws that govern court proceedings. However, numerous other factors regarding court administration and management were identified as causes of inefficiency.

2.2 General Goal

The Court Administration project is intended to be the first part of a longer-term strategy to address problems of court inefficiency with low-cost, low-tech solutions. The primary focus is on the courts' internal administrative methods.

This project is the first phase of the strategy, consisting of an initial assessment of the current problems in court administration that affect the courts' ability to deliver timely justice and to provide good public service, as well as recommendations for improvements. A second project, to implement suggested reforms, will be the subject of a separate proposal to be developed later.

The target group is all courts in BiH, except the courts of the District of Brcko, the State Court of BiH and the Constitutional Court of BiH. The minor offence courts are not included in the project. Neither has the Project examined the routines and administration of the Supreme Court in each entity.

2.3 The Project Team

The Court Administration Project is funded by The Norwegian Government on a budget of 250.000 DM. The project group started work on 7 January 2002 for a period of three months.

The project team has consisted of following members:

- Leader, Ms. Anne Austbø, Judge/President of a District court in Norway
- Mr. David Pimentel, attorney and court administrator, USA
- Mr. Radomir Đuric, lawyer and consultant, USA
- Mr. Samir Šlaku, attorney and former law clerk, BiH
- Mr. Bjørn O. Aspelund, attorney and former Deputy Judge, Norway.

The team has been assisted by two interpreters: Mr. Slavko Biljus and Ms. Jasenka Dzindo.

2.4 Methods

2.4.1 Court visits

Five courts have been selected as pilot courts in the project:

- Ljubuški Municipal Court
- Konjic Municipal Court
- Zenica Cantonal Court
- Banja Luka Basic Court
- Srpsko Sarajevo District Court

The pilot courts have been visited by the whole project team at least once and by some members of the team several times. The team has had interviews with the court presidents, judges, court secretaries and other members of the staff. The studies of the pilot courts should provide the basis for general recommendations applicable to all courts in BiH.

The team has also visited other courts not subjected to special studies or close scrutiny. The team had a more general discussion of relevant issues with the president of the Cantonal Court of Sarajevo. Members of the team have also met with the court president and some of the judges of the Municipal Court II in Sarajevo and observed some hearings there.

The project team also visited the Brcko Basic Court to learn about the recent reforms implemented in the Brcko District and to get information about how the changes are working.

2.4.2 Case-file examinations

In addition to the information gathered through interviews, the project has reviewed a number of cases to achieve a more complete picture of the case handling procedure actually followed in the courts. In order to yield a representative sample of the court's caseloads, the Project Group approximated a random sample by pulling every 7th case, in order to avoid skewed samples for even-number occurrences.[1] Where a

[1] Some courts allocate cases to particular judges by case-number. The review sought to avoid a sample on a recurring pattern that would include cases assigned only to particular judges.

completely random pull was not attainable, the pull was adapted in a way that minimized diversion from a random sample.

To avoid that any single year was in some way peculiar that could reflect to the findings, the pull was divided between the years 1996 and 1997. These years were chosen because one could expect that even cases tainted by a prolonged case handling procedure would be closed by now. Thus, a sample of 30 civil ("P") cases and 30 criminal ("K") cases from each court was pulled. During the case review, this strategy was reconsidered as the years chosen were close to the end of the war, and therefore could give a skewed impression of the types of cases predominant today. Therefore, an additional sample of 10 closed cases was pulled, evenly distributed between 1999 and 2000.

Originally, only closed cases were pulled. The reasoning was that the closed cases would give the best impression of bottlenecks in the caseflow. The case review, however, indicated it worthwhile also to review cases that still were open. Accordingly, an additional sample of 10 *open* cases was pulled, evenly distributed between 1999 and 2000.

Further, appellate courts and the appeals process were identified as significant causes of delays. Those courts also serve as trial courts for more serious criminal cases: felonies punishable by more than ten (10) years imprisonment in the Federation, felonies punishable by more then twenty (20) years imprisonment in the RS. Given the importance of those courts in the judicial system of Bosnia and Herzegovina, and the fact that two such courts (Zenica and Srpsko Sarajevo) were selected as pilot courts for this project, it was decided that sampling and review of cases should be performed at least in one of those two courts. From the Zenica Cantonal Court, the project team selected from among the closed cases 22 criminal ("K") cases and 30 civil appeals ("Gz"). The review also included the only 2 open Gz-cases available, together with 8 criminal ("K") cases.

In all, a total of 262 cases were reviewed. It is doubtful that such a small sample, from just a few courts, is sufficient to generate statistically valid conclusions about the processing of cases throughout the courts of Bosnia and Herzegovina.

However, the purpose of reviewing cases was not to generate statistics, but to get a more complete picture of case management. More important than the figures themselves was the process the Project Group went through to obtain them. The case review provided several examples of the shortcomings commented on *infra*, as well as gave valuable background for the propositions made. Moreover, the review also raised new issues that prompted additional inquiry and led to some highly productive discussions with judges and court staff.

2.4.3 Analysis of annual reports from the courts for year 2001

The project has collected annual reports from many of the courts for year 2001 and for year 2000, and has drawn up an overview. *See* ***Error! Reference source not found.***. The project has evaluated the statistics as well as comments on the statistics, some from the courts and some from ministries, as a part of its analysis.

2.4.4 Interviews with representatives of administrative bodies and organizations

The team has had meetings with the Ministers of Justice both for the Federation and the Republika Srpska. The team leader also participated in a meeting of all the Ministers of Justice in the Federation.

Members of the team have had discussions with representatives of the Judges' Associations and the Bar Associations in both entities.

Information about the reforms in Brcko District has been gathered in meetings with members of Brcko Judicial Commission and from Mr. Michael Karnavas, former executive director and chairman of Brcko Law Revision Commission.

2.4.5 Seminar

A seminar was arranged at the 19th of March 02 to get feedback on findings and preliminary recommendations. Participants included court presidents and court secretaries of all the pilot courts and some other courts, as well as all officials from Ministries and Associations that provided input to the project team.

2.5 Other Projects – potentially related to this project

The Court Administration project is one of many existing projects which may influence the efficiency in the courts and improve the serving of the public in judicial matters. The project findings in many ways confirm the need for these projects. In this report these issues will be referred to the work in other projects.

The most relevant projects are:

- IJC Project 4: Court funding
- IJC Project 6: Civil procedure reform
- ICJ Project 7: Enforcement of civil judgments
- IJC Project 9: Judicial training institutes
- IJC Project 10: Criminal procedure training
- IJC Project 11: Access to legal information
- IJC Project: Restructuring the Judiciary

Criminal procedure reforms are expected in both entities, and as well new laws on Land Registration and Notaries.

3 Key problems in Court Administration in BiH

"Justice delayed is justice denied."

- attributed to British Prime Minister William Ewart Gladstone (1809-98)

The primary concern of this project is delay in court proceedings, and the host of factors that contribute to such delay.[2] Consistent with Gladstone's dictum, the delays in the system are seriously undermining the quality of justice afforded in the Bosnian court system. Indeed, the right to a trial "*within reasonable time*" is stated in the European Convention on Human Rights art. 6.

Accompanying concerns include the limited resources the courts have to work with, and how they can make best use of the resources they have. Such issues must be considered in the context of the judiciary's ideals; any changes in the system must not compromise, and should promote, the independence, integrity, and public confidence currently enjoyed by the BiH judiciary.

Many of the factors that contribute to delay in the courts of Bosnia and Herzegovina are genuinely beyond the scope of this project.[3] As this project is aimed at the delay problem overall, however, all contributing factors must be acknowledged, even if some of them cannot be addressed effectively at this time and in this forum. Some of them are the subject of further discussion in JSAP Thematic Report X.

Of particular concern is the large backlog, particularly of civil cases, in the courts throughout both the Federation and the Republika Srpska. The backlog itself is a problem in itself as well as a consequence of the problems otherwise identified in this report. The daunting backlog hangs over the judges, casting an ominous shadow over a court system that is struggling to keep pace with new filings.

In considering the state of the courts in BiH, it is important to avoid reading too much into anecdotal information. Every court system, even the best managed, has a few cases that take too long, cost too much, or evidence serious mismanagement by the judges or parties involved. While it is tempting to jump to conclusions based on the exceptional case, such conclusions and recommendations are neither helpful nor fair. Accordingly, the project team took care to examine a cross-section of cases and a cross-section of courts. The problems identified below are problems not only in a particular case or a particular court; these problems are more general throughout the system.

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[2] JSAP Report X, Executive Summary, p. 6 ("delay is a major source of complaint about the judicial system in [BiH], from both the public and from the judges themselves").

[3] *Id.* at 6 (*e.g.* "the prime factor causing delay is the procedural laws governing court proceedings and the way that those laws are interpreted").

3.1 Institutional problems

3.1.1 Unfocused responsibility for efficient court operations.

With each canton in the Federation operating independently, responsibility for court operations is too widely dispersed, divided among ten separate cantonal governments, ten separate Ministries of Justice, and ten separate cantonal court presidents. Because of the decentralized authority over courts in the Federation, reform efforts are difficult, and there is no consistent monitoring of court effectiveness and productivity. The Federation Ministry of Justice disclaims responsibility for the court efficiency problems, arguing that it has no power to address what problems exist.

In the RS, where there is only one legislature, one Ministry of Justice, and one Book of Rules, dispersion of authority and responsibility is not such a problem. While the courts of the RS suffer most of the difficulties faced by Federation courts, the authority and responsibility to address the problems in the RS is clearly established.

3.1.2 Inexperienced and/or ineffective judges

Both judges and lawyers complain that many judges are inexperienced and are therefore seriously impaired in their efficiency and effectiveness on the bench. This problem arises from the war years when many judges left the bench and when there were few qualified candidates to fill the vacancies. At that time, of course, compensation for judges was sufficiently low that there was little incentive for competent and/or successful lawyers to apply. The compensation level for judges has now been raised, but the bench is still staffed with some poorly qualified judges appointed during more difficult times.

Some argue that the problem is not so much a lack of experience as a lack of competence; after all, the judges appointed in the wake of the war now have several years' experience.[4] In either case, the problems persist, and there is little or no coordinated training available to help them raise their level of performance.

3.1.3 Counter-productive incentives created and perpetuated by the "quota" system.

The established "quota" of cases per judge was originally intended as an orientational measure. It is used to determine how many judges are needed in a particular court, based on an expectation that each judge should be able to resolve a certain number of cases each month or year. Court culture, however, has embraced and enshrined these "quotas," which the judges now perceive as a minimum expectation of the number of cases they must resolve each month. There is a perception that as long as a judge is meeting his or her quota, his work habits cannot be criticized and his job is secure.

At the same time, the mere existence of these quotas encourages judges to measure the adequacy of their efforts against standards other than the highest ideals of justice. In other words, defining a judge's duty in terms of meeting a quota necessarily detracts from his or her greater sense of duty to litigants and to the public.

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[4] JSAP Report X, pp. 18-19; this view was echoed in one of the interviews conducted by the project team.

Notwithstanding the distraction the quotas provide, many judges are hard-working and conscientious about their caseload.[5] But preoccupation with quotas introduces counterproductive incentives. In some courts, it is reported that judges who have met their quota for the month may, in fact, ease their efforts to avoid calling too much attention to themselves or to avoid embarrassing their colleagues whose numbers are lower. Any incentive to slow down, given the current backlogs, is extremely problematic.

In all courts, judges acknowledged that the quota system encourages judges to devote their time to the cases that can be quickly and easily resolved and to avoid more complicated long-term cases. The quota system also encourages and rewards appellate courts that remand cases repeatedly for insubstantial reasons.[6]

3.1.4 Chronic underfunding: lack of equipment and inadequate premises.[7]

Every court visited suffered in some significant way from lack of funding. Some have no reasonable access to a photocopy machine (Banja Luka Basic Court and Zenica Cantonal Court, both very large courts, each have only one photocopier); others are so short on space that judges have to share offices with their typists and even with each other (Srpsko Sarajevo District Court).

Most courts deal with the shortfalls by delaying payments for court-appointed experts, for postal services, and for courthouse utilities. The courts' failure to pay court experts, however, has prompted some of them to withhold their opinions until paid for previous appearances. This can have a very direct impact on the processing of cases. Unpaid postal bills have, on occasion, caused the post office to suspend mail service for the court. Failure to pay utility bills can result in loss of electricity, heat, or telephone service in the courthouse, bringing some work in the building to a standstill, if not resulting in closure of the building altogether.

The situation – particularly as it applies to physical facilities – is so bad in some areas that it is seriously inhibiting the quantity and quality of the work. In one large court with large backlogs, they are operating with 60% of the judges they need to be fully staffed, but they do not request that the judgeships be filled because they have no office space available for more judges. Another court of considerable size is functioning without a court secretary simply because there is no place for such person to sit.

A related concern is the timeliness in disbursing the limited funds allocated to the court system. Delay in such disbursements is sufficiently serious to hold up salary payments as much as four months. Under such circumstances, motivating staff, who are already underpaid by just about any measure, may well be an impossibility.

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[5] It is not uncommon to find judges exceeding the quotas by 30-40%, and on some occasions, by as much as 100%.

[6] JSAP Report X, pp. 23-24; *see also* Section 3.3.2, "Unproductive activity by the second-instance courts," *infra*.

[7] JSAP Report X, pp. 20-21.

3.2 Organizational problems

3.2.1 Judges' performing too many tasks that could be performed by others

Analysis of the caseflow establishes that the bottlenecks in the system occur at the judges' desks. There appears to be enough staff in most courts, and the registry offices are largely very current in their work. The courts have limited capacity to process the cases because of the limited amount of judge time available to hear the large number of cases.

Given that judges' time is a scarce resource, many of the tasks performed by judges should be handled more appropriately by court staff or, in some cases, outside of the court system entirely. Too much of judges' time, particularly court presidents' time, is occupied by ministerial tasks or other less important and less productive work. Delegation and time management must be employed to maximize judges' productivity in case processing. *See* Section 3.3.5, *infra*.

3.2.2 Overly-specific, obsolete, and inflexible Books of Rules.

The focus of court staff and, to a lesser extent, court presidents is compliance with the Book of Rules. These Books have minor differences in some of the cantons of the Federation, and they prescribe court operating methods with such specificity that there is little room for innovation or streamlining of operations. The RS Book of Rules, which has not been updated since 1976, suffers from the same deficiencies. This perpetuates a court culture in which no one thinks in terms of which procedures are efficient or cost-effective. The inflexible rules also prevent the court from exercising meaningful management of the court's limited financial and human resources.

3.2.3 Inadequate and misdirected reporting systems.

The reporting systems currently in use fail to depict accurately and meaningfully the productivity of the court and the state of its caseload. Although the actual reporting mechanisms vary, very few of them appear to account for the ages of cases, *i.e.* the time from filing to disposition. While the number of cases decided and the number of cases backlogged are both recorded, there is no way to know whether old cases are being neglected, or how timely the cases are being resolved. The particular shortcomings of the reporting system presently in use are manifest when contrasted with the alternatives proposed in this report. *See* Section 6.3.2, "Reporting," *infra*, for a discussion of those alternatives.

3.3 Operational problems

3.3.1 Too many hearings, accomplishing too little.

The court's duty, under the procedure laws, to find material truth places a particular burden on the courts, prompting prolonged quests for better evidence,[8] while the parties bear little or no burden in gathering the evidence to support their respective claims. Related to this, there appears to be a general reluctance among judges to resolve their cases quickly and expeditiously. Cautious about their factual findings, they err on the side of requesting more evidence. They are sensitive about their reversal rates in the court of appeals, and are reluctant to resolve complex or difficult cases for fear of being reversed. The easier path is simply to schedule more hearings, requesting additional expert testimony or other evidence, further prolonging the case.

Bosnian judges do, for the most part, take seriously their duty to find the truth and do justice. And while some attribute this commitment to a fear of reversal, there is a strong culture in favor of establishing truth to a high degree of certainty. The judges, as a rule, fail to balance this interest against an equally important interest of ensuring that court action is timely. Until the judges, as well as the applicable procedure laws, recognize that delays in the justice system undermine justice itself, they will fail to strike an appropriate balance, and the cases will be characterized by a succession of hearings of marginal, if not negligible, value.

3.3.2 Unproductive activity by the second-instance courts.

Appellate review appears to be one of the most dysfunctional aspects of the justice system. Too many cases heard on appeal are returned to the first-instance court for further proceedings, often for merely technical or insubstantial reasons. While the second-instance courts have authority, in some situations, to hold hearings and resolve the case finally, they almost never do so.[9] It is easier to send it back to the first instance court, delaying the ultimate resolution of the case and burdening the trial court with the case all over again.[10]

As noted above, the quota system encourages this practice. A case sent back to the municipal court for further proceedings is counted as a case "resolved" for purposes of meeting the quota. When a case can be remanded for a simple matter of form, the appellate court can get credit for "resolving" the cases without even bothering to consider the underlying merits of the case.

3.3.3 Non-attendance of parties and lawyers.[11]

Review of the case files confirms that many scheduled hearings must be concluded without action because a party is absent. This is not always the fault of the

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[8] JSAP Report X, p. 28 ("Experts are called in many cases where expertise is . . . unnecessary. Judges say that they are required to do this as part of the search for material truth, but it is clear that they prefer to refer to an expert rather than basing a decision on their own common sense and judgment.")
[9] JSAP Report X, p. 37.
[10] JSAP Report X, p. 34.
[11] JSAP Report X, pp. 25-27.

parties; often it is determined, at the hearing, that the party was never served. But when a party or attorney fails to appear, there are rarely any consequences – *e.g.* sanctions or default – for such failure.[12] And almost without exception, the failure to appear results in another wasted hearing, and another continuance.

3.3.4 Problems related to service of process

The time it takes for the court to serve parties and difficulties in locating parties to serve introduces delays at every stage of the proceedings. The means employed for effecting service, primarily through the postal service, are expensive and ineffective.

3.3.5 Poor time management and lack of productivity among judges and staff

Of particular concern is the manner in which judges and staff approach their work;[13] there appears to be insufficient commitment to serving the public well and getting the job done.[14] There appears to be too much emphasis on meeting the quota and doing merely what the Book of Rules requires. The project team found some notable exceptions to this generalization; a number of individual court presidents and court staff spoke passionately about their commitment to good public service. Nonetheless, it appears to be a truly rare occasion that judges or staff come in early or stay late in order to meet the press of court business. Moreover, it appears that judges and court staff do not always make the most productive use of their working hours.

3.3.6 Problems of large and persistent backlogs

While backlogs in case processing may not be as serious a problem as originally thought, many courts still operate with daunting numbers of unresolved cases hanging over them. Even if a court is now resolving cases at the same rate they are filed, a large backlog carried from year to year will persist and assure that a large portion of the cases will not be resolved in a timely way. Closer examination of the backlog situation is provided *infra* at Section 8.

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[12] JSAP Report X, p. 32 discusses the availability of default judgments and dismissals, but makes no comment whatsoever about whether the courts issuing such judgments. The project team concludes that these options are too rarely invoked.

[13] JSAP Report X, p. 43 ("one of the prime reasons for delay is attitudinal").

[14] JSAP Report X, p. 18.

4 Structural Issues – Administration of the Judiciary Overall

4.1 Configuration of the courts

An efficient justice system requires that courts cover the territory of the country in a rational and economical way. Too many courts cause unnecessarily high budgetary outlays, and scarce resources are spread too thin.

As a consequence of the new administrative division after the war into two entities and the Brcko District, the structure of the courts was changed primarily for political reasons and not for economical and efficiency reasons. If the goal is efficiency and economy, a thorough, impartial analysis and a reform (at least within an entity-level territory) is needed.

In 1989, pursuant to the Law on Courts (Official Gazette of BiH 19/86, 25/88 and 33/89), there were seven (7) Appeals Courts in Bosnia and Herzegovina: Banja Luka, Doboj (in today's RS) and Bihac, Mostar, Sarajevo, Tuzla, and Zenica (in today's Federation). Today, there are ten Appeals Courts in the Federation (one in each canton), five Appeals Courts in the RS, and one Appeals Court in the Brcko District, a total of sixteen (16) Appeals Courts altogether in Bosnia and Herzegovina. The network of municipal courts expanded from 61 before the war to 79 today, with RS and some cantons in the Federation considering opening more. The question of how many courts there should be and where they should be located is an important one from an efficiency standpoint – for appeals courts as well as for municipal courts. Too many and very small courts are not cost effective.

A program of restructuring the courts was endorsed by the Steering Board of PIC at the 28th of February 2002. There is no need for further recommendations.

4.2 Administration of the judiciary

4.2.1 The Role of Ministries of Justice in general

Internal court administration cannot be viewed independently of the administration of the courts or judiciary overall. The funding of the courts and the working conditions in the courts directly influence their efficiency. In most countries, the administration of the judiciary is the responsibility of the Ministry of Justice ("MoJ") or an independent body.

There is no single Ministry of Justice for the entire Bosnia and Herzegovina: the Federation and the RS each has a separate Ministry, and the Brcko District has a Judicial Commission serving a similar role. In addition, each canton within the Federation has its own MoJ. These cantonal MoJs have administrative responsibility for the courts within the canton.

Independence of the courts is one of the basic principles in a democracy. However, the judicial independence relates primarily to judicial decisions. The administrative bodies responsible for budgeting have the duty to provide the courts with the premises, working tools and salaries enabling them to act independently in fulfilling

their tasks. In turn, the budgeting bodies have the right to demand from the courts both efficient use of budget resources and effective caseload management.

In this way the Ministries have an overall responsibility for an efficient judiciary, performing the dual role of manager and mentor towards the courts in their charge.

4.2.1.1 Oversight Role

In its oversight role, MoJ monitors performance of courts and acts in order to prevent backlogs and system-wide crises. Cooperating with the courts, it must create good budgeting and reporting routines. The MoJ should also monitor the caseload and the backlog in the entire judiciary. Regular review of the court system is necessary to ensure that the judicial service is provided equally throughout the entire territory of the Federation or the RS.

Again, "managing" in this sense by no means should be construed as directing or micromanaging the work of the courts, which would undermine their independence. Rather, the MoJ should monitor the work of the courts in its totality and assist, where it can, in improving the results.

4.2.1.2 Mentoring Role

In its mentoring role, MoJ provides standards, guidance, training, IT equipment and other assistance to the courts. From a cost-efficiency point of view every court should not be responsible for developing its own systems and working methods. This is obvious when thinking of a future computerized case management system. The Ministries should have the responsibility, working together with the courts, to initiate and develop adequate working tools.

In addition to the dual oversight/mentoring role, the MoJ should also be the focal point for legislative initiatives. In all the courts' work, it can serve as resource of expertise and a forum for discussion of all issues of interest to the judiciary.

4.2.2 The role of the Ministries of Justice in the Federation

The political structure of the Federation makes administration of the judiciary unnecessarily expensive in that entity. Administrative responsibility for the courts is fragmented among ten separate cantons, and ten separate MoJs. In some of these cantons there are just one or two municipal courts.

In such a situation, it may be difficult for the various cantonal MoJs to develop and deliver the necessary levels of support and expertise, particularly in court administration. Resources are severely limited in most of these cantons, and the courts undoubtedly receive varying levels of support and service from the different ministries.

4.2.2.1 The need for unified administration

It can also be argued that there is a need for uniform systems for the courts within the Federation in several respects. Uniform Books of Rules (*see* Section 4.3, *infra*) would be beneficial when writing the rules, in training programs, and when sharing experiences

and expertise between the courts. Budgeting and reporting systems are other areas where unified systems could be beneficial for the whole Federation.

Both from a cost-efficiency point of view and in consideration of unified systems, there is a need for a more centralized administration of the judiciary at least at entity level. The question about whether this centralized administration should come from the Federation Ministry of Justice or, as in Brcko, from an independent body is not important from an efficiency standpoint. That question is best reserved to other projects and forums concerned with issues of politics and independence.

4.2.2.2 Facilitating cooperation

If it is not feasible politically to centralize administrative authority for the courts in the Federation, it is more important than ever to foster close cooperation between the cantonal Ministries of Justice. The Federation Ministry of Justice is in a position to coordinate the various cantonal MoJs, to share information about what is happening in the various courts, to facilitate – to the extent possible – consensus on how to conduct judicial business in the entity. While it appears that the Federation Ministry of Justice could play a greater role in this regard, the Ministry has expressed the view that its role and responsibility in relation to the courts is unclear. That role should be reviewed and clarified.

4.2.3 Improved funding of the judiciary

Inadequate funding overall became a recurring theme during the project's examination of court administration issues. Many of a court's expenses are entirely beyond the court's control, particularly in criminal cases. These uncontrollable expenses – for defense lawyers, expert witnesses, and even the medical bills of prisoners – should not compete with the court's operational needs for funding; they threaten the court's ability to meet its basic operational needs, such as utility payments.

Findings detailed in Section 3 ("Key problems") confirm the need to increase funding for the courts overall. Although, legislation to remedy this critical situation is beyond the scope of this project,[15] adequate funding remains a fundamental prerequisite for efficient and effective operation of courts.

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[15] Other projects are attempting to address the budget situation in general. ABA/CEELI and the Federation Ministry of Justice proposed legislation as part of an initiative on the Law on the Budget of Courts and Prosecutors Offices in the Federation that would have allowed judiciary input on judicial budgets. This reform effort was frustrated when Single Treasury Account financing was implemented in both the RS and the Federation. IJC is now working with ABA/CEELI on alternative approaches to the issue. A separate "budget execution" project is underway at OHR, which including a redrafting of the Law on Treasury. It is not clear, however, if any of these reform efforts would actually result in an *increase* of the level of funding provided to the courts overall.

Recommendations:

- ***The role of the Federation Ministry of Justice should be clarified with an eye toward centralizing and unifying court administration entity-wide.***
- ***Legislation that would provide adequate funding to the courts should be given high priority.***

4.3 Uniform Books of Rules

4.3.1 Need for an updated, consistent Book of Rules

While it provides a structure and the basis for an organization, the Book of Rules ("Book of Rules on Internal Court Operations of Regular Courts," Official Gazette of SR BiH, 3/76) ("BoR") is clearly obsolete.[16] Some cantons of the Federation have amended their BoR,[17] so there is no longer a single, consistent BoR in BiH or even within the Federation. Other courts, for example those using computer systems, have simply begun to ignore portions of the BoR that are clearly inapplicable in an automated court. In the RS, the original BoR from 1976 is still in use.

The various BoRs, therefore, need to be updated to reflect common, current, and prudent court practice and to reflect a common approach, nationwide, to court operations. Ideally, they should be harmonized into a single BoR that is applicable generally, throughout the Federation, and in the RS as well. This may require a cooperative effort, with participants from multiple courts and ministries, coming from both entities.

4.3.2 Eliminating inappropriate detail in the Book of Rules

Of even greater importance is the content of the BoR itself. The amended versions, such as the one from Unsko-Sanski Canton, include only very limited changes to the 1976 BoR. Accordingly, most of the BoRs now in use suffer the same debilitating defect: they prescribe procedures, often extraordinarily detailed procedures, rather than articulating the principles on which the procedures are based.[18] As a result, the BoRs perpetuate a culture of slavish rule compliance, rather than a work culture based on efficient and productive efforts to pursue the higher mission of the court.

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[16] The BoR referenced here should not be confused with the "Book of Rules on the Internal Organization and the Systematization of Posts" adopted separately by each court. The latter Book of Rules is already within the control of the court, and can be amended to reflect optimal court practice. The BoR discussed in this chapter is binding on all courts within each canton, and within the RS, and needs to be revised to allow courts more flexibility in approaching their work and addressing local operational problems.

[17] *E.g.* the Unsko-Sanski Canton has adopted its own BoR (Official Gazette of USK, 4/00).

[18] The Brcko District has drawn up a proposed draft for a new BoR, completed in March 2002, but even this version, which trimmed the total number of articles from 220 to 190, includes large amounts of unnecessary detail. For example, while article 21 appropriately requires the court to keep and submit certain statistics, article 22 imposes a rule that the deadlines for statistical reports be compiled in a table and that the table "shall be posted at a noticeable place within the office" of the person charged with making the reports. While it may be a good idea for an employee to post "a reminder" to perform the essential duties of his or her job, it is a matter far too trivial to make the subject of a court rule. The courts of the Brcko District are not a subject of study for this project, of course, but it is significant that even this most recent attempt to comprehensively rewrite the BoR has failed to remedy some of the BoR's most obvious deficiencies.

A couple of examples of the overly detailed nature of the BoR may be illustrative. In 1998, the Federation Ministry of Justice produced a "Model" BoR for consideration and adoption in the various cantons. Although this is undoubtedly an improvement on the 1976 version, it suffers very much from the same deficiencies as the original. For example, article 88 goes into tedious detail about how to create copies of court documents, requiring that documents retyped shall be compared by "[t]wo officials of whom one reads the original while the other follows the transcribed text." It goes on to state that "[i]f the copy contains such errors which require more significant crossing-out, erasing, or adding text, the whole text shall be transcribed again . . . ." To the extent this subject matter requires a rule at all, it should be sufficient to say that copies should be accurate and neat.

Consistent with these conclusions, one court president commented that the BoR is too detailed, and expressed a desire for a simpler one that "would force them to think, not just follow the rules."

4.3.3 Preserving local court autonomy over their own operations

Each court should be free to apply the more general, principle-based BoR in its own way, as long as the principles – *e.g.* efficiency, transparency, independence – are effectively advanced. Thus courts will be empowered to improve their own operations.

Operational procedures must be adopted, of course, even for such mundane matters as copying documents. But such detailed Internal Operating Procedures ("IOPs") should be adopted and applied separately by each local court. Accordingly, each court would have the power to amend its IOPs whenever necessary to respond to operational problems or to improve operations overall. Making the transition to a single, unified BoR should not, therefore, restrict local variation, but rather facilitate it.

The rule-bound culture of the BiH court system, represented by the BoR, is inimical to efficiency of operations and to the potential for internal reform. Many of the recommendations in this report could have been, and presumably would have been, implemented already in various reform-minded courts, except that such innovations would conflict with the procedures prescribed in the BoR. The BoR, therefore, should be redrafted to ensure that it facilitates, rather than inhibits, efficient and effective operation of the courts.

Recommendations:

- ***Replace the existing Books of Rules with a new one that applies uniformly throughout both entities; at the very least there should be a unified Book of Rules for the courts of the Federation.***
- ***The content of the new Book of Rules should be simpler, articulating general principles rather than specific rules, and granting the court considerable discretion in how to carry out court business (consistent with the principles articulated in the Book).***

4.4 Transfer of Cases to Other Bodies

The courts in Bosnia and Herzegovina perform many functions that are not necessarily judicial in nature. Apart from their core cases – civil and criminal – courts issue a variety of records and certificates, notarize documents, and perform other functions that may be performed by other organizations, institutions, or private individuals. These ministerial tasks could be transferred to other bodies, reflecting the practice in some other countries. Indeed, the courts in such countries are free to concentrate on the judicial functions.

Non-judicial functions in the courts are, among other things:

- notarization of documents
- operation of the Land Registry;
- operation of an Enterprise Registry;
- issuance of criminal records.

GTZ (Deutsche Gesellschaft fur Technische Zusammenarbeit) is addressing some of these functions in various projects in Bosnia and Herzegovina. GTZ's projects could have a direct impact on the workload of the courts. A new Law on Land Registries and accompanying regulations, for example, is at an advanced stage. Although GTZ does not propose taking the Land Registries out of the courts, the project may increase efficiency enormously. Among other things, it plans to outfit courts in Bosnia and Herzegovina with 121 computers, dedicated to this very task.

GTZ is also introducing a new Law on Notaries, with implementing regulations. This will take certain matters out of the court altogether, and may very well decrease civil caseload as notary-approved contracts are less likely to result in litigation.

The new Law on Registries of Enterprises, adopted in the Federation in 2000, keeps those functions in the courts and requires that the registration be kept on electronic data processing.[19] Here the efficiency gains may be made without taking the process out of the courts.

The Register of Criminal Records could both for principle and practical reasons be transferred to the police in the future. This is an idea that may be worth pursuing. The project team, however, has no information about the efficiency and integrity of police

[19] The corresponding law in the RS, from 1998, also preserves the court's role, but without reference to computerized methods.

operations in Bosnia and Herzegovina, and it is reluctant therefore to recommend such a change at this point.

The critical issue from the standpoint of court efficiency is to minimize the involvement of judges in all such non-judicial duties. It should be sufficient for qualified court staff to perform these functions without distracting judges from their judicial work. Moving such functions and responsibilities out of the court system entirely, while it might reduce the burden on the courts themselves, would not necessarily generate a net gain for the system overall.

5 Procedure Laws

When asked about the problem of delay, the court presidents and court secretaries almost unanimously blamed the strictures of the procedure laws. This is consistent with the conclusions of the JSAP assessment.[20] No thorough analysis of court efficiency, therefore, can ignore these problems of procedure, although separate projects to reform those laws are already underway and nearing completion.[21] While most of this report focuses on changes that can be made internally by the courts, some general observations about the impact of the present procedure laws is warranted.

5.1 General concerns related to the procedure laws

Formally, the procedure laws of BiH are quite new. The civil procedure law is of December 3, 1998,[22] whereas the criminal procedure law is of November 20, 1998.[23] However, these laws are only slightly revised versions of the respective laws from the former Yugoslavia. In the RS, both the civil[24] and criminal[25] procedure laws in use are amended versions of the respective laws of the former Yugoslavia.

The procedure laws in the Federation and the RS place the burden on the judge to discover "material truth" in each case.[26] This burden spawns a "judge-driven" system, with the judge's primary concern being the completeness of the evidence. Although Federation Civil Procedure Code art. 10 also demands that "the court shall conduct the procedure without any unnecessary delay, causing as little expense as possible,"[27] the trial judges err on the side of lengthier and more exhaustive discovery. Review of the cases in the various courts under study clearly confirmed this inclination.

- In civil cases, the burden of finding "material truth" in each case generates delay. A reasonable judgment based on the evidence presented by the parties, or the most relevant evidence that is readily available, may be sufficient in most cases, at least on the civil side. A higher standard is of course justified in criminal cases.
- There are clearly too many hearings held in these cases, many of them unproductive. Procedure laws should be revisited with a view toward minimizing the hearings.

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[20] *See* for example JSAP Thematic Report X – Serving the public, p. 31.

[21] A working group under the auspices of IJC is working on a draft civil procedure code. The draft is scheduled to be finished by May 2002. Also for the RS, the procedure laws are under revision, partly under the auspices of IJC. A new civil procedure code is planned to enter into force in January 2003, while there is no set timeframe for criminal procedure. In Brcko, new civil and criminal procedure codes were passed under the auspices of Brcko Law Revision Commission, adopted on September 21, 2000 and October 23, 2000 respectively. Official Gazette of the Brcko District of BiH, nos. 5/00 & 7/00.

[22] Official Gazette of FBiH No. 42/98.

[23] Official Gazette of FBiH no. 43/98.

[24] Official Gazette of SFRJ no. 4/77, as amended *inter alia* by Official Gazette of the RS nos. 17/93 and 14/94.

[25] Official Gazette of SFRJ no. 4/77, as amended *inter alia* in Official Gazette of the RS nos. 26/93 and 6/97.

[26] Federation Civil Procedure Code art. 7; Federation Criminal Procedure Code art. 13; RS Civil Procedure Code art. 7; RS Criminal Procedure Code art. 15.

[27] *See also* RS Civil Procedure Code art. 10.

- The law calls for three-judge panels in certain circumstances, even for relatively minor matters.[28] Given the value and scarcity of productive judge time, the requirements for three-judge panels should be reduced.
- The courts also deal with more routine matters – uncontested divorces, issuance of criminal records, registry of company names – that do not require a judicial decision to be made. To the extent that it is desirable to retain those functions in the courts (*see* Section 4.4, "Transfer of cases to other bodies," *supra*), the laws might be revised to minimize the involvement of judges in them.
- Service of process problems consume great amounts of time and money; these procedures should be reviewed to consider alternative methods. *See* Section 7.8, "More effective and efficient service of process," *infra*.

Based on the findings of the project group, those involved with reform of the procedure laws, both civil and criminal, may wish to consider these issues, particularly as they reflect on efficient process in the courts.

5.2 Concerns about the civil procedure law

In addition to the more general issues cited above, the project identified several concerns unique to civil cases. These may also be worth the attention of those involved with reforming the civil procedure:

- Counsel seems to play a limited role and bear little of the burden of discovery. Placing the burden on the court, as under the current law, can only slow things down. Merely requiring the parties, in their initial filing, to state as complete basis for their claims as possible and the evidence relied on, would go a long way toward making the first hearing a productive one and expediting the cases overall.
- Written responses to the complaint would be helpful to the court and to the process. Case review revealed that in many cases, it was not until the first hearing that the defendant even articulated a response to the suit.
- Default judgments are clearly underused. There must be greater consequences for failures to respond and failures to appear.
- Many of the cases reviewed involved trifling sums of money, nonetheless occupying considerable court time; accordingly small claims procedure may be worth a re-examination, to assure that they do not command more resources than they deserve.[29]
- There appears to be little if any resort to alternative dispute resolution such as mediation; perhaps the laws do not adequately encourage such measures. There

[28] Divorce cases in the Federation are just one example.

[29] The Federation Civil Procedure Code chapter XXXI provides rules peculiar to proceedings in disputes of minor value. According to art. 451, the threshold value is 1.000 KM. The small claims procedure contain certain limitations on the right to appeal, but the proceedings in the court of first instance itself are governed by the general regulations of the law on civil procedure. Especially in small claims proceedings, there is a need to reduce the number of hearings. In the RS, the threshold value is set at RS Civil Procedure Code chapter XXX art. 460.

may also be some merit in simply requiring counsel to meet separately, without burdening the court, to discuss settlement at some point early in the process.

5.3 Concerns about the criminal procedure law

Review of criminal cases highlighted a few issues for court efficiency in criminal procedure:

- The case review revealed some examples when criminal cases were postponed in order to clarify issues that should have been settled during the investigation, such as establishing whether defendant has a previous criminal record, the extent of bodily harm (requiring medical expert witness), or ascertaining the defendant's civil/military status. Perhaps the criminal procedure can address this problem, which appears to occur too frequently.
- The revision of the criminal procedure law might also evaluate the extent of the court's obligation to *ex officio* seek more evidence than that offered by counsel. For example, if the prosecutor does not provide sufficient evidence to establish defendant's guilt, perhaps the consequence of that should be acquittal of the defendant rather than additional hearings to provide more evidence.

5.4 Concerns about appellate procedure

The Project has not endeavored to investigate the appellate procedure closely. However, the general impression reinforces the view expressed by the JSAP report, that judgments are often vacated and remanded in order to have the trial court establish new evidence.[30] According to the Federation Civil Procedure Code art. 352, *see also* RS Civil Procedure Code art. 370, the court of second instance shall vacate the judgment if it considers that a proper determination of the facts requires such new hearing, "*unless* it has decided to hold the hearing itself" (emphasis added). This provision shows that even now, the appeals court may hold a hearing itself. The case review, however, did not provide any examples of this.

If the case is appealed on the merits, and the appellate court sides with the trial court, the trial court's judgment is affirmed. It appears from the case review, however, that if the appellate court disagrees, it will vacate the judgment and remand the case, presumably because (1) it deems it better to have the court of first instance collect the evidence, or (2) the issues are such that the appellate court has no power to conduct the hearing. Wherever possible, the appellate court should rather render its own judgment, based on an evaluation of the evidence after having held its own hearing. Perhaps a change in appellate procedure law could mandate, encourage, or at least facilitate this practice.

5.5 Enforcement

In BiH, the lawsuits themselves are not the only source of the backlogs. Enforcing the judgments also poses a big problem. A separate project to reform enforcement

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[30] *See* JSAP Thematic Report X – Serving the Public, p. 40.

procedure has been set up under the auspices of IJC. Speeding up enforcement procedure is one of the specific objectives of this project.

Recommendation:

- ***The Working Groups on procedure laws should consider amendments that might be effective in maximizing case handling efficiency.***

6 Court Management

6.1 Innovations within the power of the court president

6.1.1 The role of the court president

Ultimately, it is the court president who must be responsible for management of the court. The Books of Rules already acknowledge the critical managerial role of the court president by relieving him of some or all of his caseload (depending on the size of the court).

6.1.1.1 Selection and tenure

In selecting the court president, it is important to find persons with skills and interest in management in addition to requirements for the position as a judge. In the Federation, however, the court presidents are usually elected by the judges in that court for a period of four years with the possibility of election for another period.[31] Alternative selection procedures should be considered that would take managerial skills into account, such as appointment by a non-political, judicial body, as is done in many other European countries.

There is great value in having the court president serve a fixed term, with limited options for reappointment. The position of court president may well benefit from a change from time to time; a new court president may bring new energy and new ideas. At the same time, the court president should, as now, be secured with a judge position after the period as court president.

6.1.1.2 An active management/leadership role

While much of the administrative detail work can and should be delegated to a court administrator or other staff (*see* discussion of the role of the court administrator, Section 6.1.2, and of delegation, Section 6.1.3, *infra*), supervision and management of the work of judges must be reserved to the court president. It is not enough to review monthly statistics to ensure that everyone is meeting his or her quota. The court president can, and must, take an active interest in the productivity of the judges of the court.

The court president must also find ways to motivate the judges of his or her court to meet the caseload challenge each court faces. This will require leadership skills, inspiring judges with a sense of responsibility to the public and to the justice system itself.

Regular meetings with the judges may help – in Brcko, the court convenes a meeting of judges every morning at 8:00 a.m. to review what everyone is doing and to make sure that the needs of the court and of the public are being met. The court president should have a clear idea of what he or she is trying to accomplish with each meeting, and

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[31] In the RS the court president is appointed by the National Assembly "as proposed" by the High Judicial Council. Law on Courts and Judicial Service art.45. Thus leadership and management skills can be considered, but ultimate appointment power is vested in a political body.

should schedule and run the meetings to respond to that particular need. If judges are not being sufficiently productive, it may be important to meet very often to review what each is doing, and to ensure that a reasonable and adequate number of hearings are scheduled for each judge each day.

The court president must also take action to ensure that cases are not being overlooked or neglected. In one court, a judge had left the bench several months earlier, and it appeared that the cases assigned to that judge had been wholly neglected in the months since. A court president must take responsibility to reassign such cases and ensure that they get the attention they deserve.

If the court has a large backlog, it is the responsibility of the court president to develop a strategy for dealing with the backlog. This may include lobbying the Ministry or the legislature for additional resources, redeploying the resources the court already has, and/or establishing priorities for the court in addressing old cases, among other things. In one court, the court president asked each judge to report on the status of all cases over three years old, explaining why the case had lingered so long and proposing how that judge's backlog could be addressed. This served not only to inform the court president, but to impose some accountability and motivation on the judges themselves.

A court president is also in a position to arrange "mentoring" for judges of his or her court who need help, or who need to learn better case management techniques (*see* Section 7, "Case Management," *infra*). Informal coaching and training by a supportive court president, or by other seasoned judges of the court – being careful not to interfere with the judge's decisions or judgment – can help inexperienced judges learn to be more productive and decisive. On a related note, new judges should be introduced to the work of the court in a way sensitive to their orientation needs; they may need to start on some simple cases, with some coaching, before assuming a full caseload.[32]

If the problem is not a judge's skills, but his unwillingness to work, the court President may need to resort to alternative methods. In both the Federation and the RS, the court president has power to initiate disciplinary proceedings against judges who neglect their duty.[33] A court president should not hesitate to make use of those procedures when a judge of his court is willfully unproductive and resists more positive efforts to help solve his problem.

The most critical element of the court president's approach is that he or she take "ownership" of the court and its various challenges. Court presidents who struggle with insufficient resources (funding, judges, staff, equipment, facilities), may be tempted to use that as an excuse, washing their hands of responsibility for their court's problems and

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[32] At the very least, the court president should ensure that new and inexperienced judges not be saddled with the oldest and most difficult cases, cast off by the sitting judges. Giving those problematic cases to the new judge – a practice that is all too common in many court systems – virtually ensures that those cases will not get adequate attention any time soon. Such an approach is a classic example of placing the interest of the individual judges over the interest of the public whom the court should be serving.

[33] *See* RS Law on Regular Courts art. 62 ("The procedure for discharging judges and lay judges is started by the Minister, while the initiative may also be started by the president of the court . . . .") Official Gazette of RS, No. 22/96; *see also, e.g.,* Zenicko-Dobojski Canton Law on Courts art. 87-88 ("Proposal to initiate the procedure for release of a judge . . . may be lodged by the president of the . . . court.") Official Gazette of Zenicko-Dobojski Canton, No. 4/96.

failures. While the limited resources pose daunting challenges, it is the court president's responsibility to take a problem-solving approach to address these issues to the extent he or she can, and to make maximum use of the resources he or she does have.

6.1.1.3 Caseload for the court president

Court presidents should each carry a caseload of his or her own. In smaller courts, they already do; in larger courts it will be possible only if the court president delegates more work to staff. By carrying a significant caseload of his or her own, the court president will share in the court's primary role – resolving cases – and will maintain a connection and a sensitivity to the issues facing the court's judges on a daily basis.

6.1.1.4 The court president as role model

Finally, the court president serves as a "role model" for all judges and staff in the court. This relates to working habits, attitudes toward the public, and ethics. By carrying a caseload, the court president can also model effective case management for the other judges of the court.

Recommendations:

- ***Court presidents should assume an active role in motivating the judges of their respective courts, holding them accountable for their productivity and arranging "mentoring" for those – especially new judges – who need some guidance to be productive.***
- ***Court presidents should assume responsibility for the integrity and efficiency of the court, delegating administrative details to staff (such as the new "court administrator") in order to focus on larger issues and problems in the court's operations.***

6.1.2 A new position of court administrator

Each court employs staff empowered to supervise other staff. All but the smallest courts are empowered to hire a court secretary as the top administrative staff for the court. In smaller courts, the head of the registry office may fill that role. As a rule, however, this person is underutilized in the court. Greater delegation to high-level and competent court staff can strengthen a court's operations, and free the court president to carry at least a partial caseload. Accordingly, the project team recommends that the position be redefined and retitled as "court administrator," with wide authority over administration within the court.

Key to the success of this recommendation is the recruitment and development of high-level and competent managers for this top court administration position. In order to attract and retain top talent it will be necessary to increase the salary of the court administrator substantially, to a level consistent with the responsibility level contemplated.[34]

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[34] Following this same logic, the new court administrator in Brcko is compensated at a level several times higher than that of court secretaries in the Federation and RS.

Elevating the status of the court administrator also empowers him or her in dealing with the rest of the staff. The court staff must understand that the court administrator is someone with authority in the court to hire, reassign, direct, and discipline staff members. Again, management of the judges themselves should be reserved to the court president.

Heavy delegation of responsibility to the court administrator should ease the court president's administrative burdens, allowing him to assume more of a caseload. *See* Section 6.1.1.3, "Caseload for the court president," *supra*.

The court administrator's job requirements and job description should reflect the management responsibilities he can be expected to assume. While it is not strictly necessary that he or she have a law degree, he or she should have an equivalent level of higher education in management or some related field, as well as a demonstrated ability to manage an operation as large and complex as the court.

Job responsibilities should include the following:

(1) ensure the normal flow of cases and other court business,
(2) ensure compliance with applicable laws and rules for court operation,
(3) promote efficiency in court methods and operations,
(4) develop and administer the budget and the court's financial resources,
(5) supervise all court staff, other than the judges themselves,
(6) prepare the budget submission and administer the court's financial resources,
(7) compile the statistics for the court and draft the reports, and
(8) diagnose and troubleshoot problems in court operations, making recommendations to the court president for action.

In carrying out most of these duties, he will need to keep the court president advised and, in some cases, obtain approval before acting. Also, some recommendations may include actions that only the court president is authorized to take; but even in these circumstances, the court administrator can explore the options and present his recommendations. With the court administrator's briefing and advice on such matters, the court president can efficiently consider and weigh the alternatives before making final decisions.

As the Law on Courts and the various Books of Rules now in effect reserve many of these functions to the court president, amendments will be necessary. But even under the existing Books of Rules, there is potential for court administrators to do much more than they are doing. Where a formal delegation of authority is not possible, the court administrator can nonetheless analyze the issues, consider the options, and propose the solutions for the court president's approval. Court presidents, in turn, can fulfill their rule-based responsibility to oversee operations without devoting inordinate amounts of time to the details.

Once the Book of Rules is amended to give more flexibility in court operations (*see* Section 4.3, "Uniform Books of Rules," *supra*), court administrators can take initiative to reorganize staff and streamline operations within the court. While management under the Book of Rules may have emphasized execution and compliance, a more creative and innovative management process should be possible in the next

generation. The court must recruit court administrators who can take advantage of their flexibility to envision solutions and to innovate.

Of course, the court president and the court administrator will need to develop a strong and trusting working relationship. In time, the court administrator should be able to develop a sense for which types of issues he needs to take to the court president and which ones he can resolve on his own authority. While that will be a matter of ongoing negotiation and will vary court-to-court based on the respective talents of court administrators and court presidents, the balance should be struck much more strongly in favor of the court administrator than ever before in the court system in Bosnia and Herzegovina.

Recommendation:

- ***A new position of "court administrator" should be created, replacing either the court secretary or head of the registry office in each court, but empowered to play a much larger role in managing court operations. The position should be compensated at substantial level, appropriate for recruitment of high-level, highly competent managers.***

6.1.3 Delegation

6.1.3.1 Judicial work – Effective use of law clerks and volunteer interns

It is abundantly clear that the chief bottleneck in caseflow occurs with the judges themselves. The project team found very few instances where judges were stuck with little to do, awaiting the actions of others. Because most courts are otherwise adequately staffed, the court should consider how it can delegate judicial tasks, or otherwise draw upon staff to enhance the productivity of the judges.

Law clerks and volunteer interns exist in almost every court, but it is not entirely clear what they do. In one second-instance court, two law clerks do a great amount of work normally reserved for judges. They can review case files, research the law, and draft disposition orders to be signed by one of the judges. The court president in this court boasted that he had the functional equivalent of two extra judges in his court, thanks to the high quality work, including draft judgment, done by these law clerks.

While no one would advocate the judges' abdicating responsibility for the orders they sign, routine or perfunctory cases *can* be handled effectively by experienced law clerks with an appropriate level of supervision by the judge. Courts should explore expanded use of law clerks and volunteer interns to assist judges in the actual resolution and disposition of cases. A court may take positions from more generously staffed offices in the court, and seek funding for more law clerks instead, as this redeployment of resources has the potential to significantly increase the productivity of judges. *See* Section 6.2.3.1, "Reconfiguring the personnel structure," *infra.*

Other courts reported that the law clerks were not very helpful and couldn't do much to enhance court productivity. While it is possible that law clerk assistance is more meaningful at the appellate level, it appears likely that more effective use of law clerks

could significantly enhance the judges' productivity at every level.[35] Even having a law clerk review the case files in detail in advance and orally brief the judge before each hearing may enable the judge to significantly increase the number of hearings he or she can conduct in a day or a week. Even better, thorough preparation and briefing in advance of the hearing may help make the hearing more productive in terms of resolving the case.

Recommendation:

- ***Courts should restructure in order to expand the use of law clerks, volunteer interns, and other legally-trained staff who can expand the productivity of judges. Judges should delegate their more routine work to such law clerks, wherever possible.***

6.1.3.2 Administrative work – Effective use of other judges and staff

A court president has many resources to draw upon in carrying out his administrative responsibilities. As already noted, he can and should make good use of a competent and court administrator. Yet he should not overlook the talents and abilities of his fellow judges.

On occasion, when there are special judicial issues or special projects to be done, a court president may call upon other judges of his court to assist. He could, for example, ask other judges to assume responsibility for addressing a specially-identified problem or need in the court. *See* Section 6.1.5, "Processes for improvements in the courts" *infra*. In this way, he may draw upon the particular interests and expertise of the judges of his court. At the same time, he may give these other judges a sense of ownership for court performance overall.

All recommendations go to the court president who, after all, is ultimately empowered to take action in these areas. Full delegation of responsibility would require legislative change. *See* Section 6.2.1, "Legislative obstacles," *infra*.

Recommendation:

- ***Court presidents should delegate administrative tasks to staff and can enlist other judges to assume responsibility for special projects or ad hoc issues in the court's administration.***

6.1.3.3 Ministerial work – Empowering staff

In addition to deciding cases, judges in BiH assume responsibility for other ministerial functions. This includes oversight of land registry and of enterprise registry, among others. In other legal systems, some of these functions are assigned to other government ministries – there is no particular reason that this remain a court function. *But see* Section 4.4, "Transfer of cases to other bodies," *supra*.

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[35] In the United States federal courts, where law clerks get the greatest use, appellate judges get three or four law clerks each, while trial judges get two. This acknowledges that law clerks can be of much greater use at the appellate level. While the U.S. approach may constitute over-reliance on law clerk assistance, there can be little doubt that competent law clerks do much to enhance a judge's productivity.

Even if these functions are retained by the court, the specific responsibilities need not be exercised by the judges themselves. For some of these duties, competent staff may be empowered to do ministerial and even some substantive work in each of these areas, equipped with a judge's signature stamp.[36] In other cases, and perhaps more appropriately, the statutes may be amended to allow officers of the court other than judges – *i.e.* court staff – to process registry requests or otherwise perform ministerial functions in the court without direct judicial involvement. *See* Section 6.2.1, "Legislative obstacles," *infra*.

In addition to these functions, staff may also be in a position to draft consent judgments when cases are settled, or when there is no legal issue in dispute, such as an uncontested divorce. Any of these matters, including routine ministerial matters, can and should be referred to a judge if a genuine problem, issue, or dispute arises. But the routine work can and should be handled by staff, reserving the judges' attention for more substantive work.

6.1.4 Decentralized management structure

Building on the principle of delegation, the court president, particularly of a larger court, can divide the court into departments (e.g. criminal, civil, commercial, etc.), and designate a different judge to oversee caseflow and operations in each department. Such organizational methods are in place in several of the courts studied by the project. Such division will assure that court operations in particular sub-categories of cases will be overseen by judges who handle those types of cases and who understand the challenges posed by such cases.

Again, relieving the court president of direct responsibility for every category of case may result in more effective management of court business. At the same time, it may enable the court president to handle some, or more, caseload. *See* Section 6.1.1.3, "Caseload for the court president," *supra*.

6.1.5 Processes for improvements in the courts – special projects

In all organizations there is a need, from time to time, for introspection and evaluation. The rules and routines of an organization, well-suited to the institution fifteen or twenty years ago, might not be optimal today. The courts' challenges and the public's expectations are constantly changing. Thus, evaluation of the work of the court should be an ongoing process.

This report gives several recommendations for the process of self-evaluation, particularly for the purpose of achieving greater efficiency in each court. The process can be handled in various ways, consistent with the culture and the particular needs in each court. Some courts are doing well on one issue, and others are better on other issues.

The greatest potential for improvement lies with in the experience and expertise of those working in the court. They are the best positioned to develop new solutions. The

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[36] In one court, registry office staff makes liberal use of a judge's signature stamp for official court documents, such as official certifications that an individual has no criminal record (required for some job applications), without bothering the judges at all.

courts themselves, therefore, should undertake studies and/or evaluations of their current operations for the purpose of identifying more efficient ways to do business. This can be done for the total management of the court, but may be most effective when targeted at particular functions of the court, such as the routines for dealing with special cases. Although there are many ways to approach such a self-evaluation, a model on how to manage such a process might be of some assistance and inspiration.

Such a process will be different from court to court depending of the size of the court and of how complex the issue is. A project reviewing all routines in the court will involve more people than, for example, a simple assessment on how land registration is functioning. In a small court it is easy to include all employees in a court-wide meeting; a large court must rely on meeting participants to represent the interests of others who are not present. The model set forth below, therefore, has to be adjusted to the specific situation and problems.

6.1.5.1 Planning

A good plan, identifying not only the goals but also the process for reaching them, is very important. As far as possible the goals should be specific and measurable. The goals should also be realistic and attainable. It can also be very important to involve a variety of people from the court in setting the goals, as buy-in and participation may be essential for the achievement of objectives. A long-term goal can be broken down into smaller interim goals, so progress can be made step-by-step, and can be tracked.

Goals for an improvement of the efficiency in the court could be:

- a better organization of the court
- improved cooperation between divisions in the court
- avoiding periodical unproductiveness
- improved flexibility in using the staff
- increase efficiency in handling of case flow (specifically, for example, a goal to reduce the number of hearings between the first hearing and the main hearing to an average of __, by a specified date)
- improve timeliness (specifically, for example, a goal to reduce the average civil case disposition time from 16 months to 10 months by a specified date next year)
- plan for reducing backlogs (specifically, for example, a goal to reduce the backlog by 35% percent by a specified date next year)
- use the possibilities to move judge duties to the staff
- avoid unnecessary routines
- improve service to the people, setting service standards
- improve the working conditions

Defining tasks

- How to reach the goals
- Dividing the goals
- Who is going to participate in the process

6.1.5.2 Organizing the process

The results of a changing process are often dependent on how the process is organized. The people who are working with special tasks are able to give recommendations from their point of view. At the same time it is necessary to see the links between different functions in the court. All people should be involved, yet someone must bear ultimate responsibility for the process and for the conclusions.

One model is to have a project group and several working groups. The leader of the project group does not need to be the court president, but could also be a court secretary or a judge who is interested in administrative matters.

There are several alternatives in organizing the process:

- appoint a project leader; the court president/a judge/the court administrator/head of the registry office
- include representatives from different divisions
- subdivide the group into smaller working groups for special issues
- use a "suggestion box" to allow input (even anonymous input) from all interested parties
- ask the users of the courts, attorneys and prosecutors, for example, for suggestions.

6.1.5.3 Motivating

Motivating people should be a natural part of the process to

- bring understanding for the project to all involved
- encourage to openness, confidence and creativeness
- try to find incentives to participate, and
- hold a competition for the best suggestion for improvement.

6.1.5.4 Delegating

The different working groups or individuals ought to be delegated specified

- tasks and responsibilities, and
- time limits.

6.1.5.5 Questions to be asked during the process

- What may we learn from what we are doing well?
- Where are the weaker links?
- Where are the bottlenecks?
- Could this task be done in an easier way?
- Could we use our human resources in a better way? Perhaps with more training?
- Do you need better cooperation with anyone? Do you think anybody wants the same from you?

6.1.5.6 Analysis and discussion

- problems and suggestions are to be discussed in the project group
- suggestions may be discussed in meetings of judges and/or all staff

- changes may be required in the Book of Rules
- the recommendations may have an economic impact and must be reconciled with the court's financial resources

6.1.5.7 Conclusions and implementation

- conclusions have to be precise
- responsibility for implementation must be clearly defined

6.1.5.8 Evaluation

The changes should be evaluated after some time. The results should be distributed to all employees. If the process is successful, there might be an idea to find a way to mark the occasion.

Recommendation:

- ***Court presidents should start improvement processes in their courts, undertaking special projects to address the court's most serious problems.***

6.2 Empowering the court to practice effective court management

6.2.1 Legislative obstacles

The whole concept of delegation may meet resistance when court presidents, judges, and staff doubt the legitimacy of such delegations. Of course, specific legislative changes, stating for example that land registry transactions can be effected without judicial involvement, could be enacted. A more effective approach may be to enact a more sweeping law, granting a court president general authority to delegate tasks and responsibilities of the court to judges and staff of the court. Such a grant of delegation authority would also strengthen the independence of the court by empowering the court to perform its work however it sees fit.

Recommendation:

- ***New legislation should be enacted that clarifies a court president's power to delegate administrative and ministerial tasks to be performed by competent court staff without direct judge involvement.***

6.2.2 Budget

Clearly there are problems in how budgets are administered. Inflexibility in budget administration, in addition to the more common complaint of inadequate funding in general, restricts the power of the local court to achieve optimal use of the limited resources it has. This is a factor contributing to inefficiency in the court system overall. Independence over the use of budget resources is also a key element of judicial independence.

6.2.2.1 Need for more financial resources

It is well known and generally agreed that the courts of BiH desperately need additional funding, for court facilities, for equipment and supplies, and for timely

payment of reasonable salaries. *See* Section 3.1.4, "Chronic underfunding," *supra*, and Section 4.2.3, "Improved funding for the judiciary," *supra*. Recognizing that the funding shortfalls are not easily remedied, this project was charged to make "low-cost" recommendations.

The project plan nonetheless asks for an assessment of the minimum level of equipment needed in courts of various sizes in order to work efficiently. The lack of equipment obviously has direct influence of the efficiency in many courts. Some courts have access to modern office support equipment such as networked computers, copy and fax machines. Others do not even have copy machines, let alone computers. An efficiency gain could be expected if the courts were equipped with appropriate office support equipment. The minimum level of such is discussed in Section 10, *infra*.

6.2.2.2 Need for flexibility in the use of budget resources

The fact that financial resources are scant, however, requires that a much greater effort be made to assure that such resources are wisely allocated, *i.e.* to those uses that will have the greatest impact for the court. Here the existing framework is woefully deficient.

The present budget process in most courts is controlled strictly by law and regulation. Courts submit a budget request to the Ministry of Justice. In some cantons of the Federation the request is forwarded directly to the legislature; in others the Ministry of Justice may amend the budget request before submitting it to the legislature. In either case, the court always gets significantly less than it asked for. This is true for the courts in the RS as well.

Any ministry amendments to the budget request, of course, constitute a serious imposition on the independence of the courts. Certain needs of the court may be funded while others are not, with such decisions subject to political forces and the political process.[37]

Of more immediate concern for the efficiency and effectiveness of court operations is the nearly inevitable misallocation of the funding ultimately provided. The budget given to each court is broken down into categories, and the courts typically have little or no discretion to reprogram money from one budget category to another based on the court's highest priorities and most pressing needs.[38]

This inflexibility virtually guarantees that the limited financial resources of the courts will be allocated in sub-optimal ways, usually without regard for the efficient and effective operation of the court. For example, personnel budgets are typically established following formulae set by regulation; funding for typists is typically provided on a straight formula of 1.2 typists per judge. The legislature must pay the salaries of the full complement of typists as long as all the positions are encumbered, whether or not the

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[37] Implications for judicial independence in the budget process are being addressed in separate projects. For a brief discussion, see footnote 15.

[38] One court, however, indicated that it could approach the Ministry of Justice for permission to reallocate budget money. Such reallocations, however, did not include personnel (salary) funds.

particular needs of the court warrant that many typists, and regardless of whether the court has greater needs and higher priorities.

- Decentralized budgeting

Individual courts should ideally be given discretion over the funds provided to them, both for personnel and for other operating expenses. This will empower the court presidents to engage in true management of their respective operations, establishing their highest priorities and funding those needs that will have the greatest impact on court efficiency.

At the same time, courts must be allowed to recapture unused salary funds for their authorized but unencumbered positions. Presently, the courts can claim salary money only for the staff actually on-hand, established by a monthly personnel report. But if a court is operating short-handed, with unfilled judgeships or unfilled staff positions, their need for the additional funding is *greater*, as they must compensate for the missing personnel.

The power to reprogram lapsed salary funds would be a particularly meaningful reform as most of the money in the court system is tied up in salaries. Moreover, it appears that the courts, while arguably short of judges, generally have more than adequate staff.[39] This suggests that there may be potential to reclaim some salary funds by trimming court staff. The implications are significant: if the court can operate with fewer staff, potentially significant sums of money can be freed to meet the courts' needs for IT resources and other badly needed innovations.

Allowing a trade-off between staff and equipment may be the only method of introducing IT-based innovations, innovations which could, in turn, allow the court to function with a leaner staff. The corresponding increase in overall efficiency should be obvious, and yet the present funding mechanisms make it impossible for the court president to effect such reallocations and innovations.

Of course, giving the court presidents such fiscal control is something that should be phased in, with controls in place and training provided.

- More modest approaches to budget flexibility

Granting the court full control over budget resources may be too radical to consider at first.[40] Less sweeping budgetary reform may, however, achieve many of the same goals. If the court is not afforded the power to reprogram money from one purpose to another on its own, it should at least be allowed to petition the MoJ for approval of such reprogrammings.

If a court is content to leave a position vacant, it should be able to recoup at least some of the money saved. If the legislature or the Ministry objects to allowing complete reprogramming, particularly of salary money, they may be persuaded to allow a fixed percentage of money saved to be recaptured by the court for its higher priorities. This

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[39] JSAP Report X, p. 19 ("In [JSAP's] own observations, courts appear, if anything, to be overstaffed.").

[40] Such "decentralized budgeting" was controversial when it was introduced in the federal courts of the United States in the early 1990s.

creates an incentive and an opportunity not only to reprogram money to its most effective uses, but also to save the system money altogether.

Recommendations:

- ***Court operations, including salaries for court staff, should be funded on a flexible basis, giving the court some discretion to reprogram its budget money from lower-priority uses to the more pressing needs and challenges in the court.***
- ***Concurrent with the decentralization of budget authority, court presidents and staff should be given training in budget administration, and appropriate controls (regular audits by the Ministry of Finance, perhaps) should be adopted to ensure against corruption or defalcations.***

6.2.3 Flexibility in use of human resources

Human resources constitute the largest segment of the court's budget, with most of the court's financial resources dedicated to judge and staff salaries. As alluded to in the previous section, staffing in the various courts is set by long-standing and inflexible rules that do not necessarily reflect the reality of court operations. These rules must be relaxed if the court is to manage these resources efficiently and productively. Courts must also make better use of the discretion they do have to redeploy existing staff to address the courts' most pressing needs

6.2.3.1 Reconfiguring the personnel structure

Courts must be given authority to redraw their organization charts and retool their human resources to meet their needs more effectively.

While the "bottlenecks" in case processing appear to be the judges themselves, the courts are staffed heavily, possibly even overstaffed,[41] with low-level workers who are poorly positioned to enhance the efficiency of the judges' work. Every court appears to have a few law clerks or volunteer interns, and some courts have been able to use them very effectively to improve court efficiency and the timely disposition of cases. *See* Section 6.1.3, "Delegation," *supra*. If they were empowered to do so, courts could reconfigure their staffs to include more law clerks, making corresponding staff reductions in less-critical areas.

The law clerk scenario, of course, is merely an example. Different courts have different needs, but the courts need the ability to make individual personnel adjustments to meet those needs.

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[41] *Supra*, note 39.

Recommendations:

- ***Consistent with independent control of budgets, courts should have flexibility to re-organize their personnel structure, i.e. how they title, define, and compensate the various positions within the court.***
- ***Absent flexibility at the individual court level, courts and Ministries of Justice should work together to reconsider the appropriateness of the current personnel structure, and to allow the courts to request exceptions that have the potential to improve court efficiency.***

6.2.3.2 More flexible use of existing staff

Principles of good management require regular monitoring of office operations to assure that present needs and priorities are being met. While court staff may not always be busy in their respective roles, the court may well have other needs, occasioned by absences or by other special circumstances. Court supervisors should make temporary assignments, requiring staff to serve where they are needed, not exclusively in the office they were hired into. This will make more productive use of the human resources of the court, employing the court's excess capacity to meet its most pressing needs.

One large first-instance court makes use of such procedures, and the head of the registry office described this task – monitoring needs and reassigning staff to meet those needs – as a major part of her job. The need to make such reassignments should be even more acute in a small court.

Making this work will require cross-training of staff. It may also be helpful to change job titles and redraft job descriptions in more flexible terms to adjust expectations and to make it clear that the staff may be called upon to serve in a variety of roles in the court.

Recommendation:

- ***Even where formal reorganization is not possible, courts should make constant adjustments and reassignments of existing personnel to make best use of the staff they do have to address the courts' highest priorities and most pressing needs.***

6.2.4 Training in court management

Court presidents are educated and trained as lawyers, not as managers or administrators. There is no reason to believe that candidates for court president should have any particular training or experience in management, at least in the Federation, where court presidents are chosen by popular election among the sitting judges of the court.

An excellent judge is not necessary an excellent court president. The role as the administrative leader of the court requires other capabilities such as interpersonal skills and interest in management. In addition, it is important to have some education and training in management which, after all, is a profession in itself.

Consistent with the recommendations for a more active role for court administrators, there is a need for training in court management and administration both for court presidents and for court administrators. Joint training for court presidents and court administrators could be beneficial for both and might be very important in helping to establish the new high-level role for the court administrator.

The training curriculum should include the following:

- General management
  - Human resources / personnel management
  - Financial management
  - Management by objective (goal-setting)
  - Teambuilding and motivation of employees
  - Supervision / delegation / coaching
  - Self-evaluation and improvement
- Court management
  - Administration under the new Book of Rules (*see* Section 4.3, *supra*)
  - Role of the president vis-à-vis role of the court administrator
  - The role of the court president related to the other
  - Budget preparation and management
  - Reporting
- Case management
  - dealing with backlogs
  - motivating judges
  - expediting cases
  - Codes of ethics

Training programs should be available to court presidents and court administrators on a regular basis to ensure that newly appointed court presidents and court administrators get the training they need early in their tenure. Such training should be a key element of the curriculum offered by the proposed judicial training institute, and failing that, should be arranged directly by the Ministry of Justice or even by a judges' association.

In addition to formal training programs, court presidents and/or court administrators would benefit from local gatherings occasionally to share experiences and learn from each other on administrative matters. Aside from any joint sessions, court administrators should arrange to meet and share ideas in the absence of their court presidents or other judges. Only in the absence of judges can court administrators candidly share their problems, concerns, and ideas.

Many of the recommendations in this report require rethinking and reconceptualizing the work of the court. Redefining roles and job responsibilities is just the beginning. Training will be an essential element of this reform, as it will be necessary to educate the reforms' key participants, to help court presidents and court administrators capture this new vision for court operations.

Recommendations:

- ***Training in court administration for court presidents and court administrators should be made a high priority in any reform effort, as these individuals must take the lead in introducing efficiency-measures into their respective court operations.***
- ***In addition to formal training, court presidents and court administrators should meet periodically to share ideas and experiences in court administration; on at least some occasions the court administrators should meet separately from the judges.***

6.3 Measuring and reporting productivity

6.3.1 The Quota System

6.3.1.1 The Origins and the Meaning of the Quota Standards

In the former Yugoslavia, and its successor countries – including Bosnia and Herzegovina – as well as in both of its entities, there is a standard for the number of cases a judge should resolve per year. It was originally developed as a number of cases that represent a reasonable annual caseload for a judge. That way, it could be calculated how many judges were needed to handle the given caseload. Later, this equation was naturally turned around: if for example, 286 "P" cases (civil) is a reasonable annual caseload per judge, then it must also follow that a judge – any judge – should be expected to resolve the 286 "P" cases every year. And thus, the "orientational measure" (*norma*) was born. It is usually referred to as the "quota."

However, the name is somewhat of a misnomer. The true quota system – taken to its natural conclusion – would mean that each judge is a pieceworker, measured by the judgment delivered. Nevertheless, having been established and accepted as the preferred term, the term "quota" will be used in this section as well as in the rest of the report.

The quota standards now in use in Bosnia and Herzegovina are presented in Appendix 2: Current quota system. The quota numbers differ somewhat from canton to canton and between the entities. The lowest quota in the Federation is about 60% of the highest numbers. The quotas in RS are about 82-84% of the highest quota in the Federation.

6.3.1.2 Findings

In interviews with court presidents and judges, in regards to quota standards, it was pointed out that:

- The quota standards are different from canton to canton. The difference in quota standards is troublesome because it seemed unfair that some judges are required to work much harder than the others, for essentially the same pay.

- The quotas are unreasonably high, given the size of the caseload and the complexity of cases. At the same time the quotas were exceeded by several judges.
- A further point made was that the quota standards do not differentiate between simpler and more complex cases. Any case resolved counted for the quota purpose; however, cases could be very different in terms of effort needed to resolve them.
- When asked, judges and court presidents, stated that the quota system gives incentives to prioritize and resolve the easiest cases first. That way, the quota can be filled the quickest. In appellate courts, judges had an incentive to remand cases to trial courts and meet the quota that way in the fastest possible way.
- On the other hand, even though they all agreed that the quota system was problematic in application and even in principle, most court presidents and judges felt that it should be kept, at least for now. The quotas are perceived as an essential motivation for productivity, and that absent a quota expectation, many judges could not be motivated to perform at a reasonable level.

6.3.1.3 Evaluation of Quota Standards

The number of solved cases can never be a good measurement tool alone. The burden of work represented by a single case can differ very much. A low number of cases resolved may not indicate low productivity of the judge; it could reflect high complexity of a particular case. This is a fundamental weakness in merely counting cases to measure productivity. The quota standards are simply not designed to measure all aspects of a judge's performance.

As a motivational tool, quota standards are effective up to a certain point. The standards' other deficiencies make their usefulness quite limited, however, even counterproductive. In particular, the quota standards create incentives to prioritize the simplest cases, and to overlook the complex cases entirely.

The most significant objection to the quota standards is the risk that judges will slow down their work once they have reached the quota for the month or year. This risk is, in a way, confirmed by the judges' insistence that the quota standards must be kept. Another objection is that is difficult to set the "right" standards. The quota standards are not flexible, but static, at least in the short run.

On the other hand, there is a strong cultural affinity for certainty and simplicity, which quota standards abundantly provide. For that reason too, as well as the basic motivation the quotas provide, most judges and court presidents interviewed maintained that quota standards should be retained, their own reservations notwithstanding.

6.3.1.4 Alternatives to Quota Standards

However, there are alternatives to quota standards that may provide as much, and better motivation to judges. This report sets forth specific recommendations for such alternatives (*see* Section 7.2.2, "Standard trial times," *infra*), including:

- A better reporting system, providing statistics for each judge – the number of cases resolved, the backlog, and the age structure of the backlog.
- Trial time standards, showing the length of time taken to resolve each case and the average length of time by judge and/or type of case.

Statistics about the work for each judge are presumed to be open to all judges and subject to discussion among the judges of that court. The court president and/or the head of division (criminal or civil) has the responsibility to counsel any judge that is not meeting the time standard and is developing a backlog that is of concern.

The total range of the measures available – cases solved, trial times, and overview of the backlog, complemented with other special factors that the president and judge are aware of – should, taken together, give a fair depiction of the performance of the judge.

These tools should provide good incentives for a results-oriented approach. Comparison or competition with the other judges, and the reluctance to stay behind, should provide positive incentives for individual contribution to common efforts. Ultimately, the incentives will be more appropriate and more effective than those generated by the current quota expectation.

6.3.1.5 Conclusion

There are strong arguments in favor of abolishing the quota system as a measure for the productivity of the judges. Better measures and incentives for improved efforts in case management are available. However, there is a strong cultural affinity to keeping the quota standards and the several court presidents and judges have emphasized a need to keep them, at least temporarily.

There is always a need for some standard for determining how many judgeships a certain court should have. Some type of orientational standard will need to be supplied. The danger is that whatever orientational standard is adopted should not be held up or used as a performance standard for the judges themselves. The future goal should be that the quota standards, if kept, should exclusively be used as originally intended: as orientational standard for determining number of judgeships.

The quota standards in any case will have to be adjusted in light of the anticipated new procedure laws; this will probably result in higher quotas. Some standards are probably also needed in the planned restructure of the courts. There also is a need for unified standards throughout the courts of both entities.

Recommendations:

- ***New quota standards should be introduced that reflect the expected changes in procedural laws.***
- ***Quota standards should be made unified for both entities; at least for all cantons in the Federation.***
- ***Quota standards, as a measure of minimum expected workload, should eventually be phased out and replaced by improved and transparent statistics for each judge reflecting solved cases, trial times and backlogs.***

6.3.2 Reporting

6.3.2.1 Overview

In BiH courts, there are regular and special reports, a well as internal and external ones. The most comprehensive of these are the annual reports. Good reporting routines are essential to the proper working of the courts. Firstly, the court president should have available reports that give him or her a good overview of the cases pending before his or her court. Secondly, the Ministries of Justice should have available reports that give an overview of the workload and performance in the courts, thus enabling them to review whether the courts are sufficiently funded and staffed.

6.3.2.2 Findings

Both in the Federation and the RS, the legal framework pertaining to reporting of statistics is set out in the Law of Courts.[42] Both municipal courts and cantonal courts are to issue a report on the progress of work in the court to the cantonal Ministry of Justice on a semiannual basis. The municipal court is further required to provide a copy of the report to the cantonal court.

The law does not specify more closely how the statistics should be reported; this is done in the applicable Book of Rules. But even those rules leave the court presidents great latitude as to the contents of the reports. However, the abbreviations for the case types are quite similar throughout the Federation and the Republika Srpska, facilitating easy comparison between the courts.

Hence, there are large differences between the reports, ranging from reports that only quote statistics together with a few explanatory words, to reports with detailed analyses of the case handling in the court. The shortest reports provide no analysis of or comments on the quoted figures, but restrict themselves to a mere recitation of law.[43] Sometimes, they are simply copies of the previous reports.

The reports generally consist of two parts: a verbal explanation of the figures, and tables setting forth the figures themselves. The verbal explanation focuses on the

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[42] *See* for example Law on courts for Western-Herzegovina Canton art. 31, 2nd para. The Law of Courts for the Herzegovacko - Neretvanski Canton art. 42 requires the courts to "keep statistics" and "report the activities of the court". *See further* Law on Courts of the RS art. 37, 2nd para., Official Gazette of the RS no. 22/96.

[43] One report provides figures only for individual judges, without a summary.

breakdown of the numbers by case type, but the focus is seldom on the *age* of the pending cases. Comments on the quality of the court's work, measured by the reversal rate, are frequently included.

Additionally, court presidents can and do require the judges to prepare reports internal to the court, such as reports for all cases older than one year. The law and the Books of Rules do not require such reports. However, they are necessary for a court president to fulfill his general responsibility for the court overall and are indeed highly commendable.

For the entire Mostar Canton, the cantonal court has just recently introduced special forms, put on top of the case file. By completing those forms, the courts provide, *inter alia,* filing dates, disposition dates, and a calculation of the length of the proceedings. The municipal courts then provide reports with an *age* breakdown of the cases on an annual basis.

6.3.2.3 Discussion

It is essential that the reports generated by the courts are meaningful in the sense that they fill the recipient's needs for that information. With other words, it is essential that the reports be designed such that they serve as a *useful management tool*. What distinguishes useful reporting from mere formalities is that useful reports are *actionable*; they invite *feedback* from the recipient, and *a follow-up action* may ensue.

Generally, *external* reports should be as uniform as possible statewide, and at least within each entity. This facilitates comparison. This could be attained if guidelines or recommendations for both content and layout are issued.

Both Federation and the RS use the same numbering format. This is commendable, and should be continued.

When case is remanded to the first instance court after the appellate court has vacated the decision, it is assigned a new case number.[44] The case is reported as "resolved" under the previous case number, although the case indeed is *not* resolved. Thus reports provide figures that are more positive than the underlying facts support. To avoid misleading statistics, a case should retain its case number as long as it is pending before the court, regardless of any appeals.[45] Likewise, the reports should reflect this.

For each court, the general figures could be reported using a form such as the one set forth below. It is similar to the ones that the courts already use, but a separate column depicting the percentage change in the size of the backlog since last reporting period is added. This will show the amount of time required eliminating the backlog, given the current resolution pace and assuming no further inflow. Further, the reports could include an analysis of which types of cases are the ones that are disposed.

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[44] *I.e.*, a case is filed in 1998 and is assigned case no. K: 123/98. It is appealed in 1999, and the appellate court vacates the judgment of the court of first instance. Upon receiving the case in 2000, the municipal court assigns the case a 2000 case number. The original case number, however, is retained on the case folder.

[45] Of course, the case should be assigned a separate case number for the *appellate court*.

Case type	Unresolved as of 31.12.01	Filed in 2002	Total in process in 2002	Resolved 2002			Unresolved as of 31.12.02		Change in backlog (%)	Clearance rate (%)
				Backlog	Inflow	Total	Old	New		
K P Ki Mal …										

The clearance rate measures the court's ability to cope with the inflow of cases.[46] A number higher than 100% indicates that the backlog is *decreasing*, whereas a number lower than 100% indicates that the backlog is *increasing*.

By reporting the case statistics in this way, it is easy to see whether the efforts are put on backlog cases, or whether the backlog is simply pushed forward as the court devotes itself to dispose newly filed cases.

Also, the composition of the backlog could be reported, as a number of the courts already do. A column showing the size of backlog divided by the number of resolved cases could be added, for example, like this:

Case type	Unresolved / Resolved	Cases emerging from 1999	1998	1997	1996	1995	Earlier years
Ki K P Mal …			…	…	…	…	…

As discussed more closely in Section 7.2.2, *infra*, more emphasis on the courts' work should be put on the total case handling time in the court. Accordingly, the reports should reflect both the targets set and the results achieved. For example, the below form could be used.

Case type	Case handling target (days/months)	No. of cases on target	Percent on target	Average case handling duration
Ki K P Mal …	…	…	…	…

Using a computerized case management system, it would be possible to automatically calculate the case handling time days, months and years. This would obviously facilitate the preparation of the reports tremendously.

[46] *I.e.*, resolved cases divided by inflow.

Again, it is worth noting that numbers should be handled with care. They are useful as tools for better court management, but can also be misleading.[47] Therefore, comments and analyses should be offered in the narrative part.

The *narrative* part of the report should include a general analysis of the work of the court. This does not need to be lengthy, especially if there is no backlog or if there are no problems to comment on. It could comprise the following points:

- Comment on the reasons for any big changes in case inflow.
- Analysis of the court's performance vs. applicable targets.
- Comments on the success – or lack of success – of last period's efforts on the backlog.
- Analysis of the overall efficiency of the court rather than individual judges' performance.
- Description of plans made by the court president (together with fellow judges) on the strategies for addressing the backlog. The plans should include quantifiable goals to be reached in the next reporting period.
- External factors that have had an impact on the operations of the courts.
- Staffing, funding and other issues the court president deems necessary to include in order to give a thorough description of the court's operations.

Although the courts are diligent in submitting their reports, it appears that few get much feedback on them.[48] Constructive feedback could be very helpful, however. It may motivate the courts to perform better and, at the very least, to file more complete and meaningful reports.

Feedback could include the recipient's opinion as to whether the recipient is satisfied with the progress of the work, and if not, what actions the recipient thinks should be taken in order to address points that are not satisfactory. Likewise, the recipient could comment on the actions proposed by the court president by either endorsing them or proposing additional actions be taken. However, very good care should be taken to ensure that feedback from the Ministries do not infringe on the independence of the court.

As regards *internal reports*, they can be made much more informally and more frequently than the reports that are presented to an external body. The main purpose of such reports is to ensure that the court president has a sufficient overview of the work of the court. In the absence of a computerized case-management system, the internal report must include an overview of the actual caseload among the judges. The court's internal report flow should be left to each court president; however, it is recommended that the *internal* statistics be broken down by the individual judge. In doing so, the court president

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[47] For example, a reversal rate of 50% is not necessarily alarming if it is calculated on basis of a case type that only consists of 2 cases.

[48] There are exceptions to this. In at least one canton, the reports are discussed in the cantonal assembly, to which the cantonal court president is invited. Another court reported getting written feedback from the cantonal Ministry of Justice. Further, as one court president pointed out, "informal feedback" may be given, perhaps in meetings.

can draw attention to speedier case handling. Further, especially if presented during a judges' meeting, the court president could exert moral pressure on judges to common efforts.

Both in internal and external reports, more focus should be put on reporting duration of cases, rather than simply the number of cases processed by the court.[49] The initiative taken by the Mostar Cantonal Court is commendable, in that the ages of cases are accounted for. Generally, reports should reflect the average case handling time, measured in days.

At the same time the external reports are made, a summary of the report designed for the general public could be made. Such summary could be forwarded to the media through press releases, and also posted in the court's premises.

Recommendations:

- ***The case reporting system should be similar entity-/statewide.***
- ***Cases should retain their original case number as long as they are processed in the same court.***
- ***Reports should be designed such that more attention is drawn to the standards of performance, particularly to timeliness in the resolution of cases.***
- ***Reports should include comment on long-term trends and a description of the court's plan to address its problems, if any.***
- ***Appropriate feedback on the reports should be given.***

[49] *See* Section 7.2.2, "Standard trial times," *infra*, for a closer discussion.

7 Case Management

The court president has the responsibility for the total caseload of the court, starting with his or her duty to assign the cases to the judges. Good case management, however, must be practiced by each judge with his or her own caseload, working without interference from the court president. The court president does, however, have a general duty to ensure that all cases are handled within a reasonable time and, if necessary, to address backlog problems through case reassignment or other methods.

7.1 Allocation of cases

Cases should be allocated and delivered to judges as soon as possible, preferably the same day the case is received. As already done in many courts, all cases should be assigned on a random basis. The system should also be transparent to avoid potential for manipulation, or even the appearance of manipulation. Once an automatic and strictly random system is established, it can easily be administered by staff, without the court president's further involvement.

A strictly random system does not take into consideration that some cases are simple while others are very time-consuming. These differences should level out over time. Occasionally, however, some adjustments may have to be made to address gross inequalities of caseload. Ideally, rather than reassign cases from the overloaded judge, the court president should suspend the assignment of new cases to that judge for a period of time.

There will, however, from time to time be situations when there is a need to reassign cases because of an extended illness, a maternity leave, a judicial vacancy, or a judge's recusal. All these situations should be handled by the court president or by the court administrator in consultation with the president. Because of the potential for manipulation in the assignment of cases, or at least for the perception of manipulation, reassignments should be infrequent, and the reasons for the reassignment should be noted in the case file.

New judges often have to take over the caseload of a judge who left the bench some time before. Sometimes the other judges are allowed to give a certain amount of their own cases to the new judge, in which case the new judge is frequently given the oldest and most complicated cases. The court president should ensure that a new judge is not burdened with a disproportionately large share of these difficult cases. As newly appointed judges are typically inexperienced, they should be given some time to educate themselves, carrying a reduced caseload or working only simpler cases for a period of, for example, three months.

Recommendations:

- ***Cases are to be allocated immediately in a random and transparent system.***
- ***Cases should be reassigned only when absolutely necessary.***
- ***New judges should be assigned fewer and simpler cases for the first few months.***

7.2 Setting goals for case management

7.2.1 The importance of local legal culture

Court studies in several countries have found that the local legal culture has a profound effect on the length of processing times. "Legal culture" refers both to working methods and to attitudes adopted by those working in the court. A judge may, for example, grant unnecessary postponements simply because it is common practice.

Studies in United States conclude that effective courts disposed of both complex and simple cases without delay.[50] Slow courts were slow to process cases of both types. There was similarly no correlation between the processing time and the *size* of the court. Both Swedish and American studies have found that problems with delay are more closely correlated with expectations of the local legal culture.[51] This is undoubtedly true in BiH as well.

Discussions and findings of the project team confirm that the attitude among judges is critical for effective case management. In one municipal court in the Federation, a single judge has managed to reduce a large backlog in a short time with an active and decisive approach to case management. An unfortunate counter-example is the judge who refused to decide a civil case even when both parties asked for a verdict, saying, "I can't possibly decide the case just after only two hearings."[52]

Part of the legal culture that is problematic is the tendency of judges to discount the importance of timely adjudication in their procedural decisions. The question of whether to schedule an additional hearing and whether to solicit additional evidence must balance the potential value of the new evidence against the cost of the delay it would occasion. The legal culture has prompted judges to treat delay as costless, and in so doing they ignore the consequent harm to the parties' interests and to the rule of law overall. *See* Section 9.2, "Making efficiency a priority," *infra*.

7.2.2 Standard trial times

The courts serve the public, and the individual litigants have a right to have their cases handled without undue delay. A good culture for serving the public through effective case management can be achieved, among other means, through setting specific goals for timeliness. These are goals to motivate judges and the whole court to practice

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[50] Kari Kiesilainen: "Case management – A method to reduce overall case processing time in the Courts of Law." (Published in the Finnish Law Journal *Lakimies* 7-8/2000).
[51] *Id.*
[52] Reported to the Project Team in an interview on 29 January 2002.

effective case management. In time, the culture and expectations in the court and among the public at large will change. What was earlier assumed as a normal handling time may in time be perceived as unreasonable.

There are several ways of setting standards. It is unrealistic to expect that all cases can be resolved in the same number of days. There are great differences between cases, so the trial time standards have to be set either in terms of averages, or as a standard time by which *most* of the cases should have been solved. In Sweden, for example, the goals for the first instance courts are the following:

- 95 percent of small claims resolved within 3 months from filing.
- 95 percent of ordinary civil cases resolved within 12 months.[53]

In the United States judges, prosecutors and attorneys have agreed on target processing times.[54] These standards for general civil cases are as follows:

- 90 percent of civil cases resolved within 12 months
- 98 percent within 18 months
- The rest within 24 months (excluding cases which are exceptionally large and complex)

For *felony* cases in the United States, the standards are as follows:

- 90 percent resolved within 120 days from arrest or imprisonment
- 98 percent within 180 days
- The rest within a year.

In Norway the goals are set by the Ministry of Justice as average time standards. The goal is an average timeliness of

- 180 days for civil cases from filing to disposition
- 90 days for criminal cases from the day the case was received in court to a verdict
- 30 days for criminal cases in which the defendant is pleading guilty.

The time Standards for Brcko Basic Court for some of the case types have been set as follows:

- General Civil 100% in 12 months
- Felonies 100% in 6 months
- Misdemeanor 100% in 90 days

A standard of 100 percent may be unrealistic, as there will always be some extraordinary cases which cannot be solved within normal time-frames. Such a high standard, however, sends a very strong signal.

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[53] Kiesilainen, *supra* note 50.

[54] Case Disposition Time Standards Adopted by the Conference of State Court Administrators (COSCA), the Conference of Chief Justices (CCJ), and the American Bar Association (ABA).

Similar standards, of course, could be set for the handling of cases in the appellate courts.

The attorneys', prosecutors', and general public's attitudes and expectations during the process are also very important. A negotiation about standard trial times among representatives of judges, attorneys, and prosecutors, should inspire all players to work toward common goals to serve the public. Making the trial times public will further strengthen the standards, giving everyone – judges, court staff, lawyers, and litigants – a greater sense that the standards are meaningful and will be enforced.

Because the service to the public should be the same in every court, standard trial times should ideally be set uniformly for the whole country. In a period of dealing with large backlog, an individual court might temporarily adopt some alternative interim standards, to assure that they remain attainable and meaningful goals for the court.

Recommendation:

- ***The courts, in consultation with the Ministries of Justice and the Bar, should adopt standard trial times for different types of cases.***

7.3 Five basic principles of case management

Independent of the procedure laws, case management will always be dependent on the activity of the judge and staff who are handling the case. Some basic principles for case management include:

- early judicial control
- continuous judicial control
- short time periods between events
- reasonable accommodation of lawyers' schedules
- expectation that events will occur

If these principles become a part of the culture in the court, and basic for all the routines in the court, there surely will be some significant improvement in trial times. The main principle is that there should be no delay caused by the court.

This report does not set forth a case management model in all details. The courts themselves should start improving their processes on the basis of these principles.[55] Some case management principles, however, deserve particular attention and are discussed below.

7.4 Scheduling the process at an early stage

Hearings should be set up as early in the case handling process as possible. The case review indicates that, with a few exceptions, the courts normally *do* set up the first hearing quite early in the case-handling process.

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[55] *See* Section 6.1.5, "Processes for improvements in the courts," *supra.*

As discussed in Section 5.2, *supra*, the Civil Procedure Codes should be amended however possible to reduce the number of hearings. The judge should also ensure that a preparatory hearing is scheduled promptly to

- Get information about all witnesses and documentary evidence that each counsel plans to present
- Evaluate whether there might be need for calling expert witnesses.
- Explore possibilities for settlement or whether the parties want mediation
- If necessary, set a time limit for disclosure of further evidences
- Schedule the final hearing (if the case cannot be resolved immediately)

Parties and lawyers should then be informed that continuances will not be granted without good cause.

Recommendation:

- ***The preparatory hearing should be used for planning the rest of the process, so that it can be concluded rapidly and without interruption.***

7.5 Mediation

Settlements at an early stage of the process have many advantages. A settlement may save the parties expense, time, and the mental and emotional burden of litigation. A settlement may often lead to a more beneficial solution for both parties, as it will inevitably be more sensitive to the parties' interests than a decision by the court. Settlements of cases at an early stage are also beneficial for the courts because they use fewer resources.

The judges of BiH are already familiar with settlement conferences. Mediation may also take a more systematic form in which a neutral mediator guides the parties toward finding their own solution to the dispute. The mediator helps the parties to identify their points of contention, facilitating discussions, and assisting the parties to find solutions based on their underlying interests.

Mediation by judges is proposed as a mandatory part of the civil procedure in the Brcko District. Mediation is also being considered by the working group on the new Civil Procedure Law.

Mediation by judges is beneficial for the parties because it can be done without extra costs. A judge who has mediated will often be disqualified to make a later judgment in the case, however. If there is no solution of the case by mediation, the case normally has to be transferred to another judge.

Mediation by lawyers or other persons trained in mediation is common in many countries. Parties then have the possibility to choose mediation even before going to the court. The courts may recommend mediation by a lawyer, but absent some volunteer mediation bureau, the parties most often have to pay the mediator themselves.

A combination of mediation offered by the court and of mediation by lawyers is a possibility. These alternatives should be considered when drafting the new Civil Procedure Laws.

Mediation and dispute-resolution skills have to be learned. There has been some training of judges and lawyers in mediation. However, if mediation becomes a part of the Civil Procedure codes, there will be a need for nationwide mediation training for judges and lawyers.

Recommendations:

- ***The judge should, at an early stage and continuously thereafter, explore the possibility for settlement.***
- ***Mediation should be introduced as an alternative to and/or a part of traditional court process.***
- ***Judges and lawyers should be trained in mediation.***

7.6 Effective use of the case file

The case review indicated that for cases in process, the case is put in a pigeonhole ("rocišnik") for the "action date" in the registry office. When a case is scheduled for a hearing, therefore, the case file sits in the rocišnik corresponding to the date for the hearing, awaiting the hearing itself.

Normally, the case is given to the judge a day or two before the hearing, and has no way of knowing before that whether the formalities – particularly the summonses – have been attended to. As the proper summons is a prerequisite for holding the hearing, let alone rendering a default judgment, the judge who discovers that the parties have not all been served has no choice but to postpone the hearing.

The Sarajevo Book of Rules art. 91 requires that a law clerk check case files in advance to assure that time limits have been met and that all orders of the judge have been complied with.[56] If not, the law clerk is required to endeavor to remedy any deficiencies. This rule should be followed more faithfully as a routine, with the file check done early enough to facilitate timely corrective measures.

If all attempts to rectify the situation fail, then the court should inform the other parties that hearing is postponed, and reschedule immediately. By doing this, the court, as well as all parties involved, save time, money, and annoyances.

The advance check should confirm that all formalities indeed are in place, and that the summoned parties can be expected to appear. Cases of non-appearance should be dealt with according to the applicable regulations. *See* Section 7.7, "Enforcing appearance requirements," *infra*.

Although the case folders have space on the front page in which to enter important case handling information,[57] the case folder does not provide information as to whether effective service has been carried out. To ascertain this, it is necessary to look up the relevant document in the case file itself. The case folder could be modified by adding fields with information on service status for summonses and other documents, in order to

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[56] A similar rule applies Federation- and RS-wide. The provision originates in the 1976 Book of Rules art. 99.

[57] This information includes *inter alia* name of parties, case number, responsible judge, hearing dates and effective date.

know the status of the case at-a-glance. Alternatively, one could expand the information on the cover of the case file to a cover sheet including all relevant case handling information, which routinely could be put on the top of the case file.

Recommendations:

- ***The judge should have the court staff timely check the file to ensure that the cases are fully prepared before holding hearings.***
- ***Case folders should be amended by putting service of process information on the outside cover.***

7.7 *Enforcing appearance requirements*

7.7.1 General

As discussed above, the case review indicates that the absence of parties, witnesses and, to lesser degree, professionals (attorneys, prosecutors and expert witnesses) is a sizable problem. The principle of material truth compounds the problem, as it may in effect compel the court to postpone the hearing until the witness or the party can be heard. Moreover, it appears from the case review that the courts are very reluctant actually to impose sanctions on individuals who do not appear at the hearings.[58]

Both the civil and the criminal procedure laws are about to be redrafted. The redraft should closely follow up the problems of non-appearance. Nonetheless, the laws currently in force already contain provisions that if applied more vigorously would assist in reducing cases of non-appearance. Perhaps there is a need for judges to be more active in their use of such procedures.

7.7.2 Parties fail to appear

If a party to a civil case fails to appear at a hearing, the court should always consider rendering a default judgment, to the extent this is possible under the current Civil Procedure Code. If the hearing only involves hearing of witnesses, the court should consider barring an absent party from recalling or examining the witness at a later stage. Such a ruling should be well within the judge's discretion under existing law.

Occasionally, the accused in a criminal case fails to attend. According to the Federation Code of Criminal Procedure art. 176(1), *see also* RS Code of Criminal Procedure art. 184, 1st para., the court may order the defendant brought in if he does not appear despite proper summons, and if he has not provided the court with the explanation for his absence. Further, the court may order the defendant brought in even if he is *not* properly summoned, if "circumstances make it obvious that the accused is evading service of the summons." Such measures should be applied more frequently and decisively.

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[58] *See* JSAP Thematic Report X – Serving the public, pp. 26, 30.

7.7.3 Professionals fail to attend

Professionals in the court include counsel, public prosecutors, and expert witnesses.

Neither the current Federation Civil Procedure Code nor the RS Civil Procedure Code provides for any sanctions imposed on counsel for failure to attend hearings.[59] Nor do the Criminal Procedure Codes provide for sanctions upon the public prosecutor.[60] However, they do provide for fining defense counsel for actions "obviously aimed at prolonging criminal proceedings."[61] The revision of the laws currently in progress ought to consider expanding the court's power to impose such sanctions. It might even be worth considering mandatory sanctions, rather than leaving this to the discretion of the judge.

As for expert witnesses, the law currently in force provides for fines in cases of non-appearance despite proper summons.[62] This provision seems to be only rarely, although the case review confirmed that non-appearance of experts is a recurring problem. The courts should make more ready use of such provisions

7.7.4 Witnesses fail to attend

The case review indicated that a large number of hearings were postponed because witnesses were absent. As for absent parties, it was not always clear whether the witness simply did not show up despite a proper summons, or whether the summons was not effectively served.

If a witness does not attend despite being properly summoned, a sanction should be imposed. In fact, the current Procedure Codes of both entities prescribe fines to be imposed on a witness that fails to attend despite proper summons, without providing an excusable reason. However, the case review provided no examples that this actually happened. Further, the procedure codes of both entities provide for having the police bring in witnesses.[63]

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[59] Failure of attendance may constitute *contempt of court*, but it appears that contempt would be invoked for a failure to appear extremely rarely, if ever.

[60] Rather, the Federation Criminal Procedure Code art. 294, and the RS Criminal Procedure Code art. 299 state that main trial shall be postponed if the public prosecutor fails to appear.

[61] Federation Criminal Procedure Code art. 136(1); RS Criminal Procedure Code art. 141, 1st para.

[62] Federation Civil Procedure Code art. 237; RS Civil Procedure Code art. 255.

[63] Federation Criminal Procedure Code art. 298, Federation Civil Procedure Code art. 230, RS Criminal Procedure Code art. 303, RS Civil Procedure Code art. 248.

Recommendation:

- ***The court should vigorously utilize available tools – including tougher and more frequent sanctions, use of court police to compel attendance, and cooperation with the bar – to increase compliance with appearance requirements.***

7.8 More effective and efficient service of process

Service of documents also poses a serious problem, as the above discussion shows. There is great need for more effective and, wherever possible, less expensive methods of serving documents.

According to the current Federation Civil Procedure Code art. 122 and RS Civil Procedure Code art. 132, writs are normally served by mail. This is interpreted not as "ordinary" mail, but rather involves some extra actions described by Federation art. 132 and RS Art. 142. The process presupposes that the postman delivers the document directly to the recipient, and that the recipient acknowledges by means of his signature that the document has been served with him. While this certainly represents a secure way of serving the document, it is cumbersome and expensive.

Given the large amounts of financial resources expended for service of documents,[64] and the fact that such outlays must be covered by the court's general budget, each court should consider alternative methods. It may be, for example, more cost effective for a court to establish its own "courier service" or to contract out for such services. Such couriers may also prove to faster and more reliable than the ordinary mail system.

Below is a short summary of the service methods in use by courts in Bosnia and Herzegovina, with a short comment on each of those methods:

1. **Post Office (PTT):** Most often used, but widely considered unreliable, slow and expensive.
2. **Court-Employed Couriers:** A major advantage is the complete operational control of the entire process. It also promises cost savings, especially in the long run. Some courts already have couriers as well as vehicles.
3. **Combined Methods:** One court uses its own couriers for delivery within city limits and PTT for delivery in rural areas. Other combinations are possible.
4. **Service in the Courtroom:** This is used extensively when setting subsequent hearings and, of course, is a very economical and efficient way of delivery.
5. **Service through Attorneys:** If there is an agreement to that effect, attorneys that maintain mailboxes inside a courthouse can receive mail from the court on behalf of their clients very efficiently. Also, they can receive mail any time they are in the courthouse. Even a regular mail service – using attorneys'

[64] For example, Sarajevo II Municipal Court spent 35.970 KM on service of process in February 2002 alone.

addresses – would likely improve the overall quality of service, given that their addresses are known and relatively more stable than clients' addresses.

6. **Private courier company:** This is a new concept. Payment is per successful delivery, turning the risk of non-delivery onto the private company, and providing a strong incentive to perform. It is reported that this is already being used successfully by the West Mostar Minor Offence Court.

7. **Court Police:** The Law on Court Police ("Official Gazette of FBiH" 19/96) article 8, *inter alia*, states that the Court Police: " … ensures attendance of summoned witnesses, brings the accused to the investigative judge and the defendant to the main hearing…." Clearly, the Court Police plays important role in this process, particularly in criminal cases. The courts could consider whether the Court Police could be used more extensively.

8. **Brcko Method:** For minor offences, the police in the Brcko District employ an efficient innovation of the service process. Simultaneously with writing a citation, a police officer issues the summons to the defendant and obtains his signature at the spot.[65] Service and scheduling are done right away.

When other efforts at service fail, usually because a party cannot be found, the court should also make use of statutory alternatives, such as posting the notice on the courthouse bulletin board, and appointing a temporary representative for the absent party. These options are discussed *infra* at Section 8.7.

Recommendation:

- ***The courts, working with the Ministries of Justice, should study the various alternative approaches to service of process, including courier services, and adopt the methods that would provide the best operational performance at the lowest cost.***

7.9 Training of judges

Good case management can be implemented only if the judges understand the key principles and methods. The suggested Judicial Training Institutes should be a valuable supplement in education of judges, particularly in teaching case management techniques.

New and inexperienced judges have an obvious need for training in case management, but also in other areas, such as substantive law, procedure, how to conduct a hearing, and judicial ethics. Whether or not formal training is available through a Judicial Training Institute, each court must afford the new judge at least some informal training. This should include observing other judges at work, as well as mentoring by carefully selected, experienced judges. In his or her early days on the bench, the new judge should be allowed some extra time, with reduced caseload, to learn. When formal training opportunities become available, new judges should also be given a special training course of, for example, one week sometime during their first year on the bench.

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[65] Police are informed in advance of the available dates for minor offence hearings.

New legislation and new challenges in case management create a need of training both for new and for more experienced judges. IJC has planned a special training program for judges and prosecutors on the anticipated new criminal procedure law. Case management and timeliness should be an essential element of this training, as well in any training programs on new civil procedure law.

Recommendations:

- ***Case management techniques should be integrated into all judicial training, including the training planned on the new procedure laws.***
- ***New judges should for a period have an experienced judge as a mentor.***
- ***A special training course should be designed for new judges.***

8 Clearing the Backlog

One of the pressing concerns in the BiH court system is the persistent backlog of unresolved cases that exist in many courts. The extent and nature of the backlog problem is unique to each court, but is discussed generally below in Section 8.1, "Review of unresolved cases."

The pendency of a large backlog is not merely a *result* of court inefficiency; it can also be a *cause* of inefficiency. The court with a large body of unresolved cases must manage the "open files," using registry office resources to keep track of them. At the same time, judges' attention to any particular case must necessarily be diluted the more cases she has before her. Finally, the existence of a large backlog can be demoralizing and demotivating to judges who may be tempted to despair of ever "catching up."

For all of these reasons, the present backlogs require attention.

8.1 Review of unresolved cases

The purpose of the backlog review was to gain understanding of the size, structure and the trends for unresolved cases. Figures were collected for the entire court system in Bosnia and Herzegovina, except for the Brcko District. In order to get a time perspective, data from 1999, 2000, and 2001 were collected.

In addition to the *total* figures, data for criminal ("K") and civil ("P") cases were also collected, as these represent the core of the judicial cases. Correspondingly, for cantonal/district courts, data are provided for "K" cases and "Gz" cases.

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8.2 Non-judicial cases

The BiH courts handle a variety of other case types that are not of strictly judicial nature but nonetheless take up a large amount of courts' time. These include, *inter alia*, cases of notarization, land registry, enforcement, and issuance of different certificates.

The following table provides a categorized breakdown of the 2001 total inflow of cases for a selection of larger urban courts, as well as the totals for the entire RS.

Urban Courts	"Core"*	Enforcement**	Land Registry ***	Notarization ****	Other cases
Sarajevo I	5.8%	14.8%	45.5%	31%	6.4%
Sarajevo II	10.4%	83.1%	0%	0%	6.5%
Bihac	38%	16.7%	8.1%	32.2%	2.9%
Zenica	35.3%	13.4%	6.5%	34.8%	10%
Mostar II	17.2%	19.4%	0%	49.4%	4.7%
Banja Luka	23.6%	7.3%	24.3%	41.5%	13.7%
RS	31.1%	12.6%	19.1%	0%	37.2%

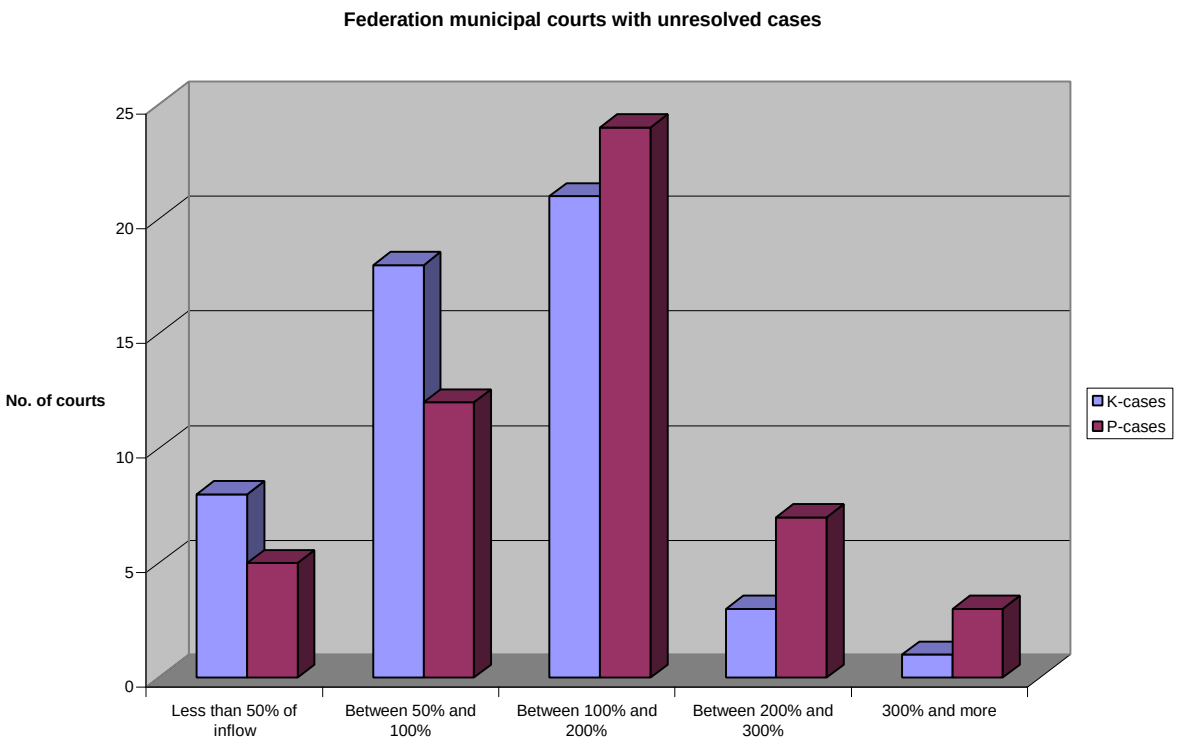
** Case types K, Ki, Kv, Km, Kri, Kr, Kp, Iks, Pk, P, Mal, P, Mal and Ps*
***Case types I and Ip*
****Case types ZKDN, ZKI and, DN-KPU*
*****Case types OVD and OVIN*

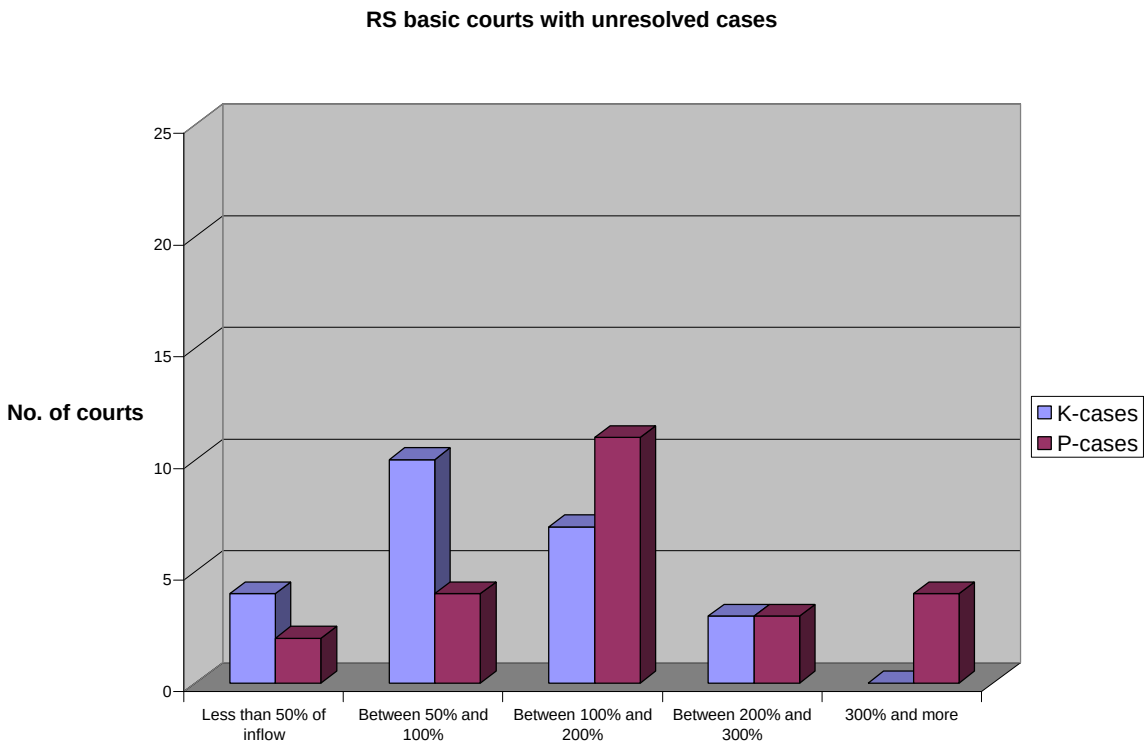
As can be seen in the above table, cases other than strictly judicial cases make up a large portion of the total inflow.

8.3 Relative size of unresolved cases

One meaningful measure of the relative size of each court's backlog can be found by dividing the number of unresolved cases by the annual inflow of cases. The percentage thus calculated measures the time it would take the court to eliminate the backlog, assuming no further inflow of cases. For example, a ratio of 200% means that the backlog represents two years of work. In such case, it must be assumed that the backlog contains a high number of quite old cases. Of course, such a ratio is a purely calculated value, and provides only an indication.

The following tables give an overview of the backlog elimination time for the Federation and RS courts, respectively.





The diagrams indicate that while some courts are efficient in their case handling, others have a large relative size of the "K" and "P" backlogs. Information about the actual age of the cases is not available for all the courts.

8.4 Total backlog trends

Overall size of backlog is steadily increasing in the RS trial courts, whereas in the Federation, it appears that the number peaked in 2000. The backlog of K-cases and P-cases in both entities decreased from 1999 to 2001. The trend is not particularly strong in either case, however, and it is not possible to draw conclusions with much certainty. For the first instance courts, the backlog figures are as follows:

	RS Basic courts			Federation Municipal courts		
Case type	1999	2000	2001	1999	2000	2001
Total	74.008	77.951	81.117	183.051	244.359	229.977
K	6.459	6.198	6.329	13.105	12.358	11.898
P	36.193	36.714	35.272	45.711	46.303	43.163

A similar pattern can be observed comparing trends for appellate courts:

	RS District courts			Federation Cantonal courts		
Case type	1999	2000	2001	1999	2000	2001
Total	4.800	6.421	7.913	11.675	18.584	13.083
K	365	396	106	587	441	624
P	1.372	2.719	4.088	1.932	3.086	3.402

Again, in the Federation, the backlog peaked in 2000, whereas in the RS it is steadily increasing. The rate of increase in the RS appellate backlog (65% overall in the last two years), however, gives serious cause for concern.

It should be emphasized that the most troubling backlogs are attributable to special circumstances, such as the 10.000 war claims in Banja Luka Basic Court, and the 70.000+ enforcement cases filed in Sarajevo II Municipal Court. These problems may require separate solutions. Nonetheless, as shown above, there appears to be a substantial backlog attributable to nothing more than the courts' inability to keep pace with new case filings in recent years.

8.5 Developing a strategy in each court

Each court – with the assistance of the Ministry, perhaps – must develop a strategy for addressing the backlog. Strategies for backlog reduction should be agreed upon at court meetings with all judges participating. In this way, the judges may be able to motivate each other in a joint enterprise. The strategy should be reduced to writing, with specific goals and target dates. *See, e.g.,* Appendix 3: Plan for resolving the backlog in Banja Luka Basic Court.

It may also be helpful to hold a meeting with the local bar to discuss the court's backlog-reduction strategy. Attorneys may have suggestions or ideas. Attorneys also need to understand the priority that the judges will give to resolving the backlog. This meeting may be an opportunity to impress the bar with the fact that the judges will not be granting continuances and will expect the attorneys to be prepared at the hearings.

The Brcko Law Revision Commission proposed a multi-stage strategy, including the first four steps laid out below. There are other possibilities as well limited only by the imagination of the courts involved.

8.5.1 Form a list of all unresolved cases and determine their status

A starting point for addressing the backlog is understanding its nature. Different cases are backlogged for different reasons and at different stages, and the cases come in wide varieties. Only after determining the nature of the backlog in a particular court – how old the cases are, what types of cases are problematic, at what stage they are delayed, etc. – can a meaningful strategy for addressing it be formulated.

This can be approached in different ways. Each judge may be asked to review and list his or her own backlogged cases. In some situations, it may be more effective for the court president to ask a more experienced judge to review the backlogs of fellow judges. The experienced judge may produce a more accurate and consistent summary for the court as a whole. The experienced judge may also find, in the process, where certain judges may benefit from mentoring or other assistance from the court.

8.5.2 Aggressively utilize mediation and settlement conferences

Many backlogged cases may be amenable to settlement. Parties that may have resisted settlement at first may, after lengthy delays and expenses incurred without court action, be willing to consider alternatives to traditional court methods. The assessment of

the backlog may identify types of cases that are likely candidates for settlement, and settlement conferences can be scheduled.

The advantages of resolving cases by settlement need not be detailed here. There is a rich literature on the benefits and methods of effective mediation. Judges in BiH should already have some experience with settlement conferences, but this would be an excellent topic for judicial training programs to be developed in the future. *See* Section 7.9, "Training," *supra.*

8.5.3 Gradually introduce backlogged cases into the processing system

Cases that do not settle can be reintroduced onto the judges' calendars, little by little, on a schedule laid out in advance. The schedule for reintroduction of backlogged cases can work toward a goal for total backlog reduction, bringing it down to a certain level by a certain date. It is understood that this will increase the judge's workload during the backlog reduction period; a judge should have sufficient commitment to doing timely justice, and a sufficient sense of responsibility, to be willing to make such sacrifices. A court president may need to work at motivating the judges of the court to appreciate this fact.

8.5.4 Set aside special days or weeks reserved for backlog cases

If it is too easy to neglect the backlogged cases, given the press of more current cases, it may be helpful to set aside one week each month, or one day each week, for such cases. This will assure that the judge gives a certain percentage of his time and attention to the old cases on his docket. A judge is, after all, in control of his calendar, and by setting aside a certain amount of time for it, he or she may be able to begin chipping away at this nagging burden.

8.5.5 Improve the judge's time management

Of course, more efficient time management may well make the difference, so a judge can handle more cases – including backlogged cases – without necessarily putting in longer hours. In Brcko, the Law Revision Commission went so far as to depict a sample schedule of how a judge should use his or her working time (*see* Appendix 4: Sample weekly schedule for judges in Brcko).

At the very least, every judge should consider how much time in his or her working day is lost, or spent in relatively unproductive activities. Court staff may be marshaled to handle administrative details in a way that accommodates the judge's work schedule and will keep the judge at his or her most productive state for as much of the working day as possible. Review of files and other activities that do not require the presence and assistance of staff can be handled after regular working hours.

Effective time management for judges is critical. It is not only necessary for reducing the backlog, but important in helping judges stay current with their regular caseload.

8.5.6 Frequent reports on results achieved

Regular and frequent reporting to the court president on progress in reducing the backlog can be a strong motivation. Successes can be recognized all along the way, and judges may well wish to avoid having to give reports showing little or no progress.

If the judges of the court have agreed to a backlog reduction strategy as a group and have set court-wide goals to do so, the regular reports on their progress can be shared with all judges at court meetings. Those who are most successful can be heralded and their successful techniques can be shared. If the goals are not being met, the group can reconsider how realistic the goals are and perhaps make adjustments, including reassigning work and reformulating the strategy, if necessary.

8.5.7 Establish a strict time-frame for all case phases

It is already recommended that courts adopt "standard trial times": expectations or goals for the time to complete each type of case. *See* Section 7.2.2, "Standard trial times," *supra*. A similar process can be employed for backlogged cases. Judges can then announce to attorneys the court's expectation that this case will be resolved within the prescribed time period and proceed on that schedule. Attorneys must be specifically warned that continuances will not be granted.

8.5.8 Dismissing old and idle cases

Some of the backlog is composed of civil cases that are not active. There may be many reasons for this:

(1) the case has been settled between the parties,
(2) the plaintiff has, for practical purposes, abandoned his claim,
(3) the claim has been rendered moot by intervening events,
(4) the statute of limitations has expired,
(5) case files have been lost, or
(6) one or more of the parties has died or has moved out of the country, beyond the jurisdictional reach of the law, etc.

These cases, however, are still listed as "active" cases in the court's registry and add to the court's backlog.

The court can, and should, periodically review the pending cases and identify those that have been inactive for more than six months. Cases that have been "inactive" for a long time should either be activated or dismissed. In the United States, it is common practice to issue "Orders to Show Cause" why an idle case should not be dismissed for want of prosecution. The parties are ordered to appear and show why the case should not be dismissed; delays must be explained and accounted for in such hearings. Otherwise the case is dismissed.

While a procedure like the American one may require a change in the procedure law, a procedure of similar purpose exists at article 200 of the Federation Code of Civil Procedure and in the RS Code of Civil Procedure, Art. 216. The triggering mechanisms are

(1) settlement,
(2) failure of both parties to appear at any hearing,
(3) the parties' choosing not to participate in the proceedings,
(4) failure of one party (properly summoned) to appear and the other party requests suspension.

In any of those circumstances, the court may suspend the cases. Four months later, unless some party takes action, the case can be dismissed. Code of Civil Procedure art. 201 (see also RS Code of Civil Procedure art. 217). Article 200 also provides that if the conditions for suspension have repeatedly been met, the case may be dismissed, without the four-month delay.

Judges can make more ready use of this procedure, particularly with old and backlogged cases. Review of the files may show that conditions for suspension have already been met "repeatedly," particularly as failures to appear are so common. Also courts may schedule new hearings in long-idle cases, looking for opportunities to enter suspensions. If only one party appears, the judge may ask if the party would like to request suspension. The cases must then be faithfully followed up four months later with the dismissals.

This procedure may help clear out old cases. It may also help if the procedure laws were amended to give the judge more discretion to dismiss cases that the parties have failed to pursue, and to dismiss claims that have been rendered meaningless or moot by intervening events or by the passage of time.

Recommendation:

- ***Each court should develop a strategy for addressing its backlog of unresolved cases; the strategy may include any or all of the following steps –***
  - ***Analyze the backlog and compile a list of backlogged cases;***
  - ***Refer some or all of them for mediation or settlement conferences;***
  - ***Gradually introduce them into the case processing system;***
  - ***Set aside special days or weeks, reserved for backlog cases ;***
  - ***Establish strict time-frame expectations for resolving these cases and communicate those to the parties;***
  - ***Make greater use of suspension procedures, and expand such procedures, to dismiss old cases.***

8.6 Temporarily assign experienced judges to the backlogged court

8.6.1 Judges from other courts

One technique that has been used successfully is to transfer judges, on a temporary basis, from one court to another to address pressing caseload needs. While most courts complain about being understaffed, there is no question that the need is more acute in some areas than in others. Optimal use of the judicial resources (the judges

themselves) should include some temporary reassignments to where the need is greatest. Of course, the most experienced judges are likely to have the biggest impact.

This procedure is presently permitted by law.[66] At least one canton has used it recently, when the court president of the cantonal court has reassigned judges from one municipal court to another within the canton. Temporary reassignments across cantonal lines may require enabling legislation, but should be explored as a possibility. The potential use of such procedures is another compelling reason to adopt a uniform Book of Rules for all the courts. *See* Section 4.3, *supra*.

Particularly promising is the possibility of designating second-instance judges to sit temporarily on first-instance courts. These judges should be experienced and, as a rule, are more available than other first-instance judges (as the second-instance courts have less-serious backlog problems). Such temporary reassignments have another benefit, as the experience – sharing their different perspectives – can be educational for the second-instance judges and first-instance judges alike.

8.6.2 Retired judges

In other countries, most notably the United States, the courts have drawn upon the ranks of retired judges for this type of special assistance. Some retired judges are willing to come back and do additional work; those with great skill and experience, particularly in case management, can have an enormous impact in reducing backlogs, even in a relatively short time. While it is unclear whether there exists a body of retired judges in BiH who are both skillful and available, it is a prospect that is worth considering, particularly in those courts where there are otherwise "unfilled" vacancies.

Recommendations:

- ***Court presidents and Ministries of Justice should consider how experienced judges, particularly appellate judges, may be temporarily re-assigned to sit in first-instance courts with greater needs to help address severe backlog problems.***
- ***Consideration should be given to temporarily bringing back skilled judges who have retired, perhaps occupying vacant judgeships for a time, to help resolve backlog problems.***

8.7 When a party cannot be found

One of the most common causes for long case delays is that a party could not be found, and therefore could not be served. Such cases usually sit, idle, adding to the backlog, when it is apparent that nothing can be done. Waiting and continuance only means delay, with the situation unlikely to change with the mere passage of time. A court must seek to minimize trial-date continuances as much as possible.

To the extent possible, the court should place the burden on the plaintiff in civil cases to locate the defendant and to provide an accurate address. In cases in which the plaintiff is unable to do so, the current Code of Civil Procedure in both entities provides

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[66] *See*, for example, Law on Courts in Zenica – Doboj Canton art. 98, 1st para.

that the court shall try to obtain the required information from a competent administrative body.

If these efforts fail, the court should actively invoke the alternatives that the law affords. One option is to appoint a temporary "representative" of the absent party, to allow the case to go forward. Code of Civil Procedure art. 76; RS Code of Civil Procedure art. 84. Another is to effect constructive service by posting the writs on the bulletin board in the court. Federation Code of Civil Procedure, art. 138 and art. 135 1st and 2nd para.; RS Code of Civil Procedure art. 148 and art. 145, 1st and 2nd para.

The upshot is that a case need not sit idle simply because a party cannot be found or served. The court should conscientiously seek to effect service, but failing that, should proceed immediately with one of these alternative methods.

Recommendation:

- ***In cases when a party cannot be found, courts should make greater use of alternative procedures, such as posting the writs at the bulletin board in the court or appointing temporary representative of defendant.***

9 Fostering productive work attitudes among judges and staff

9.1 Inspiring pride in and commitment to good public service

In one of the meetings with the project team, a member of the Brcko Judicial Commission observed that the most important reform is the reform that takes place "in your head." Indeed, many of the proposals articulated in this report will have little impact without corresponding adjustments in the expectations, priorities, and attitude of judges and staff. The reform in people's attitudes may be the most difficult reform of all, but also the most important.

9.1.1 A sense of responsibility for court operations overall

Ultimately, everyone in the court, starting with the court president, must assume a sense of responsibility for the quality of justice and the quality of public service rendered by the court. Vestiges of an earlier era, when duties and obligations were defined in terms of merely "following rules" must be eradicated, allowing a more results-oriented philosophy to take hold in court operations. Individuals in the court system must see and appreciate their role in the greater mission of the court organization and the justice system overall – which includes the timely and efficient processing of cases – so they can carry out their duties in a manner calculated to further that mission.

While the court president may assign cases to judges in his or her court, the court president must retain a sense of responsibility for the timely and effective processing of those cases. Accordingly, he must keep track of how the individual judges are doing with their respective caseloads and take action whenever a judge falls behind. Similarly, he or she must assume responsibility and take action if it becomes apparent that a judge is breaching any ethical duty, including the duty to put in a full day's work.

While individual judges may delegate tasks to typists or other staff, they must retain a sense of responsibility for the appropriate handling of those tasks. If a case "slips through the cracks" and gets lost in the system, even due to clerical error, the judge assigned to that case must be accountable. Similarly, at all levels in the court staff, supervisors may delegate to lower level staff, but should retrain ultimate responsibility for the timeliness and the quality of the work performed.

9.1.2 The difficulty of cultivating a new attitude

Individuals who have worked in the court system for many years will be slow to adopt new ways of thinking about their work. They may well be suspicious of the recommendations of an international team that has unavoidably limited exposure to the practical realities of working in the Bosnian public sector. The apparent success of the Brcko project, however, suggests that it can be done.

The problem of introducing a new sense of responsibility is particularly acute as applied to court staff; they continue to work for very low salaries, untimely paid. Simply asking them to take a more responsible attitude toward their work, or to work harder, without any corresponding benefit is unlikely to generate a positive response.

Success in building new attitudes about the work of the court will take time and patience. As judges and supervisors within the court exhibit more industrious work attitudes, and as they talk about their work in terms of the mission and purposes of the court, the culture will evolve. In time, court employees may embrace the new culture within the court.

9.2 Making efficiency a priority

While it is easy to blame the procedure laws for the delays in the system (*see* Section 5, "Procedure laws," *supra*), the JSAP evaluation suggests that it is more a question of the judges' attitude than the law itself.[67] One municipal court judge echoed this view, pointing out that the law indeed has features that if used vigorously could speed up case processing, and called upon judges to exercise more *decisiveness*. These ideas suggest that the procedure laws themselves may not be the main obstacles, but rather the perception of them and the legal culture they spawn.

While decisiveness is an essential quality in a good judge and an attribute that must be developed in every judge, there is also a question of balancing priorities. The pursuit of ultimate, unassailable truth must be balanced against the time and other resources expended in a Pyrrhic effort to remove all doubt. Judges must recognize that delay itself undermines justice, and that scheduling an additional hearing, or calling upon an additional expert witness may do greater harm to the cause of justice than overlooking a marginally-relevant piece of evidence.

If the judges gave higher priority to issues of timeliness and efficiency, they would make better use of existing procedure laws to eliminate unnecessary delays. Weighing efficiency concerns, judges should more readily hold hearings despite one party's absence, more frequently apply default judgments, and more readily impose sanctions and penalties for failures to appear. Judges should also give weight to timeliness concerns when deciding whether to seek additional evidence and schedule additional hearings. *See generally* Section 7, "Case management," *supra.*

It is also of critical importance that judges of the second instance courts respect the judgment of a first-instance judge who chooses to forgo marginally relevant evidence in favor of disposing of the case promptly. Unless the courts of appeals understand and appreciate this balance, the first-instance judges will be forced – by fear of reversal – to continue their cases to absurd lengths.

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[67] JSAP Thematic Report X – Serving the public, p. 18.

Recommendation:

- ***Judges should be urged, in orientation and in training, to give sufficient weight to matters of timeliness and efficiency in rendering justice; over-emphasis on the pursuit of evidence and the pursuit of ultimate truth can ultimately undermine justice when it results in excessive delay.***

9.3 Establishing new expectations for judges

For judges, there is a tremendous opportunity presented in the projected restructuring of the courts. While the restructuring itself is a separate project beyond the scope of this report, its execution will create opportunities that should be seized to help bring about a fundamental change in attitude about the work of the court.

9.3.1 Judicial candidates can be informed of new, heightened expectations

Salaries have been raised, and according to the restructuring proposal, judges will be expected to compete for judgeships on the newly restructured courts. In the course of the evaluation and appointment process, judicial candidates can be educated about the new expectations for the court and for the judges privileged enough to be appointed to it.

In order for this approach to be successful, the panel doing the screening and appointment of new judges must understand and emphasize the attitude shift, and the corresponding change in court culture, that is expected. Candidates should be told that they will be expected to work late and on weekends in order to catch up with backlogged cases and to assure that no new backlogs develop.

9.3.2 Commitments can be elicited in the interviews

A major factor in the selection of new judges, therefore, should be the willingness and commitment of the candidate to work hard and to put in extra time whenever necessary to process the cases in a timely way. Judicial candidates can be instructed that the high salary of a judge carries with it an obligation – a condition of employment –to shoulder a heavy caseload, to work hard, and even to work late, in order to assure that cases are progressing as they should.

The important thing is not that judges work long hours; the point is not to extract "extra" work from them. The critical point is that judges should measure their work by their currency with their caseload, rather than by the hours on the clock. If his cases are taking too long – *see* discussion of time-based goals at Section 7.2.2, *supra* – the judge must put in the extra time to make sure that he delivers timely justice for the litigants and attorneys before him.

Recommendation:

- ***The court restructuring project should seize the judicial selection and appointment process as a means of impressing upon the judges the higher expectations for responsibility and productivity; commitments to adhere to these higher standards should be elicited from the candidates.***

9.4 Mission statement for the court

It will be helpful for a court to articulate the "mission" of the court, *i.e.*, the principles and ideals that should govern court operations. A "mission statement" should be drawn up in a cooperative session with judges and high-level court staff. In a small court, it may be possible to have all staff participate in the process; this is highly desirable.

The purpose of developing the mission statement is to focus everyone in the organization on the same goals. If the statement can be adopted by consensus, after affording wide participation, it is likely to be embraced by judges and staff at all levels as a meaningful summary of the ideals of the court. A mission statement proclaimed by the court president, without consulting other judges or staff, is less likely to have the desired impact.

Mission statements should not be lengthy, but should not overlook any of the key values and/or ideals of the organization. For a court, these principles can and should include concepts of justice, independence, fairness, efficiency, public service, and/or the rule of law. Three examples of court mission statements from the United States are laid out below:

The state courts of New Mexico exist to:

Resolve civil disputes in a manner that is just, speedy, reasonable in cost and restores harmony to the community,

- Resolve criminal matters quickly and justly in a manner that protects the rights of participants, responds to the community's need for justice, and protects the community from future harm,
- Protect the interests of persons unable to protect themselves,
- Develop and clarify law and procedure so that citizens can order the conduct of their daily affairs accordingly,
- Provide the public with the information needed to use the court system, and
- Carry out these functions in the most cost-effective manner.

The mission of the Superior Court of California, County of Riverside:

The judiciary shall, in a fair, accessible, effective, and efficient manner, resolve disputes arising under the law, and shall interpret and apply the law consistently, impartially, and independently to protect the rights and liberties guaranteed by the Constitutions of California and the United States. To this extent, it is our continuing goal to increase the public's access to justice while providing efficient and courteous service at decreased costs.

While these statements may vary in length and substance, they reflect essentially the same core principles relevant to any court system. Efficiency and timeliness are among those principles, ones that have been and continue to be undervalued in the BiH court system.

It is also possible to take a general mission statement and expand it into an array of very specific goals for the court. Making the goals specific can give the more general statement more relevance in the day-to-day performance of official duties in the court. An example, from the court system of the state of Idaho in the United States, is offered below:

Idaho Judiciary
MISSION STATEMENT

As adopted by the Administrative Conference on July 14, 2001 and approved by the Supreme Court September 24, 2001

Provide equal access to justice, promote excellence in service, and increase the public's trust and confidence in the Idaho courts.

GOAL 1: Increase Access and Service to the Public.

District Court

Expand Court Assistance Offices to each district, with the goal of having services available in every county in three years.
Increase access to or availability of certified court interpreters.
Expand district websites and information / resources available to the public.

Supreme Court

Implement ISTARS for Windows in three years.
Test electronic filing of court records in three counties.
Provide Internet access to ISTARS for Windows in three counties.
Expand Court's homepage and information / resources available to the public.
Simplify the reporting of "CLASS" statistical information and establish a centralized "data warehouse" of court information.
Pursue development of Internet-based, interactive court assistance forms and instructions.

GOAL 2: Improve the fast and fair resolution of court cases.

District Court

Identify opportunities for the use of Pro-Tem or Senior Judges to reduce the number of pending cases exceeding time standards.
Review CLASS reports to identify caseloads or case types with significant numbers of cases exceeding time standards, and explore ways to hear cases more timely.
Resolve 90% of all Court Cases filed within the Time Standards Adopted by the Supreme Court.
Develop strategies to improve the handling of cases involving children and families.

Supreme Court

Provide case management education to all new judges and provide continuing case management training every 3 years thereafter.
Support innovative efforts to manage increasing caseloads.
Continue to identify and secure funds for innovative case management programs.
Evaluate Supreme Court time standards.

GOAL 3: Promote Excellence in Service by Expanding Educational Opportunities.

District Court

Encourage annual orientation and training programs for all new court clerks.
Encourage the participation of court personnel in the Idaho Institute for Court Management (IICM).
Insure the availability of the revised Clerk of the District Court Manual, and other electronic resources, to court staff in each county.

Supreme Court

Expand educational programs to court reporters, court security officers, jury commissioners, Trial Court Administrators, Court Assistance Officers, misdemeanor and juvenile probation and detention officers.
Promote on-going clerk education through IICM, Distance Learning, and publication of electronic resources.
Provide on-going education to judges through the Summer Judicial Conference, Magistrate Judge's Institute, District Judge's Seminar, New Judge Orientation and publication of electronic resources.
Expand the court interpreter training and certification program.
Support an annual spring Children and Family multi-disciplinary institute.

GOAL 4: Increase the Public's Trust and Confidence in Idaho Courts

District Court

Hold annual court/legislative forum in each district.
Hold annual forums with the media to encourage accurate coverage of the courts.
Conduct one to three public education forums describing the function and role of the courts. Possible target audiences: service clubs and schools.
Evaluate the effectiveness of community-based alternatives for juvenile offenders such as youth courts, truancy courts, status offender programs, and community accountability boards.
Establish pilot drug courts in each district and evaluate their effectiveness in combating drug abuse and in providing sentencing alternatives.

Supreme Court

Lead efforts to insure that adequate sentencing alternatives, including substance abuse assessment and treatment, are available to trial judges.
Explore with legislative leadership an alternate method to address judicial compensation.
Provide judicial impact statements on legislation that may affect the judiciary.

9.4.1 Performance evaluations that refer to the mission statement

The court's system for evaluating employee performance can also be done with specific reference to the ideals of the court as articulated in the mission statement. This will make it clear that it is everyone's obligation to serve and support the court's mission.

9.4.2 Posting mission statement where it can be seen

The mission statement can be posted in prominent places in the working areas of the court, so judges and staff are reminded constantly of the higher principles they are serving. It may also be worthwhile for the postings to be in view of the public, further reinforcing high expectations of integrity and public service.

Recommendation:

- ***Each court should adopt a mission statement reflecting the goals and aspirations of the organization; the statement should be posted prominently and referred to in management meetings and personnel evaluations.***

10 Office support equipment and information technology

10.1 General

Many of the courts in Bosnia and Herzegovina lack modern office support equipment such as copy and fax machines. Moreover, they are not – or are only marginally – equipped with modern information technology.

The project plan specifically points out that project shall seek "low-tech, low-cost" solutions that the courts are able to implement themselves. As mentioned in Section 6.2.2.1, the project plan, however, asks for an assessment of "the minimum level of equipment needed in courts of various sizes in order to work efficiently."

Both a "minimum level" and "efficiency" are relative terms that have to be considered in relation to the available resources. Possible donor assistance will have great influence on this evaluation. It is therefore appropriate not only to posit a "minimum level," but also point out the potential to improve efficiency in the courts with marginal enhancements in office support equipment.

10.2 Findings

The computer equipment available to the courts is of varying standard. Of the five courts visited, Srpsko Sarajevo District Court had one computer that was used mainly for keeping track of court decisions. Konjic Municipal Court had one computer, placed in the court president's office. Ljubuški Municipal Court had four computers; one for the land registry and the rest in the judges' offices where hearings were conducted. Those were mainly used for word processing. In Zenica, two computers were used for the enterprise registry and one for accounting. None of these were utilized for the case management system.

On the other hand, Banja Luka Basic Court and Sarajevo II Municipal Court were equipped with an electronic case management system. Banja Luka's is on a networked system of computers donated by the Swiss Government. The system Sarajevo II is limited to criminal ("K") cases and runs on a relatively new, ZIP-drive equipped computer in the registry office. The case management system in the Sarajevo II Municipal Court was developed, with financial support from the OSCE, by local software developers. It was developed "on top of" Microsoft Access, and is able to generate a variety of reports, which also can be broken down by individual judge as well as case age. Although not networked, the system is regarded as a very helpful tool in the case management.

10.3 Copy machines and fax machines

It is obvious that copy machines and fax machines have great influence on the efficiency. One copy machine and one fax machine should be the minimum level of equipment in all courts.

The copy machine should preferably be equipped with a feeder and sorter function, in order to facilitate larger copying jobs. Such a machine is, however, quite expensive; the price is equivalent to several computers.

In the largest courts there of course will be a need for a second copy machine, or at least a copy machine with great capacity.

10.4 Computers in the courts

10.4.1 Functions of computers

Computers offer very versatile and helpful office support, which could be utilized on several levels and with different degrees of expenditures. Some non-exhaustive examples include the following:

- Word processing only. This requires little more than the computer itself, a printer and proper word-processing software. This would greatly improve the editing process and eliminate the need for carbon copying judgments, etc. Further, law clerks or volunteer interns could use the equipment to draft decisions, leaving the judge only to make specific alterations where desired.
- Typing by use of pre-made templates and development of merge documents, such as dismissal orders and orders to apprehend witnesses. Such tools would make it possible for the courts to develop much-used forms in advance, leaving the staff only to fill in case-specific information. This would reduce the need for involving the judge and also reduce processing time among staff.
- Case management system (see below for a fuller discussion).
- Accounting and financial management. This is one of the most important areas for use of computers. It would require customizing the software to reflect the court's budget processes.
- Legal library. The publishers of the Official Gazettes of both entities provide CD-ROMs of the Official Gazettes currently in force, which could be read on computers in the courts. CD-ROM technology also provides the possibility to *search* its contents.
- Land registry and registers for criminal certificates. These are essentially databases, but would probably require some customization of the off-the-shelf software. In addition, the initial data entry process creating the database could be very time-consuming.

10.4.2 Computerized case handling system

A great portion of the working time of the court staff is used for registering the cases in different ledgers. Then, later, the same information entered in the ledgers is extracted in order to generate reports required by the law. This type of routine work may be carried much more efficiently out by a computerized case handling system, *also* providing the court president and court administrator with updated information in real time.[68]

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[68] One court uses an electronic case management system but updates the manual case ledgers for backup purposes. This means double work, and removes the efficiency gain. Other means of making backups

Advantages of a computer-assisted case-management system include the following (all available in real time):

- Ability to track single cases in order to ensure that no case gets lost in the system or is otherwise ignored.
- Instant overview over cases not attended to for a given period.
- Tools for decreasing time gap between actions.
- Exact calculation of time since filing (or from any other desired time point, for example since first hearing, etc.)
- Generation of reports of caseload, broken down by case type, age, time since last action taken, etc. (all broken down by each judge).
- Generation of reports showing the number of cases pending before the court and the status of each case.

Most computers for sale today come bundled with office support software that include database management software.[69] The software needed is therefore available at low initial costs. Typically, a more specific application needs to be developed "on top of" the off-the-shelf software, however, to ensure a user-friendly user interface.

Some courts already have a case management system, but the systems are not coordinated. With more computers in the courts, the need for a uniform system will soon become urgent.

10.4.3 The benefits of compatibility and joint procurement

Most computers available in the courts today were provided by a variety of different donors. There does not appear to have been coordination regarding hardware or software. The benefits of an entity-wide initiative are obvious:

- Joint government procurement programs could lower prices.
- Entity-wide service and maintenance agreements could be negotiated.
- Customization of software could be carried out by the MoJs (or at least under their supervision) in order to achieve uniform applications entity-wide, thus dividing development costs among all participants.
- Uniform systems also facilitate production of uniform reports, making them more readable and useful. Further, this facilitates easy interchange of staff between courts.

The GTZ/SIDA-headed land registry project is considering donating computers to the courts. Possible future donations should take into consideration the already existing hardware and make the software compatible for several services.

10.4.4 Minimum level of computer equipment

Many courts only use manual typewriters. It would serve little purpose to replace those with new, electric typewriters. The greatest improvement in efficiency would come

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should be sought, for example by keeping printouts or – preferably – using separate backup devices such as a ZIP-drive (as is done in the Sarajevo II court).

[69] Examples include Lotus Smart Suite and Microsoft Office.

from using computers for as much typing as possible. Replacing old typewriters with computers should be assumed as a minimum level in order to work efficiently. It is probably not realistic to get computers for all typists in the near future. To some extent one computer can be useful for several typists as they are not typing the whole day.[70] As a minimum of three computers for typing is suggested, even in the smallest courts.

All courts should further have computers for case management and accounting. In the smaller courts one computer might be used for both these functions, but it might require changes in the organization and possible inefficiency on other levels. One computer for case registration and one for accounting are therefore recommended as a minimum for all courts.

The minimum number of computers mentioned above, of course, is too small for larger courts. They will gain substantial improvement by getting more computers for both typing and case management, but it is difficult to state any minimum level. As a rule of thumb only, the minimum number of computers allocated for typing should be half the number of judges.

Even if one computer mainly is meant for typing, additional functions could be available, for example, to meet the judges' need for the computer as a library and caselaw depository. This use, however, has only limited potential for improving efficiency and should not take priority over the typists' use of the computers. The location of the computers also should be considered, to maximize the computers' availability for different functions and to different persons.

The need for computers for land registry and registry of companies is not evaluated as these registries are the subject of other projects.

10.4.5 Conclusions

A minimum level of equipment for the smaller courts is recommended as follows:[71]

- One copy machine, preferably a high-capacity one,
- One fax machine,
- Five computers (computers for the land registry and registry of companies not included),
- At least one printer,[72]
- An adequate support and maintenance contract.

For larger courts, the minimum numbers of computers and printers should be higher, proportional with the number of judges in the court.

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[70] The problems of too few computers could be further alleviated by acquiring dictaphone equipment, making it possible for the judge to dictate decisions for later typing.

[71] For illustration use only, the project team collected price examples from three likely sources. Prices were understood as bulk purchases of 50+ units, free of taxes and customs. The prices also include training, installation and warranty. Copiers were quoted ranging from € 4,238 to € 12,787; fax machines ranging from € 220 to € 1,500 and printers were quoted in the range of € 233 to € 1,636. Computer prices were quoted as ranging from € 870 to € 1,200 per item. It is certain that the steady fall in prices and skillful and judicious use of competitive bid procedures can yield even better terms for the implementing agency.

[72] Because of printing speed and long-run maintenance costs, a laser printer is preferable.

For both larger and smaller courts, it would be desirable to include a simple case management system, uniform for both entities, as minimum equipment.

It should be pointed be out that the project has not endeavored to conduct an inventory of office support equipment in the different courts. Therefore, no estimate of the total costs has been made.

Recommendations:

- ***A minimum-level computerization of the courts should be sought, if possible through a donor project.***
- ***A simple, computerized case management system should be developed in an entity-wide joint effort.***

10.5 Future possibilities

10.5.1 Computers

The rapid development of computerization could bring even additional possibilities for the courts. The proliferation of the Internet and web-based services paves the way for real-time information exchange between the courts and other public services, not to mention the general public.[73] The basic requirement would obviously be to connect the courts to the Internet. In itself, this is very simple. To fully exploit these possibilities would be more complicated and probably call for the involvement of supervising and coordinating units. This typically could be tasked to the MoJs in the RS and the Federation.

Future services could include the following:

- Information "bulletin boards," enabling courts to communicate to a larger public.
- Legal databases (both laws and jurisprudence) available on the web, diminishing the need for printed material and thereby reducing expenses.
- Web based user support, *i.e.*, user support without having a computer consultant to actually travel to the courts.
- Real-time provision of statistics, *i.e.*, the MoJ could at any given time access the court's own databases and retrieve updated information on the caseloads in the courts.
- Centralized databases for land registries, criminal records and company registers (to name a few), accessible by all the courts real time.

Of course, these are just examples. The future information age will no doubt see even more involvement of web based services for the courts.

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[73] In fact, both the Federation and the RS operate web-sites already. The URLs are http://www.fbihvlada.gov.ba and http://www.vladars.net.

10.5.2 Audio recording of the proceedings

The proceedings could be recorded *in extenso* by means of audio recording equipment.[74] This would serve efficiency purposes, as it would be possible for the typists to type statements of witnesses and parties, decisions etc. after the hearing is concluded.[75] Further, audio recording would also ensure a complete and accurate record.

The actual use of such equipment will depend on the regulations in the new procedure laws.

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[74] This is done in Brcko.
[75] Normally, there would be no need for a complete transcription of the records.

11 Appendices

11.1 Appendix 1: Systemwide backlog database

	Number of judges	Backlog as of December 31., 1999			Backlog as of December 31., 2000			Inflow of new cases in 2001			Total in work in 2001			Resolved in 2001			Backlog as of December 31., 2001			Clearance rate vs. 2001 inflow			Backlog 31.12.01 as percentage of inflow			Special remarks
		K	P	Tot.	K	P	Tot.	K	P	Tot.	K	P	Tot.	K	P	Tot.	K	P	Tot.	K	P	Tot.	K	P	Tot.	
Federation of BiH Municipal Courts																										1)
Canton I: Una Sana																										
Bihac	13	457	1,171	3,315	363	1,286	7,438	410	1,126	21,970	773	2,412	29408	394	1,010	20,515	379	1,402	8,893	96%	90%	93%	92%	125%	40%	
Bosanska Krupa	5	198	541	1,009	150	480	1,282	116	320	4,100	266	800	5,382	140	447	4,273	126	353	1,109	121%	140%	104%	109%	110%	27%	
Bužim	3	47	203	414	76	205	529	84	103	3,636	160	308	4,165	72	127	3,627	88	181	538	86%	123%	100%	105%	176%	15%	
Cazin	8	403	993	2,916	413	1,070	4,134	239	593	7,309	652	1,663	11,443	142	649	6,626	510	1,014	4,817	59%	109%	91%	213%	171%	66%	
Kljuc	4	64	54	189	54	93	347	94	190	5,108	148	283	5,455	95	221	5,199	53	62	256	101%	116%	102%	56%	33%	5%	
Sanski Most	7	56	124	270	83	270	581	143	451	13,542	226	721	14,123	144	515	13,520	82	206	603	101%	114%	100%	57%	46%	4%	
Velika Kladuša	5	220	1,704	3,484	224	1,834	3,427	229	599	13,917	453	2,433	17,344	207	732	14,041	246	1,701	3,303	90%	122%	101%	107%	284%	24%	
Canton II: Posavina																										
Odžak	5	54	71	518	30	61	182	88	169	5,000	118	230	5,182	81	189	5,018	37	41	164	92%	112%	100%	42%	24%	3%	
Orašje	6	103	158	612	65	172	718	115	272	6,601	180	444	7,319	111	206	6,300	69	238	1,019	97%	76%	95%	60%	88%	15%	
Canton III: Tuzla																										
Banovici	7	334	1,078	2,227	238	891	1,950	175	459	2,845	413	1,350	4,795	255	667	3,385	158	683	1,410	146%	145%	119%	90%	149%	50%	
Gracanica	10	36	209	900	53	208	999	189	510	5,119	242	718	6,118	155	519	5,296	87	199	822	82%	102%	103%	46%	39%	16%	
Gradacac	9	136	466	1,705	81	452	1,486	104	280	5,352	185	732	6,838	97	353	5,310	88	379	1,528	93%	126%	99%	85%	135%	29%	
Kalesija	6	275	341	1,134	220	315	1,049	195	537	2,596	415	852	3,645	273	575	2,811	142	277	834	140%	107%	108%	73%	52%	32%	
Kladanj	5	88	301	1,119	94	204	1,037	223	320	2,082	317	524	3,119	163	246	1,847	154	278	1,272	73%	77%	89%	69%	87%	61%	
Lukavac	9	463	1,866	5,965	210	1,096	4,152	161	593	5,682	371	1,689	9,834	229	955	5,461	142	734	4,373	142%	161%	96%	88%	124%	77%	
Srebrenik	7	541	913	3,531	536	740	3,854	179	387	3,172	715	1,127	7,026	280	525	3,393	435	602	3,633	156%	136%	107%	243%	156%	115%	
Tuzla	32	565	4,848	18,738	432	4,815	23,718	400	2,603	16,898	832	7,418	40,616	405	2,986	13,530	427	4,432	27,086	101%	115%	80%	107%	170%	160%	
Živinice	8	610	2,132	5,718	351	2,127	5,002	254	689	4,885	605	2,816	9,887	274	864	4,653	331	1,952	5,234	108%	125%	95%	130%	283%	107%	
Canton IV: Zenica-Doboj																										
Breza	5	0	0	0	0	0	0	119	452	2,858	119	452	2,858	38	47	1,577	81	405	1,281	32%	10%	55%	68%	90%	45%	2)
Kakanj	8	645	550	4,534	232	574	2,377	291	552	4,187	523	1,126	6,564	225	474	3,697	298	652	2,867	77%	86%	88%	102%	118%	68%	
Maglaj	4	143	410	2,180	112	487	2,122	104	357	6,581	216	844	8,703	117	451	6,708	99	393	1,995	113%	126%	102%	95%	110%	30%	
Olovo	4	141	169	485	149	268	723	83	131	1,814	232	399	2,537	117	274	1,976	115	125	561	141%	209%	109%	139%	95%	31%	
Tešanj	7	343	1,181	5,251	279	1,228	5,994	187	409	14,237	466	1,637	20,231	193	590	14,945	273	1,047	5,286	103%	144%	105%	146%	256%	37%	
Vareš	3	65	86	338	32	156	434	68	175	5,403	100	331	5,837	79	211	5,376	21	120	461	116%	121%	100%	31%	69%	9%	
Visoko	8	277	695	3,138	310	790	4,657	240	607	5,013	550	1,397	9,670	320	846	7,051	230	551	2,619	133%	139%	141%	96%	91%	52%	3)
Zavidovici	8	521	1,026	2,928	330	1,452	2,948	188	350	9,034	518	1,802	11,982	289	443	9,652	229	1,359	2,330	154%	127%	107%	122%	388%	26%	
Zenica	22	495	4,530	12,070	318	4,709	18,478	700	1,707	18,962	1,018	6,416	37,440	583	2,112	23,047	435	4,304	14,393	83%	124%	122%	62%	252%	76%	
Žepce	5	181	241	2,142	227	652	2,934	108	200	1,822	335	852	4,756	149	261	2,388	186	591	2,368	138%	131%	131%	172%	296%	130%	
Canton V: Gorazde-Podrinje																										
Goražde	5	67	170	862	70	146	988	135	412	8,959	205	558	9,947	164	420	8,870	41	138	1,077	121%	102%	99%	30%	33%	12%	

	Number of judges	Backlog as of December 31., 1999			Backlog as of December 31., 2000			Inflow of new cases in 2001			Total in work in 2001			Resolved in 2001			Backlog as of December 31., 2001			Clearance rate vs. 2001 inflow			Backlog 31.12.01 as percentage of inflow			Special remarks
		K	P	Tot.	K	P	Tot.	K	P	Tot.	K	P	Tot.	K	P	Tot.	K	P	Tot.	K	P	Tot.	K	P	Tot.	
Canton VI: Srednja - Centralna Bosna																										
Bugojno	11	23	509	2,075	462	657	2,876	605	922	20,205	1,067	1,579	23,081	629	762	19,979	438	817	3,102	104%	83%	99%	72%	89%	15%	
Fojnica	3	336	110	808	386	97	754	142	108	1,877	528	205	2,631	171	86	1,708	357	119	923	120%	80%	91%	251%	110%	49%	
Jajce	6	170	349	2,597	284	649	4,112	136	176	4,458	420	825	8,570	154	200	4,616	266	625	3,954	113%	114%	104%	196%	355%	89%	
Kiseljak	5	120	167	442	153	144	527	98	188	5,543	251	332	6,070	133	183	5,520	118	149	550	136%	97%	100%	120%	79%	10%	
Novi Travnik	5	322	276	1,260	427	323	1,395	390	200	7,995	817	523	9,390	330	214	6,682	487	309	2,708	85%	107%	84%	125%	155%	34%	
Travnik	11	676	841	5,704	475	802	2,852	244	466	9,897	719	1,268	12,749	413	519	10,479	306	749	2,270	169%	111%	106%	125%	161%	23%	*)
Vitez	6	589	261	1,422	652	315	1,708	582	315	7,491	1,234	630	9,199	437	307	7,023	797	323	2,176	75%	97%	94%	137%	103%	29%	*)
Canton VII: Hercegovina-Neretva																										
Capljina	5	54	322	1,308	49	237	1,620	110	417	7,647	159	654	9,267	121	395	7,497	38	259	1,770	110%	95%	98%	35%	62%	23%	*)
Citluk	4	66	221	745	41	271	1,179	58	239	3,296	99	749	4,475	44	263	3,165	55	247	1,310	76%	110%	96%	95%	103%	40%	
Jablanica	3				65	181	617	64	124	1,038	129	305	1,655	56	163	1,041	73	142	614	88%	131%	100%	114%	115%	59%	4)
Konjic	6	157	881	2,208	164	679	2,415	201	382	3,605	365	1,061	6,020	161	502	3,775	204	559	2,245	80%	131%	105%	101%	146%	62%	5)
Mostar I	14	165	1,721	5,121	239	1,765	11,673	131	1,076	5,282	370	2,841	9,592	246	1,452	4,435	124	1,389	5,157	188%	135%	84%	95%	129%	98%	6)
Mostar II	14	138	906	3,023	148	967	2,992	205	674	9,462	353	1,641	12,454	241	772	10,173	112	869	2,281	118%	115%	108%	55%	129%	24%	
Neum	3				10	47	219	16	46	750	22	93	969	14	41	836	8	52	133	88%	89%	111%	50%	113%	18%	7)
Prozor-Rama	3	21	85	382	25	96	318	5	108	2,994	30	204	3,312	7	82	2,773	23	122	539	140%	76%	93%	460%	113%	18%	
Stolac	4	17	36	363	38	53	464	63	85	4,452	101	138	4,916	74	81	4,197	27	57	719	117%	95%	94%	43%	67%	16%	
Canton VIII: Zapadna-Hercegovina																										
Ljubuški	4	74	1,150	2,863	29	1,170	1,831	82	328	5,538	111	1,498	7,369	88	352	5,771	23	1,146	1,598	107%	107%	104%	28%	349%	29%	8)
Široki Brijeg	8	169	951	3,061	168	936	2,997	132	385	10,176	300	1,321	13,173	152	451	10,378	148	870	2,795	115%	117%	102%	112%	226%	27%	
Canton IX: Sarajevo																										
Sarajevo I	33	728	5,024	34,710	754	4,483	63,481	744	2,504	157,647	1,498	6,987	221,128	817	2,666	164,686	681	4,321	56,442	110%	106%	104%	92%	173%	36%	
Sarajevo II	42	1,297	3,937	23,294	1,646	3,744	31,427	1,427	2,998	95,590	3,073	6,742	127,017	1,350	2,675	95,999	1,723	4,067	31,018	95%	89%	100%	121%	136%	32%	
Canton X: Herceg-Bosna																										
Drvar	3	74	10	118	74	16	143	98	58	1,909	172	74	2,052	85	38	1,769	87	36	283	87%	66%	93%	89%	62%	15%	
Livno	6	212	850	1,688	210	1,254	3,055	127	575	10,426	337	1,829	13,481	199	904	10,596	138	925	2,885	157%	157%	102%	109%	161%	28%	9)
Tomislavgrad	5	169	873	2,167	127	636	2,164	98	295	4,687	225	931	6,851	122	339	4,478	103	592	2,373	124%	115%	96%	105%	201%	51%	10)
Cantonal Courts																										
Bihac	14	80	135	558	78	267	760	71	1,041	14,823	149	1,308	15,583	71	960	14,579	78	348	1,004	100%	92%	98%	110%	33%	7%	
Odžak	5	0	0	193	0	1	111	15	73	1,536	15	74	1,647	3	74	1,604	12	0	43	20%	101%	104%	80%	0%	3%	11)
Tuzla	35	210	105	1,995	46	892	2,486	149	1,492	6,444	195	2,384	8,930	106	1,684	7,115	89	700	1,815	71%	113%	110%	60%	47%	28%	
Zenica	20	101	241	1,375	137	521	2,310	97	1,276	12,206	234	1,797	14,516	136	1,303	13,215	98	494	1,301	140%	102%	108%	101%	39%	11%	
Goražde	4	15	0	45	13	22	75	9	206	1,309	22	228	1,384	14	198	1,250	8	30	134	156%	96%	95%	89%	15%	10%	
Travnik	9	4	47	247	2	104	362	98	566	4,536	100	670	4,898	10	487	4,344	90	183	554	10%	86%	96%	92%	32%	12%	
Mostar	16	30	775	1,997	24	394	5,744	84	731	1,424	108	1,125	7,168	24	640	4,668	84	485	2,500	29%	88%	328%	100%	66%	176%	
Široki Brijeg	5	0	27	80	0	12	62	14	224	824	14	236	886	2	235	771	12	1	115	14%	105%	94%	86%	0%	14%	
Sarajevo	35	147	599	5,182	141	873	6,634	216	1,700	27,732	357	2,573	34,366	223	1,416	28,834	134	1,157	5,532	103%	83%	104%	62%	68%	20%	
Livno	4	0	3	3	0	0	40	19	406	2,209	19	406	2,249	0	402	2,164	19	4	85	0%	99%	98%	100%	1%	4%	

	Number of judges	Backlog as of December 31., 1999			Backlog as of December 31., 2000			Inflow of new cases in 2001			Total in work in 2001			Resolved in 2001			Backlog as of December 31., 2001			Clearance rate vs. 2001 inflow			Backlog 31.12.01 as percentage of inflow			Special remarks
		K	P	Tot.	K	P	Tot.	K	P	Tot.	K	P	Tot.	K	P	Tot.	K	P	Tot.	K	P	Tot.	K	P	Tot.	
Republika Srpska																										
Basic courts																										
District Banja Luka																										
Banja Luka	47	1,605	15,569	25,459	1,595	16,094	30,495	1,068	3,803	77,985	2,663	19,897	108,480	1,253	3,340	74,860	1,410	16,557	33,620	117%	88%	96%	132%	435%	43%	12)
Gradiška	9	298	1,355	2,543	222	1,283	2,850	229	677	5,555	451	1,960	8,405	263	811	5,943	188	1,149	2,462	115%	120%	107%	82%	170%	44%	
Kotor Varoš	4	196	517	988	173	528	977	55	205	1,478	228	733	2,455	117	316	1,467	111	417	988	213%	154%	99%	202%	203%	67%	
Kozarska Dubica	5	36	411	852	45	274	736	78	464	4,118	123	738	4,854	75	421	4,167	48	317	687	96%	91%	101%	62%	68%	17%	
Mrkonjic Grad	7	334	1,277	2,906	221	1,198	3,023	269	434	2,617	490	1,632	5,640	242	464	2,734	248	1,168	2,906	90%	107%	104%	92%	269%	111%	
Novi Grad	8	210	625	2,069	187	737	1,822	177	468	3,925	364	1,205	5,747	149	577	3,690	215	628	2,057	84%	123%	94%	121%	134%	52%	
Prijedor	15	288	4,382	5,757	185	3,837	6,399	332	686	3,177	517	4,523	9,576	259	1,458	3,819	258	3,065	5,757	78%	213%	120%	78%	447%	181%	
Prnjavor	7	143	885	2,480	174	1,096	2,066	110	417	3,725	284	1,513	5,791	171	471	3,311	113	1,042	2,480	155%	113%	89%	103%	250%	67%	
Srbac	4	46	298	738	63	272	691	129	200	2,219	192	472	2,910	125	324	2,185	67	148	725	97%	162%	98%	52%	74%	33%	
District Bijeljina																										
Bijeljina	19	782	2,459	8,919	804	2,433	7,840	967	1,773	12,061	1,771	4,206	19,901	562	1,548	11,626	1,209	2,658	8,275	58%	87%	96%	125%	150%	69%	
Lopare	5	17	88	196	18	51	269	110	363	1,383	128	414	1,652	105	370	1,456	23	44	196	95%	102%	105%	21%	12%	14%	
Srebrenica	4	325	559	1,346	249	626	1,350	343	333	2,065	592	959	3,415	247	392	2,069	345	567	1,346	72%	118%	100%	101%	170%	65%	
Zvornik	12	117	316	2,104	167	1,092	996	234	549	5,373	401	1,641	6,369	246	1,216	4,265	155	425	2,104	105%	221%	79%	66%	77%	39%	
District Doboj																										
Derventa	6	328	922	1,802	273	827	1,947	104	1,033	2,228	377	1,860	4,175	267	518	2,373	110	1,342	1,802	257%	50%	107%	106%	130%	81%	
Doboj	14	429	1,415	4,791	581	1,354	5,076	297	743	5,662	878	2,097	10,738	384	868	6,081	494	1,229	4,657	129%	117%	107%	166%	165%	82%	
Modrica	9	261	593	1,991	217	802	1,849	271	527	11,641	488	1,329	13,490	264	541	11,499	224	788	1,991	97%	103%	99%	83%	150%	17%	
District Trebinje																										
Nevesinje	3	83	532	1,244	24	597	1,316	9	188	3,737	33	785	5,053	7	63	3,809	26	722	1,244	78%	34%	102%	289%	384%	33%	
Srbinje	5	83	572	933	62	719	851	185	315	2,249	247	1,034	3,100	178	440	2,167	69	594	933	96%	140%	96%	37%	189%	41%	
Trebinje	8	149	691	1,413	142	517	1,788	222	664	3,518	364	1,181	5,306	265	438	3,896	99	743	1,410	119%	66%	111%	45%	112%	40%	
District Srpsko Sarajevo																										
Rogatica	4	24	99	244	36	61	286	86	196	1,051	122	257	1,337	66	197	1,093	56	60	244	77%	101%	104%	65%	31%	23%	
Sokolac	6	238	364	958	225	365	928	319	347	2,086	544	712	3,014	235	299	2,056	309	413	958	74%	86%	99%	97%	119%	46%	
Srpsko Sarajevo	6	210	781	2,039	293	764	1,680	114	207	2,388	407	971	4,068	132	263	2,029	275	708	2,039	116%	127%	85%	241%	342%	85%	
Višegrad	4	45	423	460	39	331	631	106	117	1,449	145	448	2,080	111	331	1,620	34	117	460	105%	283%	112%	32%	100%	32%	
Vlasenica	6	212	1,060	1,776	203	856	2,085	284	344	614	487	1,200	2,699	244	829	923	243	371	1,776	86%	241%	150%	86%	108%	289%	
District courts																										
Banja Luka	22	159	915	3,133	227	1,826	4,380	81	2,805	18,304	308	4,631	22,684	235	1,479	16,613	73	3,152	6,071	290%	53%	91%	90%	112%	33%	
Bijeljina	11	88	161	377	98	277	511	20	780	2,652	118	1,057	3,163	104	745	2,645	14	312	518	520%	96%	100%	70%	40%	20%	
Doboj	11	47	281	375	11	0	101	23	1,115	2,260	34	1,115	2,361	25	1,115	2,340	9	0	21	109%	100%	104%	39%	0%	1%	
Trebinje	9	35	0	95	19	57	115	12	530	1,123	31	587	1,238	31	507	1,154	0	80	84	258%	96%	103%	0%	15%	7%	
Srpsko Sarajevo	10	36	15	820	41	559	1,314	20	467	1,759	61	1,026	3,073	51	482	1,854	10	544	1,219	255%	103%	105%	50%	116%	69%	

SUMMARIES

	Number of judges	Backlog as of December 31., 1999			Backlog as of December 31., 2000			Inflow of new cases in 2001			Total in work in 2001			Resolved in 2001			Backlog as of December 31., 2001		
		K	P	Tot.	K	P	Tot.	K	P	Tot.	K	P	Tot.	K	P	Tot.	K	P	Tot.
Federation																			
Municipal courts	432	13,105	45,711	183,051	12,358	46,303	244,359	11,379	28,222	590,649	23,733	74,764	827,645	11,835	31,362	597,668	11,898	43,163	229,977
Cantonal courts	147	587	1,932	11,675	441	3,086	18,584	772	7,715	73,043	1,213	10,801	91,627	589	7,399	78,544	624	3,402	13,083
RS																			
Basic courts	217	6,459	36,193	74,008	6,198	36,714	77,951	6,098	15,053	162,304	12,296	51,767	240,255	5,967	16,495	159,138	6,329	35,272	81,117
District courts	63	365	1,372	4,800	396	2,719	6,421	156	5,697	26,098	552	8,416	32,519	446	4,328	24,606	106	4,088	7,913

In reviewing Annual Reports that were the source of the data, several issues were noted. The end-of-the year numbers and the following year opening numbers were not always the same. Wherever there was a discrepancy between the 2000 and 2001 data, the more recent data (2001) were used consistently. MC Jablanica, Neum and Breza were not established in 1999; therefore, certain statistics for previous years did not exist.
Such cases were noted in the "Comments" column.

1) Discrepancy between the backlog between the 2000 and 2001 report.
2) Court established in June
3) Transferred 851 cases to MC Breza
4) Established on June 1, 2000.
5) Discrepancy backlogs 2001/2002.
6) Land Registry moved out in 2001.
7) Established on June 1, 2000.
8) Discrepancy backlogs 2001/2002. Wrong math
9) Major discrepancy/total backlog 2000.
10) Wrong math (12 cases higher total backlog)
11) No trial jurisdiction for K cases until August 1, 2001.
12) Major discrepancy in 1999 backlog numbers.
*) Minor math error

11.2 Appendix 2: Current quota system

Courts of first instance:

	"P" civil cases		"K" criminal cases	
	Month	Year	Month	Year
I Unsko Sanski	26	286	18	198
II Posavina	20	220	12	132
III Tuzlansko – Podrinjski (Tuzla)	17	187	12	132
IV Zenicko – Dobojski (Zenica)	26	286	18	198
V Bosansko – Podrinjski (Gorazde)	26	286	18	198
VI Srednje Bosanski (Travnik)	25	275	14	154
VII Hercegovacko – Neretvanski (Mostar)	20	220	12	132
VIII Zapadno – Hercegovacki (Siroki Brijeg)	25	275	14	154
IX Sarajevo (Sarajevo)	26	286	18	198
X Herceg-Bosanski (Livno)	24,5	270	14,5	160
REPUBLIKA SRPSKA	22	242	15*	165*
			5**	55**

** Crimes punishable by up to 15 years of imprisonment*
*** Crimes punishable by more than 15 years of imprisonment*

Courts of second instance:

	"Gz" civil appeals		"Kz" criminal appeals		"K" criminal cases	
I Unsko Sanski	25	275	25	275	5	55
II Posavina	14	154	12	132	5	55
III Tuzlansko – Podrinjski	15	165	15	165	4	44
IV Zenicko – Dobojski	25	275	25	275	5	55
V Bosansko – Podrinjski	25	275	25	275	5	55
VI Srednje Bosanski	20	220	20	220	5	55
VII Hercegovacko – Neretvanski	15	165	12	132	5	55
VIII Zapadno – Hercegovacki	20	220	20	220		
IX Sarajevo	15	165	18	198	5	55
X Herceg-Bosanski	20	220	20	220		
REPUBLIKA SRPSKA	15	165			15*	165*
					5**	55**

** Crimes punishable by up to 15 years of imprisonment*
*** Crimes punishable by more than 15 years of imprisonment*

11.3 Appendix 3: Plan for resolving the backlog in Banja Luka Basic Court

BASIC COURT BANJA LUKA

Date: 04.01.2002.

At the meeting of judges of the Basic Court Banja Luka, held on 04.01.2002., we made following:

PLAN
OF RESOLVING BACKLOG CASES IN THE BASIC COURT BANJA LUKA

The plan consist following assignments:

1. To make list of backlog cases, by their allocation to judges (cases from 1998 and older).
2. Each judge of this court is obliged to make regular monthly report at the first day of the month and on the number of resolved backlog cases for the previous month. This report is to be provided to the President (head) of the department (civil, criminal, out-of-court and commercial).
3. On monthly basis, each judge is obliged to inform president (head) of the department on the number of scheduled backlog cases, and give the reasons why the certain case could not be completed.
4. At least once in a month, Presidents of departments are obliged to have joint meeting with judges from those departments in order to analyze efficiency in resolving of backlog cases and to propose the way on how to resolve problems that influenced backlog case not to be finished.
5. All the judges from this court are introduced with this plan and are obliged to respect determined assignments.

Court President,

/s/ Vukasin Boskovic

11.4 Appendix 4: Sample weekly schedule for judges in Brcko Basic Court

Brcko Basic Court

Hypothetical Standard Workweek

For a Basic Court Judge

Hearing Civil, Criminal and Backlog Cases

Time	Monday	Tuesday	Wednesday	Thursday	Friday
07:30 to 08:30	Case Preparations	Case Preparations	Case Preparations	Case Preparations	Case Preparations
08:30 to 09:30	Status Hearings, Pleas, Preparatory Hearing, Motions	Status Hearings, Pleas, Preparatory Hearing, Examination, Motions	Status Hearings, Pleas, Preparatory Hearing, Examination, Motions	Status Hearings, Pleas, Preparatory Hearing, Examination, Motions, Sentence Bargaining and Sentencing	Status Hearings, Pleas, Preparatory Hearing, Examination, Motions, Sentence Bargaining and Sentencing
09:30 to 10:30	Civil Trials	Civil Trials	Criminal Trials		
11:30 to 12:00	Lunch	Lunch	Lunch	Lunch	Lunch
12:00 to 14:00	Civil Trials	Civil Trials	Criminal Trials	Backlog Trials Civil	Backlog Trials Criminal
14:00 to 15:00	Civil Trials	Civil Trials	Criminal Trials	Backlog Trials Civil	Backlog Trials Criminal
15:00 to 16:00	Civil Trials	Civil Trials	Criminal Trials	Backlog Trials Civil	Backlog Trials Criminal
16:00 to End	Civil Trials	Civil Trials	Criminal Trials	Backlog Trials Civil	Backlog Trials Criminal