# Progress Report April – June 2001

## Highlights

1. The IJC is now in a position to attend most meetings of the Entity Commissions and Councils. To assess the work of those bodies, the IJC has also started an independent evaluation of the judges against whom the most serious complaints have been filed.

2. Together with the lack of transparency in the appointment process, the ethnic composition of courts and prosecutors' offices and the anticipated expiry of a number of mandates of the prosecutors in the Federation are issues of concern to the IJC.

3. IJC has identified its priorities for judicial reform, aiming to secure the independence of the judiciary, to increase judicial efficiency and to improve the delivery of justice. A draft strategy paper is in preparation.

## Legal and Judicial Reform

The IJC has been gathering information about the work of various international and local agencies in BiH in order to fulfill IJC's role of guiding and co-ordinating judicial reform. In this regard, the IJC will convene regular meetings with all actors involved in this field and the first such meeting will be held on June 19.

The problems facing the judiciary are sufficiently well known through the reports of other agencies, and in particular JSAP, to enable the IJC to work towards developing an overall strategy without having to conduct extensive research itself. While a strategy paper is in preparation, the IJC has already identified the following five priorities:

1. Criminal procedure reform and training
2. Civil procedure reform
3. Enforcement of civil judgements
4. Court administration and management reform
5. Amendment of the laws on judicial and prosecutorial service

**Criminal Procedure Reform**

The drafting of new criminal procedure legislation is in the hands of the OHR Anti-Fraud Department, but the IJC will assist in the drafting if needed. IJC will co-ordinate the development of the necessary training programs and also expects to be involved in developing political support for the new legislation. Preliminary discussions with other organizations, including UNMIBH, the Council of Europe and the US Department of Justice, have been held to determine how the different agencies can work together on this.

**Civil Procedure Reform and Enforcement of Civil Judgements**

There have been different local and international initiatives in these fields, particularly in the Federation, where working groups have been set up and legislation is already in the drafting process. Progress has been slower in the RS, but the Ministry of Justice has appointed a working group to draft new legislation on enforcement of court orders. Given the importance of these reforms to the reduction of delays in the judicial system, the IJC intends to take a leading role in co-ordinating reform in these areas.

**Court Administration**

There are a number of ongoing projects within the international community that will affect court administration, such as those on land and company registries. Reform of court administration will be a difficult, complex and sensitive issue, and the IJC is considering how best to tackle the many different problems presented as part of this issue.

**Laws on Judicial and Prosecutorial Service**

The IJC has been working on various issues that have presented themselves in the implementation of the Law on Judicial and Prosecutorial Service in the Federation. It has been considering urgent amendments to that law as well as the application of ethical rules to judges and prosecutors.

**Bar Associations**

The IJC is assisting the Bar Association of the RS in drafting a new law on legal profession. It will guarantee that all lawyers in BiH can practice before the courts of the RS and so will be a significant step forward. The IJC has provided comments to the Association on its latest draft and expects to have input in any further drafts. Similar legislation for the Federation was prepared by ABA-CEELI, and the IJC has given a letter of support to the Federation Minister of Justice. While the drafts are not identical, they will give reciprocal rights of appearance before the courts of both entities, and the IJC

intends to ensure the application of uniform admission and disciplinary standards throughout BiH.

**Judicial Training Institutes**

Draft laws for each entity are expected to be considered for adoption this year and the IJC has met with the relevant ministers of justice to urge their speedy passage. The next session of the Interim Inter-entity Co-ordinating Board for Judicial and Prosecutorial Training is scheduled for 21 June.

**Monitoring of Judicial Cases**

The IJC is established to promote broad judicial reform measures in BiH. Accordingly, specific monitoring of individual police, prosecutorial and judicial investigations and court proceedings could be considered inappropriate as a matter of principle, as well as being beyond IJC resources. However, the IJC intends to act as the co-ordinating body for those agencies that are involved in trial monitoring.

## Judicial and Prosecutorial Matters

**Comprehensive Review of Judges and Prosecutors**

The Comprehensive Review of all serving judges and prosecutors has been underway since June 2000. It is scheduled to be completed by early 2002. There are over 750 judges and 260 prosecutors in BiH and each of them is the subject of an individual review, carried out by judicial and prosecutorial Commissions and Councils. So far, approximately 700 complaints have been received by the Commissions and Councils.

IJC finds that there are difficulties concerning the ability and willingness of the Commissions and Councils to carry out the Comprehensive Review process in a proper manner. The IJC

has noticed tendencies to treat instances of misconduct in an insufficiently serious manner, and also for them to act in a passive manner. Generally speaking, both the Commissions and Councils are insufficiently staffed and equipped to perform their duties.

The IJC has been steadily and rapidly building up its capacity to monitor and improve the Comprehensive Review process and is now in a position to attend the majority of meetings of the Entity Commissions and Councils. This is an extremely important and time-consuming task, as there are 24 Commissions and Councils to be monitored. IJC representatives at such Commission meetings contribute oral and written advice on issues arising and ensure that the requirements of the Federation Law on Judicial and Prosecutorial Service, and the RS Laws on the Prosecutor's Office and Law on Courts and Judicial Service are complied with by the Commissions and Councils.

Demonstrable improvements in the work of these bodies have already been noticed. However, there is still a need for further improvement. It is clear that the presence of IJC representatives at Commission and Council meetings leads to a greater awareness of the requirements of the laws concerning review of judges and prosecutors, and also leads to a more transparent procedure.

## Appointment Process

The IJC has devoted a significant amount of time and resources to the process of appointment of judges and prosecutors. The presence of IJC representatives has a clearly beneficial effect on this process. The Commissions and Councils are very receptive to IJC guidance and the IJC is trying to ensure that it is present at every Entity Commission and Council meeting concerning appointment.

Together with lack of transparency in the appointment process, the ethnic composition of courts and prosecutors' offices are issues of concern. The latter has recently come to a head with the rejection of the nominations for the Federation Constitutional Court by the Federation President and Vice-President. The issue is complicated by the fact that the BiH Constitutional Court decision on constituent peoples has not yet been fully implemented. In the interim, the IJC will seek to ensure that Commissions nominate the most professionally suitable candidates for all posts, in line with the BiH Constitutional Court decision on constituent peoples.

Another issue that has recently arisen is the expiry of the mandates of prosecutors. Many such mandates will expire during the summer of 2001. The IJC is currently assessing the seriousness of the situation, and developing a series of measures and activities to minimize the effect of this situation.

## Advisory Opinions

The IJC has issued eight advisory opinions on various legal issues throughout the reporting period. Advisory opinions are proving to be an effective method for the IJC to guide the legal community in following proper procedure. The advisory opinions will also serve as a basis for reforming the laws on courts and prosecutors' offices.