Progress Report September – October 2001

Following the usual pattern in these activity reports, this report has been drafted following the project goals of the IJC as set out in its Strategy Paper and the project numbers referred to in this report are those of the Strategy Paper.

1. Major achievements and current issues

1. **IJC continues release of Strategy Paper**

Delivery of the Strategy Paper to local institutions was a main focus in September, including most cantonal ministers of justice and other key judicial bodies. The ministers took the opportunity to present their own ideas for reform. The fact that these ideas are, in general, in line with the IJC's own policies bodes well for acceptance of our proposals for reform.

1. **Supplemental Amendments to the Law on Judicial and Prosecutorial Service**

See Section 2 Project 2.

1. **Federation Supreme Court appointments**

See Section 2 Project 2.

2. Improving the independence of the judiciary

Project 1 – The Comprehensive Review of Judges and Prosecutors

The first two judges have been removed from office under the Comprehensive Review Process.

Each IJC Field Office has established a Judicial Monitoring Working Group to co-ordinate the investigation of judges and prosecutors between relevant international organisations (UN-CJAU, OSCE, OHR). The first batch of complaints from other international organisations against individual judges and prosecutors has been received and submitted by the IJC to the relevant Commission or Council. The IJC will monitor their progress to ensure that they are dealt with appropriately. More complaints are expected soon. Meanwhile, the IJC is intensifying its own investigations against judges and prosecutors.

The IJC has assessed the situation regarding extension of the Comprehensive Review Process and a provision extending it until 30 June 2002 was inserted into the draft amendments to the Law on Judicial and Prosecutorial Service recently submitted to the Federation Minister of Justice. Steps will also be taken to seek to ensure parallel changes to the relevant laws of the Republika Srpska.

The Finnish Government agreed to provide funding of EURO 159,500 to recruit a total of eight lawyers and four investigators to assist the Commissions and Councils in the Comprehensive Review Process. It is anticipated that the first officers will start work in November. The IJC is also devising

a plan to dispose of existing complaints against judges and prosecutors.

The current situation with the comprehensive review process is as follows:

1. The Federation Judges Commission (FJC) has received over 720 complaints from the public. To date, the FJC has identified 71 cases for subsequent review (further investigation) and four cases for final review proceedings (which involve a hearing to determine whether to recommend removal from office). The FJC has conducted two removal proceedings, both of which have led to dismissal of the judges in question. In addition, two judges resigned from office as a result of scrutiny of their judicial conduct. However, the work of the FJC will be hindered as it has lost three members recently.

1. The Federation Prosecutors Commission (FPC) has received over 80 complaints and designated a large majority of them for subsequent review. Also, the FPC declined to recommend a number of incumbent prosecutors for reappointment (which is, effectively, a removal from office). The President of the FPC recently resigned at the suggestion of the IJC. An acting President has been appointed, pending the appointment of a permanent replacement.

1. The High Judicial Council (HJC) has received over 380 complaints. To date, the HJC has identified 28 cases for subsequent review and two cases for final review. In both cases, the HJC determined that the judges were unsuitable to hold office and recommended their removal.

1. The High Prosecutorial Council (HPC) has received 23 complaints. To date, the HPC has identified four cases for subsequent review and two cases for final review. The Basic Prosecutor in Prijedor has been suspended pending the final review proceedings.

In general, the IJC has noticed some improvements in the process, although it is still inefficient and the results to date are below what is necessary to remove a significant number of unsuitable judges and prosecutors.

Project 2 – Appointment Process

Federation Supreme Court

Fifteen vacancies recently arose for positions in the Federation Supreme Court and the IJC was involved in the nomination process at all stages. The FJC nominated 19 candidates to the appointing authority for the fifteen vacancies. The appointing authority, being the Federation President and Vice-President, approved fifteen names and sent these to the House of Peoples for confirmation. Following the voting on 18 September eight of the fifteen judges were not confirmed and the appointment procedure for those eight positions, along with six newly created positions in the Supreme Court, has begun again. The eight judges have filed an application with the Human Rights Chamber, alleging that the failure to confirm their appointment was based on their age and therefore amounted to illegal discrimination.

Appointment in General

The appointment process for judges and prosecutors has been substantially amended and improved by the IJC. The Memorandum of Understanding, signed by relevant actors on 4 July 2001, is

now being implemented throughout the country. Recent appointment processes include those for Deputy Federation Prosecutors, the Cantonal and Municipal Prosecutors in Gorazde, and for fifteen Federation Supreme Court judges *(see above*).

Following the imposition in the Federation, on 3 August 2001, of the Amendments to the Law on Judicial and Prosecutorial Service, a working group assembled by the IJC agreed on language for additional amendments to that law requested by the political authorities. The working group is comprised of the President and Vice President of the Federation, the Federation Minister of Justice, the Speakers of the two houses of Parliament, representatives of the Federation associations of judges and prosecutors and representatives of the FJC and FPC. Most notably, the proposed amendments included a change in the composition of the FJC and FPC as well as an extension of the Comprehensive Review Process. The final text of the supplemental amendments was sent to the Federal Ministry of Justice to commence normal legislative adoption procedures.

The appointment process for Deputy Federation Prosecutors was recently successfully completed and, on 31 October, Alma Tiric and Muhidin Hadarevic were appointed as Federation Deputy Prosecutors. One deputy prosecutor post remains vacant and will be re-announced.

The IJC intervened in the appointment process for prosecutors in Gorazde to block the nomination of the incumbent Municipal Prosecutor. The IJC conducted its own investigation into his conduct as a prosecutor. The Governor of the Canton, who is the appointing authority, refused to appoint the nominated candidate for Cantonal Prosecutor, also the previous incumbent. The IJC was closely involved in this and assessed that the reasons for non-appointment put forward by the Governor were grounded.

The new appointment process has resulted in a very competitive pool of applicants (approximately 55, including a large number of Serb applicants) for the nine posts in the Federation Constitutional Court. The IJC believes that this is attributable to the new, broader, announcement policy for vacancies. During the first round of applications, only eleven applicants applied for the same number of posts.

The Commissions and Councils are generally satisfied with the new appointment process, which they see as streamlining and to an extent codifying the process. At the same time, the political authorities continue to see the appointment process as an opportunity for interference, and resent efforts to reduce their influence over the process.

The IJC has also been active concerning the Commission for the Nomination of Judges to the Court of BiH. This Commission is now in a position to work effectively. The IJC has provided it with a Book of Rules and standard application documentation. It has announced the fifteen vacancies for the Court and for the national members of the Permanent Election Commission. The IJC will continue its close involvement in these issues.

Project 3 – Reform of Commissions and Councils

The IJC is in the process of revising a project proposal concerning the reform of the Commissions and Councils and the disciplinary process in general. This project was previously submitted to the Dutch Embassy in draft form. The project provides for the engagement of foreign experts, probably from Council of Europe, to examine the BiH system and other European systems and to draft a report setting out proposals for amendment. The IJC has already drawn on the expertise of its own officers to obtain details of the current systems in various European and North American countries.

Project 4 – Court funding

The IJC has begun to consider closely some technical issues related to the proposed Federation law on the courts and prosecutors' office budget. In particular, it seems that some of its provisions might not be compatible with the ongoing public sector finance reforms. The IJC is working with the relevant agencies to resolve these issues and then urge the adoption of the draft law.

Project 5 – Court security

The IJC is looking into the question of whether to support the creation of a separate court police system in the RS. There is some known support amongst the judiciary, but whether the proposal would actually solve the current problems is not so clear.

3. Improving the quality and efficiency of the judicial system

Projects 6 and 7 – Reform of civil procedure and enforcement of civil judgements

The Federation Minister of Justice has appointed local working groups on both these topics, which include representatives of the IJC. These groups held their first substantial meetings in late October. The Brcko law on enforcement will serve as the basis for the Federation draft and the current Federation law will be the basis for civil procedure reform.

Progress in the RS is less certain, as none of the working groups appear to have yet met.

Project 8 – Court administration reform

The Norwegian government has confirmed financial support of KM 250,000 for an IJC project on this issue, which should result in recommendations for low-cost, low-tech solutions to improve court administration and management. The IJC is now dealing with recruitment of consultants and other logistical issues, as well as identification of courts suitable for the assessment phase. It is anticipated that the project will begin in early 2002, under the leadership of the President of the largest District Court in Norway, Judge Anne Austboe.

Project 9 – Judicial training institutes

The Federation House of Representatives failed to vote on the draft law on the judicial training institute recently, seemingly for lack of support. The IJC has met with the relevant parliamentarians in order to clarify some problems faced in the legislative process. The IJC will also meet Ministry to agree on the next steps.

The RS Ministry of Justice has accepted the IJC recommendations in respect of its draft law, but the draft has not yet been forwarded to the Government, due to staff replacement in the Ministry. Adoption is still expected before the end of the year.

Project 10 – Criminal procedure training

The IJC is preparing comments on the draft state-level criminal procedure code developed by OHR Anti-Fraud Department. This reform will have a substantial impact on the structure of individual courts and will reduce the need for so many judges, while probably increasing the need for prosecutors. The IJC expects to work closely with OHR on how to deal with this issue.

The IJC has begun implementing phase one of a comprehensive

action plan for criminal procedure training. UNMIBH, the U.S. Department of Justice and ABA/CEELI are developing specific training programmes for RS and Federation prosecutors and police to enhance co-operation between them and to prepare prosecutors in particular for the new demands that will be placed on them after new codes are adopted (expected early next year).

Project 11 – Access to legal information

Discussions have continued with the Swedish Embassy on funding of a project in this area and the IJC is in the process of finalising a proposal.

Project 12 – Legal profession

The IJC has drafted a proposed RS draft law on the legal profession, following delivery of an unacceptable draft from the RS Bar Association. It has been sent to the Association for comment with an outline of those issues that will be crucial to obtain IJC support.

In the Federation, a copy of the Federation Ministry of Justice's draft as sent to the Government was obtained and reviewed. It became clear that significant portions of the draft that had been previously and painstakingly negotiated between the two current Bar Associations had been deleted or altered. This issue is being addressed directly with the Minister.

Project 13 – Inter-entity judicial co-operation

Nothing to report.

Project 14 – Minor Offence Courts

The IJC delivered comments on the RS draft law on minor offences to the RS Ministry of Justice in September. Some of these comments proposed radical changes to the draft, such as the substitution of a re-appointment procedure for the proposed comprehensive review. Surprisingly, the comments have received a great deal of support in the RS, including from the Prime Minister. The IJC will continue working with the Ministry to finalise the draft.

In the Federation, the IJC has been included as a member of the Working Group on drafting a new law. It has also provided comments along the same lines as those for the RS draft, which is substantially similar to that in the Federation. It is expected that the draft will be completed shortly.

Project 15 – Herzegovina-Neretva Canton

The Central Zone judicial institutions are still not working because of lack of premises. There is finally a solution to this in sight, but it involves prior moves of various other institutions.

Other issues

Trial Monitoring

The IJC has prepared a trial monitoring package, which has been distributed to all members of the Judicial Monitoring Working Groups throughout the country. The package included Basic Principles and Guidelines for Trial Monitors, a Checklist for Fair Trial Standards in Criminal Cases and Model Trial Monitoring and Reporting Forms.

Streamlining

As part of its consideration of the international community’s streamlining initiatives, the IJC has proposed the possibility

of additional IJC projects other than those in the Strategy Paper. These are on establishment of an appropriate relationship between Ministries of Justice and the judiciary and on establishment of permanent secretariats for the commissions and councils. The need for these additional projects has been indicated in various meeting with Ministries. However, capacity to undertake these projects would depend partly on extension of the IJC mandate period.