

# Executive Summary

## Brief Overview of the Results

The 2006 Judicial Reform Index (JRI) for Bosnia and Herzegovina (BiH) reflects a number of positive achievements in the area of judicial reform that were implemented in the country since the 2001 JRI, most notably the establishment of a single High Judicial and Prosecutorial Council (HJPC) responsible for all judicial appointments and discipline; reappointment of all judges pursuant to an objective procedure and criteria; adoption of new procedural legislation that introduced an adversarial system of justice; establishment of Judicial and Prosecutorial Training Centers (JPTCs); and enhanced accountability and transparency of the judicial system. However, because of the newness of many of these changes, it is still too early to determine the effectiveness or impact of the reforms.

Overall, of the 30 factors analyzed in the assessment, the correlations determined for 13 factors improved from 2001 to 2006, while none of the factors suffered a decline. The factors that were rated positive in 2001 continued to be positive in the current assessment, and were joined by three other factors upgraded to positive in 2006, bringing to seven the number of factors receiving the highest grade. Seventeen factors received neutral correlations in this report, including 11 that had received negative grades in 2001. Only six factors continue to carry negative ratings, including those relating to poor budgetary and financial safeguards for the judiciary, as well as the judicial review of legislation, enforcement of judgments, and the absence of effective case management systems. The correlations for a total of 13 factors were below positive in both 2001 and 2006 and were not upgraded in the current assessment, although the analysis of many of these factors reveals optimistic signs of progress and awareness of the need for further improvement. These conclusions suggest that much work still remains to be done as BiH seeks to strengthen its judiciary.

## Positive Aspects Identified in the 2006 BiH JRI

- Perhaps the greatest achievement of the BiH judicial reforms to date has been the **establishment of the unified HJPC at the national level** in 2004, in place of the state and entity-level councils that were created in 2001. This independent body has the mission to secure an independent, impartial and professional judiciary, and is entrusted with broad competencies in the areas of judicial appointments, discipline, and numerous other aspects of judicial system management and administration. Most significantly, the establishment of the HJPC has enabled the appointment and discipline of judges to be conducted **without political interference** and ensured the application of **uniform standards in judicial appointment and discipline** throughout BiH.
- One of the recent key reform initiatives involved revamping of the judicial system through a **process of reappointment of the entire BiH judiciary**, which was largely completed during 2003-2004. As a result of a generally accepted opinion that the professional quality of the judiciary was poor and its level of independence was low, as well as the strong political influence present during the post-war judicial appointments, a decision was made to declare all existing judicial positions vacant and open for competition to all qualified legal professionals. Approximately 30% of incumbent judges were not reappointed. During the reappointment process, the HJPC used, for the first time, **new and objective criteria and procedures for judicial selection**. The reappointment process also enabled **greater ethnic and gender balance** throughout the judiciary. Despite raising some doubts among judges about the security of their life tenure, there is universal consensus that the reappointment initiative was a major success.
- The **Office of Disciplinary Counsel** was established within the HJPC as a professional regulatory body charged with **exclusive authority to receive, hear, and decide on complaints of alleged judicial misconduct**. Public information about the judicial complaint and disciplinary process is widely disseminated, and the investigation is conducted in a transparent and objective

manner, although the actual practice is still in its formative stages. On a less positive note, several judges have expressed **concerns over the integrity of the new system**, noting that it is subject to abuse by parties or their attorneys dissatisfied with the outcome of the case. The vast majority (98%) of complaints filed in 2005 were deemed unfounded; nonetheless, the threat of a complaint can serve as a form of intimidation for some judges.

- A related measure involves the **promulgation of the Code of Judicial Ethics** in November 2005, which is based largely on the internationally recognized Bangalore Principles of Judicial Conduct. The adoption process included substantial vetting and input from the judiciary and the legal community as a whole in order to ensure participation, knowledge, and ownership. The JPTCs are now developing courses and materials for regular delivery of judicial ethics trainings.
- Since 2004, all sitting judges are required to attend at least four days of **mandatory continuing judicial education** annually, which encompasses courses on substantive and procedural law, court administration, and advocacy skills. Training is provided by the separate JPTCs of each entity, which operate under the supervision of the HJPC. The new system has received favorable reviews from both judges and other stakeholders. The scheduled introduction of the mandatory judicial orientation program and the proposed merger of the two JPTCs into a national system are widely regarded as positive future steps.
- Effective January 1, 2006, a **uniform judicial salary and benefits structure** was introduced throughout BiH, which substantially eliminated the disparities in judicial salary levels between the entities. Judicial salaries are universally regarded as sufficient to attract, retain, and support qualified judges without having to resort to other sources of income. At the same time, the recent changes resulted in reduction of some judicial salaries, which raises a possibility of challenging their constitutionality. It should be noted, however, that **non-judicial court staff salaries have not been raised for many years**, and their average salaries are currently 5 to 9 times lower than judicial salaries. This disparity has led to resentment, lack of motivation, and petty corruption among court personnel.

## Concerns Relating to Inefficiency of the Judicial System

- The majority of BiH courts are facing an **overwhelming backlog of unresolved cases**, which included over 1.3 million cases as of December 31, 2005. A number of strategies and efforts are being developed to deal with these problems, including attempts to increase the use of reserve judges and judicial associates. Unfortunately, the use of these mechanisms has been constrained by lack of sufficient funding.
- **Problems with enforcement of judicial decisions** continue to plague the courts. Litigants commonly resort to filing **frivolous appeals intended to delay enforcement proceedings**. Despite new legal provisions requiring enforcement even if there is an appeal, in practice most judges continue to stay enforcement upon such a challenge. This practice leads to delays and a growing backlog of enforcement cases. A further complication is that enforcement actions may be initiated on the basis of "authentic documents" (such as unpaid utility bills). As a result, enforcement cases constitute about 63% of the overall case backlogs in the BiH courts, the majority of these cases being undisputed small claims from utility companies. It is estimated that it would take the judiciary **five years to dispose of the current enforcement backlog**, even if no new claims were filed.
- A contributing problem is the **absence of efficient case management systems and procedures** for filing and tracking cases. The manual systems that exist in most courts mean that case files are susceptible to misplacement. This situation also complicates obtaining an accurate picture of backlogs and active cases. Recent positive developments included introduction of a common case numbering system for all courts, as well as testing and piloting of

more efficient case management systems in model courts, which are eventually expected to be implemented in all other courts.

## Concerns Relating to Financial Resources

- A persistent problem, which is largely the result of BiH's complex political structure, is the **fragmented and cumbersome budgetary structure for the judiciary**. The judiciary is currently funded out of 14 separate budgets, and there are 14 "appropriate" ministries of finance and/or justice, as well as legislatures involved in the process. Although the HJPC performs an advisory role during the budget drafting process and is charged with advocating for adequate and continuous funding for all courts, in practice the **HJPC's proposed funding levels are rarely taken into account in full**. Poor communication and distrust between the various actors involved and other uncertainties in the budgeting process lead to frustration, inefficiency and little satisfactory input by the judiciary into budget decisions. HJPC's proposals to establish a single source of funding for the entire judiciary are yet to be translated into concrete measures.
- As a result of these inefficiencies, the **funding allocated to the courts is typically insufficient to cover their basic operating expenses**, such as telephone service, postage, and payment for utilities. In addition, court presidents are given **no discretion to manage their assigned budgets** according to their realistic needs by moving funds between line items. Indeed, relevant ministries of justice involved in the process may manipulate the approved budgets by withholding amounts due for payment of judicial salaries in order to pressure or punish judges in politically sensitive cases. Courts often have to carry over the expenses incurred in one year to the next year's budgets and have accumulated substantial debts.
- Inadequate budgetary allocations mean that the HJPC must **frequently resort to seeking financial contributions from international donors**. For instance, almost **no allocations are made in judicial budgets for capital expenditures**, despite the deplorable condition of most court buildings. Several courthouses have been renovated with international funding, but much more resources are needed. Funding is also not available to provide courts and judges with adequate **security arrangements**. Similarly, supplying the judiciary with **computers** and other equipment, while satisfactory, is almost completely donor-dependent, and arrangements will need to be made to provide for local support of maintenance and replacement of the existing equipment. Finally, insufficient budgets has also meant that the judiciary is often unable to address backlogs and other inefficiencies that plague many courts.