

Courting Controversy in Bosnia

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Bosnia's judicial reforms could serve as regional model but remain dependent on internationals and threatened by delays.

Reforms that have transformed the Bosnian judiciary and moved it closer to European Union integration have been heralded as a regional model but some argue the process has been far from perfect.

Bosnia is the only Balkan country to have forced judges and prosecutors to give up their positions and go through a screening process run by an independent body in order to be re-hired.

Many in the judiciary who were deemed corrupt, inefficient or subject to political influence were fired, leading some in the region to say this vetting together with new monitoring and disciplinary procedures make the country's reforms the most comprehensive in the region and a good example to other states reforming their judiciaries in order to meet EU standards.

They compare the current situation to that of a few years ago when Bosnia's now more independent and accountable judiciary was as compromised and politically influenced as any in the Balkans.

But critics argue "re-appointment" has made the legal system dependent on Bosnia's international overseers. They also say reforms are endangered by a problem common to all Balkan judiciaries – chronic backlogs and delays affecting one quarter of court cases, meaning Bosnians wait anywhere from six months to 10 years for their cases to be processed.

"Delays and case inaction remain the biggest problem in Bosnian courts," reads an unpublished November 2004 special report by Bosnia's Ombudsman obtained by Balkans Crisis Report, BCR.

"The results of the judicial reforms [regarding delays] do not leave room for optimism, if the problem is not solved urgently, the reforms will be dreams and hopes rather than reality."

Many but not all of Bosnia's judicial problems stemmed from the bitter 1992-1995 war which led to three judicial structures, each dominated by a single ethnic group. They were dependent on patronage and open to influence by the three ethno-nationalist political parties, which had carved up the country and controlled judicial appointments.

"The way judicial appointments were made during the war and after meant that it was necessary to check the backgrounds of all judges and prosecutors," said Branko Peric, president of the High Judicial and Prosecutorial Council, HJPC, the independent body which now monitors and appoints the judiciary.

"The re-appointment process was the only way we could do this."

Loosely based on the East German model used after its unification with the Federal Republic, the process lasted almost two years during which the Independent Judicial Council, IJC, screened judges and prosecutors for political affiliations, corruption and property ownership.

The IJC also invited Bosnians to lodge grievances against the judiciary in an attempt to identify patterns of abuse and restore confidence in the institution, resulting in 4,560 complaints.

The complaints system was supported by an IJC database which gathered information on all candidates as well as details on potential war and organised crime links through cooperation with the Hague war crime tribunal staff, the NATO peace-keeping force and other international civilian agencies working in Bosnia.

This information was checked against application forms, which judges and prosecutors along with new candidates had to submit. The forms included information on their education, experience, wartime activities and personal assets, as well as those of their families.

Most importantly, they had to detail all property they had occupied since 1991 together with supporting documentation, so the IJC could check that laws on returning property to pre-war owners had been obeyed.

"The application process was extremely detailed," said Tim Hughes, the former head of the IJC's investigation and verification project. "Within our database, the average application for a judge or prosecutor ran to 55 pages."

Bribery and corruption were not found to be commonplace, but a number of senior members of the judiciary suspected of such offences were barred from their former jobs as a result of the reforms.

The final report by the IJC named prosecutors and judges around the country whom it alleged had committed a range of offenses including obstructing criminal investigations, working while under the influence of alcohol and violating property laws.

At the Bijeljina court, 24 out of 40 judges and prosecutors were not re-appointed when a system of bribes was exposed. The amount of each pay-off was found to have varied based on what the favour involved - releasing someone from detention, an acquittal or a light sentence.

“The high-profile suspensions and exclusions clearly demonstrated the need for reform,” said an international official on condition of anonymity.

“The action taken against these officials and others put judges and prosecutors on notice that things in Bosnia were changing and that abuse of office and criminal activity would no longer be tolerated.”

But critics argue that the weeding out was not as comprehensive as is claimed, pointing to statistics showing that approximately 80 per cent of re-appointments Bosnia-wide involved incumbent judges and prosecutors.

“I don’t think the re-application procedure changed much,” Dzenana Karup-Drusko, a court reporter who investigated the vetting process, told BCR.

“Most of the people who were there before were re-appointed and while there are some excellent judges and prosecutors, many bad and corrupt ones remain.”

Analysts agree that the process was limited.

“There’s been little in the way of a substantive personnel changeover,” said Marcus Cox, an analyst with Balkan think-tank European Stability Initiative, ESI.

“Look at how many of the old appointees were brought back into the reformed structures - a large majority.”

Sven Marius Urke, a former deputy director of the IJC and member of the HJPC, defends the reforms, arguing the upper levels of the judiciary have been transformed.

“The chief prosecutors and court presidents have a decisive influence over their colleagues and the results of the re-appointment process was more radical here with a 79 per cent shift in favour of new people,” he said.

Bosnian judges say the legal system is now largely free of meddling from nationalist political parties, something they attribute to the accountability and judicial independence measures undertaken during the re-appointment process and continued by the monitoring and oversight work of the HJPC.

No judge or prosecutor can now be a member of a political party and an Office of the Disciplinary Council, ODC, has been set up to investigate complaints relating to political influence and corruption.

ODC investigator Samir Husic told BCR that his office has removed three officials from office and reduced the salaries of a further 15 since the council became a Bosnian state institution in April 2004.

But with only three lawyers to review and investigate more than 125 complaints from the public the ODC receives each month, the group’s resources are stretched thin and some allegations receive less attention than they might if more money was available.

“I think that there are still some very bad prosecutors and judges out there,” said one international official who wished to remain anonymous. “But the ODC is limited by its staff numbers as to the number of cases they can really investigate in detail.”

Also galling to many Bosnians is that the reforms have fostered a dependency on the international community and in particular the Office of the High Representative, OHR, the chief civilian peace implementation agency.

“Political dependency is dependency no matter whether it is the OHR, the [Bosnian Croat nationalist] HDZ party, the [Bosnian Serb nationalist] SDS party or the [Bosnian Muslim nationalist] SDA party,” said Senka Nozica, a Bosnian lawyer.

Other international officials, lawyers and legal experts have also complained to BCR about the extent of the involvement of the OHR in the everyday functioning of the courts, urging the High Representative to loosen his iron grip on Bosnia’s judiciary.

“The level of oversight, involvement and control exerted by the OHR verges on undue influence on an independent judiciary,” said one high-ranking official, who preferred not to be named.

Though Bosnia's new judiciary is not entirely dependent on international funding - receiving money from the state budget - legal experts and local human rights organisations have criticised the extent to which judicial appointment reform is controlled by non-Bosnians.

"We were very sceptical of how much local ownership would be involved in the re-application process," said ESI's Marcus Cox, a onetime legal advisor in Bosnia.

"Local judges were left out of most of the decision-making process and the dependence of the Bosnian judiciary on the internationals continues to this day."

The Bosnian Helsinki Committee for Human Rights, HCHR, echoes this criticism.

"Judicial bodies have become dependent on the international community," read the HCHR's 2003 report on judicial reforms. "It is hard to believe that any judge in Bosnia whose appointment depends on organisations established by the internationals can make a different decision than the one suggested by the OHR."

But the OHR counters that without foreign intervention there would have been no reform and that when the time is right, full control will be handed over to the Bosnians.

"Part of the OHR's mandate is to help create an independent, functioning judiciary with solid foundations," said OHR communications director Irena Guzelova. "The international community has had to play a role in moving this process forward, and we will step back and hand all the responsibility over when we can."

Another international official, on condition of anonymity, said the reluctance of the nationalist parties to lose control of the judiciary meant intervention was necessary.

"Given a choice between international interference based on the need to reform against the kind of mono-ethnic, politically influenced, non-functioning judiciary created by the nationalists, I think it's pretty clear which is the lesser of the two evils," said the official.

One of the key requirements for Balkan states wishing to join the EU is judicial reform and both local and international officials believe Bosnia now sets an example to other countries.

Frane Maroevic, spokesperson for the European Commission delegation in Bosnia that is monitoring the country's movement toward accession negotiations, said good progress has been made, adding the EU's insistence on reforming the judiciary has helped politicians to accept the changes.

Urke believes the EU's insistence the legal system be reformed also ensured that Bosnia's reluctant lawmakers were forced to agree to state funding for the HJPC.

"By including judicial reform and the role of the council within the accession documents we can guarantee a level of state funding for the future," he said.

But there are conflicting signals as to whether the re-appointment process has increased the efficiency of the courts and the ability of judges and prosecutors to master new codes of practice.

A recent report by the Organisation for Security and Cooperation in Europe, OSCE, found that more than 70 per cent of the re-appointed judges and prosecutors had "accomplished the shift to adversarial procedures" which were introduced as part of a new criminal code.

"There has been a remarkable transition," said former US judge and senior OSCE legal advisor Daniel Beckwith who monitors the courts. "And I think it continues to get better from the information we're receiving from on-going cases."

However, the re-appointments have not reduced case backlog and courtroom delays, which some observers believe could threaten the reforms, and has caused Bosnians to be sceptical of the entire process.

In a straw poll conducted by BCR at Sarajevo's cantonal court, more than half of the respondents said they had experienced delays, including Pasco Dupac whose case has been before Sarajevo cantonal court for ten years. He is unconvinced by the re-appointment process.

"I don't think the new rules changed anything," he told BCR. "The court is still very slow, judges are arrogant and their work is not good."

Refija Fejzovic, whose case is three- years-old, agrees, "I think our courts remain very slow, the judges have made mistakes during my case."

Even the HJPC acknowledges that efficiency is a problem and its 2005 strategy paper lists tackling hold-ups as its number one priority. "We must deal with delays ... otherwise the people will not have confidence in our reforms," admitted the HJPC's Peric.

There is money for modernisation to speed up the legal process – new audio equipment for Bosnia’s courts and improved computer systems – but much of that comes from the EC and USAID, further increasing the country’s dependence on the internationals.

Peric suggested Bosnia has little choice. “I think we will need international experts to advise and monitor the judiciary for at least another three years ... and we will require international financial support for another five,” he said.

Despite the problems and the controversy, there have been notable successes.

While re-appointment may not have entirely eliminated corruption and incompetence, one undoubted accomplishment has been the re-establishment of the multi-ethnic character of Bosnia’s judiciary that was destroyed by dismissals, ethnic cleansing and war.

In both the Federation and Republika Srpska, RS, the ethnic balance within the judiciary now roughly reflects the pre-war 1991 census to within a few percentage points.

Some who’ve watched the transformation of the Bosnian judiciary believe it has come a long way. “While no judiciary is perfect, if you look around the Balkans, you’ll find that Bosnia is the lead example in the region,” said legal expert Tim Hughes.

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Location: Balkans
Macedonia
Albania
Serbia

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