



Strengthening the Justice Sector

The OSCE Mission to Bosnia and Herzegovina assists the judicial system to improve its independence, efficiency, respect for fundamental fair trial rights and ability to meet internationally recognized standards.

Justice Sector in Bosnia and Herzegovina

Reforming the judicial system in Bosnia and Herzegovina (BiH) is a main focus of domestic and international efforts to consolidate a democratic and self-sustaining country. Despite noteworthy progress, much remains to be done. The completion of these reforms is fundamental to BiH securing its rightful place in Euro-Atlantic institutions.

Significant changes were introduced in 2003, including the restructuring of courts and prosecutorial services, the re-appointment of judges and prosecutors, and the establishment of state level judicial institutions: the BiH Ministry of Justice and the High Judicial and Prosecutorial Council. The Court of BiH and BiH Prosecutor's Office became functional in 2005 with jurisdiction over the most serious crimes threatening social peace and security, including war crimes, organized crime and terrorism.

However, the goal of a BiH justice system fully capable of upholding the principles of the rule of law remains distant, due in large part to a fragmented institutional structure and the resulting lack of co-ordination among the numerous levels of government and relevant judicial institutions. The judiciary is increasingly subject to attacks and other more subtle interference with its independence. Recent judicial reforms must be reinforced and the remaining reforms undertaken to ensure that the rule of law takes root in BiH.

Justice Sector Monitoring Programme

Against the backdrop of these significant judicial reforms, the Mission initiated a trial monitoring programme focused on main trial proceedings in criminal cases and compliance with the new Criminal Procedure Codes. Later, the programme expanded and continues to encompass all aspects of criminal proceedings, from the initial investigation to the enforcement of criminal sanctions, and includes the provision of services to victims and juvenile offenders. Specially trained staff monitor courts at all levels throughout BiH. The justice sector monitoring programme works to ensure that: laws comply with the BiH Constitution and with international human rights instruments, and that their application complies with BiH's international commitments;

- the independence of the judiciary is fully respected;
- the defendant's right to a fair trial is respected;
- vulnerable individuals in the justice system, whether as defendants or victims, are treated with full respect for their rights and granted adequate protection; and
- all people have equal access to the justice system.

Institutional and legislative reform

The Mission is concerned about attacks on the independence of the judiciary. In December 2010, in its report *Independence of the Judiciary: Undue Pressure on BiH Judicial Institutions*, the Mission urged political forces to refrain from improper influence in relation to the judicial



process and from attacks on the judiciary. The report also calls for the High Judicial and Prosecutorial Council, the Court of BiH and the BiH Prosecutor's Office to be enshrined in the BiH Constitution.

The Mission supports the work of the BiH Ministry of Justice and its Criminal Codes Implementation Assessment Team, which is responsible for the oversight and review of those reforms implemented within the criminal justice field. On an as-needed basis, the Mission provides comments on draft legislation and its compliance with international human rights standards. Since their formation in 2004, the Mission has continuously co-operated with the entity Judicial and Prosecutorial Training Centres by providing trial monitoring findings to educational programmes and input to training needs assessments.

Since 2008, the Mission has monitored the human rights situation in prisons throughout BiH. In April 2011, the Mission released a report entitled *Torture Ill-treatment and Disciplinary Proceedings in Prisons of Bosnia and Herzegovina*. The Mission assisted the authorities in establishing a National Preventive Mechanism as required by the Optional Protocol to the United Nations Convention Against Torture. Such a mechanism should provide an independent, reliable and continuous assessment of conditions and treatment within all places of detention in BiH.

Respect for human rights and access to justice

To promote greater respect for the fundamental human rights enshrined in the European Convention on Human Rights, the Mission published an overview of trial monitoring findings with respect to the right to liberty

and the use of custody, entitled the *Law and Practice of Restrictive Measures: The Justification of Custody in Bosnia and Herzegovina* (August 2008). The Mission's justice sector findings led entity Chief Prosecutors to issue a binding recommendation to investigate allegations of police ill-treatment. The Mission documented consistent concerns identified during trial proceedings about judges' conduct impinging on the defendant's right to be presumed innocent until proven guilty in its report *Presumption of Innocence: Instances of Violations of Internationally Recognized Human Rights Standards by Courts in Bosnia and Herzegovina* (February 2007).

Working with partners from the international community, non-governmental organizations (NGOs) and local civil society initiatives, the Mission monitors all aspects of juvenile justice, from police questioning to court procedures and the institutionalization of juveniles. The project's findings are targeted at policy-makers at all governmental levels, as well as the judiciary, law enforcement authorities, social welfare centres and the public. The Mission aims to assist BiH in responding to juvenile offending with an approach which keeps the best interests of the child at the heart of the system.

The Mission seeks to enhance the enforcement of victims' rights. In 2010, to assist victims of crimes in exercising their rights, the Mission created a leaflet *Know Your Rights and Duties* explaining, in simple language, the scope and content of victims' rights in criminal proceedings. The Mission also created a template to assist injured parties in filing compensation claims in criminal proceedings. The Mission promotes co-ordination among the justice sector actors and service providers to ensure the appropriate support and protection for vulnerable victims within the justice system.

The OSCE Mission to Bosnia and Herzegovina assists BiH in meeting its OSCE commitments and in progressing towards its stated goal of Euro-Atlantic integration by strengthening security and stability through completion of peace-building within the Dayton framework and developing inclusive political discourse and democratically accountable institutions that respect diversity, promote consensus and respect the rule of law. The Mission takes a comprehensive and integrated approach through its field presence, reflecting an emphasis on developing cohesive communities and on the timely identification of obstacles to progress.