

Western Balkans



Guidelines for Swedish Bilateral Support within the Sector of Justice and Home Affairs for the Western Balkans

Period 2003–2006

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1. Summary

The Sida guidelines for Swedish bilateral support within the sector of Justice and Home Affairs for the Western Balkans, should be understood as a framework or a road map to guide Sida in prioritising legal reform projects (at national and regional levels) and for allocating bilateral assistance to the justice sector in countries in the Western Balkans. Special emphasis is put on the contribution towards efforts for harmonisation of the EU *acquis communautaire*, and EU's criteria for membership. Swedish support should therefore be understood as a supplement to EU's support within the CARDS programme, but also closely co-ordinated with other international donors. Further principles guiding Swedish assistance is to contribute to making the legal system more adopted to poor and marginalised people's needs, and to allow perspectives on gender to influence the activities. Swedish support will take a long-term approach. Though perspectives, in many instances, need to be regional in the specific sector, flexibility in the use of methods and funding of activities for tackling specific problems should make country-specific projects possible. A holistic view allowing for the specific use of a legal chain -approach would further secure more comprehensive analyses. Beside allocating support to fundamental judicial structures, Sida will also assist some specific areas within the legal system, such as anti-corruption, organised crime, war crimes, juvenile justice and ombudsman. (See Plan of Action, Appendix 1). The guidelines will be valid from 2003–2006.

2. Background

Sida (Swedish International Development Cooperation Agency) is the Swedish government agency for bilateral international development co-operation. Since 1993, Sweden (mainly through Sida) has provided development assistance to the six countries/areas in the Western Balkans (Albania, Bosnia-Herzegovina, Croatia, Serbia-Montenegro, Kosovo and Macedonia)¹. The nature of the co-operation has gradually changed from humanitarian assistance to reconstruction, and the co-operation is now entering into a third phase; development and institution building. The transition and the development of the legal systems is a key area for the establishment of a functioning democracy and a society governed by the rule of law. All countries in the Western Balkans are undergoing major changes in their legal systems. These reforms are however slightly different in all countries and are at different stages. A large number of donors are contributing to a variety of projects for improving the legal reform process in the Western Balkans. In spite of all the money and expertise provided by the international community in this area, the legal systems in the region still remain more or less fundamentally flawed. Swedish support to the Western Balkans has only limited been allocated to this specific sector. Following the very large demand for additional support, and the EU harmonisation process highlighting the need of addressing the problems of a prevailing weak rule of law, Sida will now focus more on activities for the strengthening of law-enforcement institutions, and an enhanced public trust for the legal system and its actors. The Sida guidelines for Swedish bilateral support within the sector of Justice and Home Affairs for the Western Balkans, should be understood as a framework or a road map to guide Sida in prioritising legal reform projects (at national and regional levels) and for allocating bilateral assistance to the justice sector in countries in the Western Balkans. The Sida guidelines should be understood as a supplement to Sida's country strategies, and will accordingly be subordinated to these.² The Sida guidelines are elaborated from a study made by the International Legal Assistance Consortium (ILAC)³. (Separate appendix).

¹ Kosovo will in the rest of the document be included as a "country" in the Western Balkans.

² Swedish development support is guided by governmentally approved country strategies, in which areas for assistance are identified.

³ An international NGO, registered in Sweden as a non-profit association, with the purpose of developing legal systems in post-conflictive environments.

3. Other donors

All countries in the region share the aim to eventually join the European Union, even if they are not yet formal candidate countries. The EU is therefore in a rather unique position to make demands on all the countries in the region and has to quite an important extent used this to further principles of good administration, human rights and respect for minorities and other matters. EU provides economic assistance through the CARDS programme (Community Assistance for Reconstruction, Development and Stabilisation), but the Union's support towards stability and future association is also manifested through the Stability Pact, the special mechanism for the Western Balkans administered by the EU. The sector of Justice and Home Affairs is highlighted in EU's different initiatives, and the reports from recently conducted EU missions within this specific sector, are considered as important tools for allocating direct assistance. The Council of Europe is considered as an important actor within the sector as is the United Nations and its organisations like UNDP, UNHCR and others. A range of different NGO:s is also present.⁴ Even if meetings and fora may exist for co-ordination this is too often restricted to talking but not co-ordinating in fact or to presenting projects only after they have started.

⁴ The presence of international donors is further elaborated in the ILAC report.

4. Extent of Swedish support and financial planning

Sida has a flexible budget frame for bilateral assistance to the countries in the Western Balkans. Funds for activities within the sector of Justice and Home Affairs will be allocated between the countries and identified areas on the basis of their different needs and their capacity to receive support. It is important to see Swedish support, within this specific sector, as a complement to above all EU but also other bilateral and multilateral assistance.

5. Objectives and guiding principles for Swedish support

The overall objective of Swedish development co-operation is to create requisite conditions and support processes that lead to poverty reduction. Among the sub-goals guiding Swedish development support is the promotion of lasting peace and stability and the promotion of a democratic society under the rule of law. The most important tool for integrating the countries in the Western Balkans into Europe is formulated through the Stabilisation and Association Process (SAP). Following this ongoing harmonisation process, the SAP should therefore provide the overall framework for Sida's undertakings to provide specific support towards the broad area of Justice and Home Affairs.

The following guiding principles should be taken into consideration:

5.1 Harmonisation towards the EU

All countries in the Western Balkans share the goal of eventually being integrated into the European Union. EU is the driving force for development, and the SAP is considered as the guiding tool for the integration process of the Western Balkans into the European structures. Sweden has been involved in supporting the present negotiating countries, and has therefore experiences from bilateral support towards the strengthening of rule of law in these countries.

*Swedish assistance should correspond with the deeper long-term integration with Europe by supporting the ongoing SAP. Special emphasis is put on the contribution towards efforts for harmonisation of the EU *acquis communautaire*, and EU's criteria for membership. Swedish bilateral support should therefore be used to supplement EU support in the CARDS programme. Experience from co-operation with the present negotiating countries should be drawn upon, and expertise from these countries could be used accordingly.*

5.2 Co-ordination of support

There are a large number of donors involved in the region, allocating support within the broad area of Justice and Home Affairs. Although there are in most parts of the region different meetings held regularly with the aim of co-ordinating aid, these are often not efficient. Co-ordination and strategic thinking are not only lacking among donors but also among the recipient countries/actors. The recipients' absorption

and reception capacities are crucial for implementing successful activities. Supporting the strengthening of local capacities to better co-ordinate international assistance themselves, and thereby improving a more efficient international assistance should therefore encourage local ownership.

Swedish assistance should strive for improving the local ownership and transparency in the allocation of funds and co-operation between international donors to enhance co-ordination.

5.3 Conflict prevention

Ethnicity and religion as well as socio-economic circumstances have been (and are still) exploited for different purpose in the region. Tensions within the population have both to be prevented and properly addressed by a society governed by the rule of law. Even a well-functioning legal system has however difficulties in serving the poor and marginalised groups in the society. These groups have difficulties in dealing with the formal system and the formal system is not always adequately designed for their day-to day problems.

*Being in line with the *acquis communautaire*, the selection and design of Swedish development co-operation in the legal sector should feature a long term contribution of making the legal system more adopted to poor and marginalised people's needs. Direct aspects of reconciliation should also be taken into consideration when designing project activities, including the participation of different stratum of the society.*

5.4 Gender equality

Following the objectives of Swedish development co-operation, Swedish assistance is to be permeated by the perspective of gender equality. The understanding of the importance of equal participation between men and women is considered as having a significant potential in the prevailing transition process.

All programmes and interventions planned, implemented or done in collaboration with Sida must take gender equality into consideration as it is the equal right for women as well as men to take part of and participate in the outcomes and results of Swedish interventions. Sweden will especially focus on women's right and access to the juridicial system and legal institutions in the societies. Women's legal right to own, inherit and participate in the decision making in the region should further be taken into consideration in all Sida's work.

6. Methods

6.1 Legal development co-operation needs a long-term approach

A conclusion drawn from the experience from legal development co-operation is that co-operation in this area ought to be long-term in order to be sustainable. System changes require a long-term vision with corresponding programming and allocation of resources.

Swedish assistance should mainly focus on long-term co-operation, and sustainable development.

6.2 Holistic approach

Most efforts supported within the international donor community in providing assistance to strengthen the legal systems based upon the rule of law, is normally to target one or more sectors of the legal system; seldom all sectors. In different contexts, Sweden has tried to use the method of a legal chain approach. This implies the use of a technique allowing for a more comprehensive analysis since the basis of the method lies at the assumption that the various parts of the legal system are linked together both regarding different sectors such as criminal justice, civil justice and administrative justice but also in regard to the specific actors within the different legal sectors. Once a problem in a society has been identified all actors in that society that form part of the chain that carry (or should carry) a responsibility for that policy area should be identified, together with their respective roles. If used, the method could minimize the risk of overseeing the weakest link, which could otherwise hamper the achievement of the identified objective/s. The method is therefore favoring a cross-sector approach to the Justice and Home Affairs and a need for all efforts pulling in the same direction. Beside this the use of a legal chain approach entails also the necessity to co-ordinate efforts between different involved actors (to ensure synergies and avoid overlaps).

It is not always possible to enter into a development co-operation that includes all the sectors or actors that are linked with the others, but it is important to take a holistic view. The use of a legal chain approach should be seen as a technique to be used when analysing the aspects of the legal system as well as for taking into account when designing individual actions and projects. Following the guiding principle

on gender equality, a holistic approach should also include the integration of aspects of equal right for women and men through using techniques for gender mainstreaming.

6.3 Regional approach

Existing legal reform efforts in the region have largely taken a national approach. As underlined in EU's support, the SAp is however not simply a bilateral process with each country in the Western Balkans. Many serious problems faced by the various legal systems, such as organised crime and unresolved war crimes, are cross-border issues and would require a regional approach. The promotion of stability stresses the need for regional co-operation, and a special focus on establishing relationships to work together to respond effectively to common concerns. However, attention needs to be given to the fact that the region itself, and the countries in it, are becoming increasingly diversified, which implies that a regional approach and "solutions" are less easy to find and more sophisticated solutions need to be devised.

Swedish bilateral support should, when applicable, include a regional approach. Though perspectives need to be regional in many instances, flexibility in the use of methods and funding of activities for tackling specific problems should make country-specific projects possible.

7. Tools for implementing bilateral assistance

Swedish support within the sector of Justice and Home Affairs will focus on assisting institution building. The broad concept of institution building refers to development of legislation, building as well as strengthening structures and enhanced administrative capacity. Support is most often made available in the form of technical support. Allocation of funds for equipment can be made available as components and complement projects providing for technical support. No separate investment projects will however be financed.

Annex 1

Plan of Action

In Regard To Swedish Bilateral Support Within The Sector Of Justice And Home Affairs For The Western Balkans, 2003–2006

1. Support to fundamental judicial structures

A prerequisite for the guarantee of human rights is a functioning constitutional state. The core is made of public mechanisms in the form of institutions, laws and other regulations dealing with both civil justice and criminal justice. Its main objective is to strengthen the functioning of a state governed by the rule of law by legislative processes and national institutions in the judicial system. In a DAC evaluation report on programs promoting participatory development and good governance the DAC evaluation model recommends certain steps in working with legal development co-operation. The *first step* for legal support is the existent of a desire to change among the political leadership of the partner country. If it is missing, the first step must be to identify agents for change and to create alliances. The *second step* should be structural reforms, which include eventual constitutional changes, improvements to the legislative process, independence for courts and upgrading status of the ministry of justice. The *third step* is to safeguard accessibility to the judicial system, for example building up a functional legal aid system. First when all the above mentioned conditions are in place the time has come for traditional inputs to build up institutions, for instance, development of legislation and legal training.

The above steps are all included in what Sida considers to be the fundamental judicial structure and Swedish assistance should strive to build up the fundamental structure in the legal system within the criminal and civil justice.

1.1. Legal training

International donors are supporting a lot of specialised training activities within the broad sector of Justice and Home Affairs. The problem is though that the basic legal education is not very good. The basic knowledge is often poor, as is the knowledge of foreign languages and generally of international matters. Generally, more efforts would be needed for reforms of the national law faculties and basic legal education, as it is very difficult to target other specialised areas if this basic area is not dealt with first. Basic training on domestics' matters such as new legislation is often lacking or patchy, as is training of EU law. The

entire region is undergoing major changes in the judicial system based on new or amended procedural codes, changing from the system of an investigative judge to a more active role for prosecutors. The role of the judge is therefore to be abolished in favour of increased investigative powers for prosecutors and the police. An entirely new type of co-operation will therefore be necessary between the police and the prosecutors. In order for the new system to work a lot of training will be necessary involving all actors in the legal chain. Because of lack of efforts from donors or from domestic sources, the prosecutors in many ways are considered the weak link in the chain.

Swedish support on legal training should target basic education, encouraging the exchange of students as well as improved training activities within the national Law Faculties. Possible regional co-operation should be encouraged. In relation with the new criminal code and criminal procedure code and since the system of an investigative prosecutor will be similar to that of Scandinavian countries, Swedish support will also be made available within this area of training. Especially important is the improved co-operation between the prosecutor and the police. In general however, training has to be co-ordinated and focused so that it really contributes for better implementation of laws.

1.2 Access to legal information and legal aid

The access to legal information is of concern in all countries in the Western Balkans. It is quite common that lower courts do not have all the information and for lawyers to get access to new laws is even more difficult. There is no proper system for publishing laws, the dissemination of legal regulations and translation. The poor availability and accessibility of legal acts compounds the difficulties due to the uncertain legal situation of knowing what rules are actually in force. As for legal aid, this area also needs support. In the absence of any organised legal aid, sometimes NGO:s will be operating in a grey zone of legality, almost providing unauthorised practice of law, in areas where nothing else exists. Legal advice centres especially in areas where nothing such yet exists are other means of raising public awareness of basic rights and access to justice.

Sweden has previously supported initiatives on access to legal information, and continued support should also be made available in the future. Swedish support will also be made available for programs for legal aid, not only in connection with minorities but also the general public.

1.3 Court administration and alternative dispute resolution

The judicial administration and administration of courts is a big problem in most of the countries in the Western Balkans. Judges do not have training or competence for managerial tasks and very little time to devote to this, but there are no other trained staff available for this either.

There are some different national attempts at creating organisational centres for court administration. This kind of structure could take over administrative tasks from judges, allowing the latter to concentrate on the casework. This entails the need for some legal reforms about court administration, but to some extent improvements can be achieved by

implementing existing legislation better. Ideas of alternative dispute resolution are being studied in the region, and due to the backlog of cases in several of the countries in the region, mechanisms for alternative dispute resolution need to be developed and supported.

A lot of donors are active within this specific area. In order to complement other bilateral- and multilateral support (above all the CARDS programme), Swedish assistance should encourage the co-operation between NGO:s within the framework of the International Association of Judges, and to use the real experience from Bar Associations in regard to the specific subject of alternative dispute resolution and legal ethics.

1.4 Police training and police administration

Much donor support is allocated in regard to the training and establishment of national police academies. This also includes specialised programs/seminars on smuggling, terrorism, trafficking, counterfeit money and other major issues. This kind of support has been rather successful and the police in the region are quite well trained and function rather well. There is however no functioning police administration, which is a problem becoming more and more urgent to address if the police are to be able to function properly. The police also often lack the efficient support of other sectors of the legal community, which means that there is no full impact of the relatively successful police training.

In regard to police training, some assistance could be made available for complementary education. Swedish support has been allocated in regard to handling of conflicts, which could be used regionally. Development of structures for police administration and the real functioning of the police in practice should be addressed. It is important to increase the public confidence of the role of the police.

1.5 The penitentiary system

Donors seem to neglect the penitentiary system in the region. The state prisons are generally in bad conditions. There is no concept of rehabilitation in the prison service and the physical conditions are also very poor. There is also mainly a lack of any alternative to normal prison.

Swedish assistance will be made available within the penitentiary system, but further investigations are needed in order to identify eligible support to the state penitentiary system and alternative measurements (probation and parole service). Training visits could be arranged for prison staff, which could include some different countries in the region. A special focus can be elaborated in regard to juveniles and women being in conflict with the law.

1.6 Land ownership and property rights

The issue of land ownership is considered as a significant problem in the Balkans, which affects all different levels and spheres of the society and the establishment of a functioning rule of law. Not many donors

ⁱ The OSCE has however started to look into the issue.

are approaching the issue, which is fundamental, both to ethnic conflict in the Balkans as well as to the shift from a planned to a market economy.¹ Property issues are also very important due to still rather weak functioning and reliable recording systems, proper systems for claiming property, proper systems for privatisation and so on. Legislation is developing in this field but there are major problems with enforcing decisions.

Sweden is allocating support for the countries in the Western Balkans for land reform and cadastre. Sida could take a holistic approach, that would help revise the applicable laws and regulations, provide equipment and training for land registration, and train judges and other officials charged with resolving land disputes. The area does however need to be looked at more carefully before any further steps are taken.

2. Support to specific areas within the legal system

2.1 Strengthening anti-corruption measurements

All countries in the Western Balkans have a recognised problem with corruption at all levels of society. Many national actors feel that this issue has been dealt with to some extent, at least in so far as that the problem is recognised and some measures are taken against it. The problem is still big though some progress has been made following the set-up of national structures for fighting corruption, and the strong international pressure in dealing with wide spread corruption. The perception among the population of action being taken against corruption is very important in itself, as it should have a positive effect in further reducing corruption as a normal element of the society. Corruption is also a big problem within the judiciary system. Even if measures are taken against it and these have had some effects, lawyers (as well as other actors within the system) who try to react against the corruption may get known and “blacklisted” in the system. At the same time, many in the legal profession are used to this and not willing to make too many efforts against it. The widespread perception of corruption does also erode any trust in the application of laws.

Swedish support should be allocated to strengthen national measurement in fighting corruption (national anti-corruption agencies, development of national plans etc). Efforts to involve NGO:s in anti-corruption measures, as well as improve the public awareness in how to address problems of corruption should also be highlighted.

2.2 Fighting organised crime

International analysis and discussions with representatives from the region have confirmed that one of the most serious problems within the region is the transnational organised crime. Legislative efforts are needed in this field in addition to practical work. Fighting organised crime does also address the issue of witness protection, and the creation of a witness protection law needs to be done in several countries. This requires a regional approach because it is likely that witnesses will need to be relocated to other countries. In addition to this is the need

for technical means to fulfil the law and sufficient knowledge on how to use it. All new states in the Western Balkans have thus faced a situation where organised crime is prevailing. Contrary to law enforcement agencies, organised crime has hardly ever experienced difficulties in taking their activities across international borderlines. Some positive developments in counter measures against organised crime are present in the national police structures in several of the countries, but further efforts are needed in order to grapple with the issue on how to combat crime more efficiently. Possibilities of gathering and using forensic evidence are very poor, which further hampers the possibilities to make an effective contribution to the detection and prevention of crime. As modern forensic techniques become increasingly sensitive and the contribution that forensic science makes to investigations becomes more crucial, forensic science is being increasingly closely scrutinised by the courts.

Actions in regard to the prevention of crimes and trafficking in humans are underlined in Swedish priorities. Within the very broad sub-sector of organised crime, it is suggested that Swedish support should be focusing on improvements of the issue of witness protection. Following the rather big experience of allocation assistance in the Baltic region in regard to crime scene investigation and forensics, Swedish support will also be made available for the Balkan region. Assistance could also be allocated to transnational police co-operation and the development of national Interpol-Offices and regional networks. Sida supports anti-trafficking measurements mainly through a regional programme implemented by the International Organisation for Migration (IOM).

2.3 War crimes

The issue regarding unresolved war crimes is considered as one very serious problem facing the legal system in the region, and the need to build up a proper domestic capacity for war crimes has been recognised by the international presence in the region. Following the sensitive nature of the subject, and the still rather unsolved question how it should be dealt with, bilateral support should only be made available after close examinations of the prerequisites for specific assistance. In connection with war crimes trials there is also an identified need for some changes in the legislation as well as a need for changes to implement legislation properly.

If national war crime trials will be possible and successful, both general education on humanitarian law as well as specialised knowledge to conduct war crimes trials among judges, prosecutors and lawyers are necessary. Swedish support could be made available for these kind of training courses. Possible Swedish assistance could also be allocated by initiating programmes for monitoring trials by international legal expertise.

2.4 Juvenile justice

As there are no special detention centres for juveniles in most of the countries and they cannot be put in ordinary prisons apart from in some special cases, juveniles convicted even of serious crimes are often just released in the absence of any measures available against them. Rather few donors are present in this sub-sector of the penitentiary system.

Swedish support could be made available for strengthening of juvenile justice. Further investigations are needed, but any assistance should reflect the rather broad range of actors within the specific area.

2.5 Ombudsman

The Ombudsman institutions are very important as watchdogs and as balancing factors in the judicial system. The Ombudsman offices in the Balkan region are still regarded by many as quite weak even if the creation of such an office is an important step. It is important to safeguard the role of the Ombudsman in the ongoing legal reform process, and to make its role compatible with the general internationally accepted ideas of Ombudsmen. The Ombudsman is generally perceived positively although many feel the institutions could be more efficient. They are still in need of continued support and could have an increased role since the full impact of the activities of the Ombudsmen all through the system is still not felt. The Ombudsman should also be supported in its development/strengthening of an analytic department that could deal with more wide-ranging matters as making proposals for new laws or legal changes, thereby taking a more proactive approach.

Swedish support should be made available to Ombudsman institutions. Support can be allocated as direct training and exchange programs, which could have a regional approach and further include networking with European (and international) associations.

Annex 2

Development co-operation

Introduction

Since 1993, Sweden has provided development assistance to the six countries/areas in the Western Balkans (Albania, Bosnia-Herzegovina, Croatia, FRY, Kosovo and Macedonia). The size of this Swedish involvement has roughly doubled every other year. The budget for 2004 will be around 700 MSEK.

Today, the Balkans are simultaneously exposed to a multitude of transition issues: from dictatorship to democracy, from socialism to market economy, from war to peace and – last but not least – integration into Europe and the European Union.

The nature of the cooperation has gradually changed from humanitarian assistance to reconstruction. The cooperation is now entering into a third phase – development and institution building. At this stage, the recipients' absorption and reception capacities are crucial. The transition and the development of the legal systems is a key area, which requires careful analysis and long term planning. Today, a large number of donors are contributing to a variety of projects in the different countries. However, coordination and strategic thinking are mostly lacking both among donors and recipients. As a result, in spite of all the money and expertise provided by the international community in this area, the legal systems in the region still remain more or less fundamentally flawed.

Existing legal reform efforts in the region have largely taken a national approach. However, the most serious problems faced by the various legal systems, such as organized crime and unresolved war crimes, are cross-border issues and would require a regional strategy, with a view to increased cross-border cooperation and harmonized procedures. In addition, given the similarity of the recent political and legal history of these countries (with the exception of Albania) – and the fact that they all share the goal of eventually being integrated into the European Union – there may be areas of the law, where the same, or slightly modified, projects could be applicable in several countries. For example, it can be presumed that the legal texts in certain areas, e.g. criminal law and procedure, property rights etc, will eventually have to become more or less uniform in the various countries. Thus,

indications are that the present legal reform issues in the region would be well served by also developing and applying a regional strategy to legal reform.

A regional reform strategy must build on the strengths and weaknesses of the various national legal systems in the region. Even if the countries of the Western Balkans have some similarities, the centrifugal forces of the '90s have been very strong, not least on the psychological level. The result today is a region characterised by strong divisions, both legally and mentally.

In order to create a platform for building the regional strategy, it has first been necessary to determine the present status of the legal system in each country. Only when there is a clear understanding of the strengths and weaknesses of the various legal systems, will it be possible to determine how and in what areas a regional strategy can be formulated.

A meaningful strategy would also require an inventory of current reform projects and plans and who the present actors are.

Implementation

This project has been implemented by the International Legal Assistance Consortium (ILAC), an international NGO, registered in Sweden as a non-profit association, with the purpose of developing legal systems in post-conflictive environments. ILAC has involved highly qualified international experts in the implementation process.

It was agreed with Sida to divide the process into the following parts:

- A brain-storming session in Stockholm involving the Swedish stakeholders, i.e. Ministry of Foreign Affairs, Ministry of Justice, the Office of the National Prosecutor, the National Police Board and others;
- On the basis of the findings of the brain-storming session, the countries in the region should be visited in order to assess the status of designated aspects of the legal systems and make inventories of ongoing legal reform projects in the respective areas.
- A draft report regarding the findings in the different countries including suggestions and recommendations should be presented and discussed with the stakeholders
- Finally on the basis of these discussions produce a proposal for a final strategy, including proposals for possible implementers.

The countries in the region have been visited in three different missions. The first mission took place in November 2002, when Serbia (Belgrade), Kosovo (Pristina) and Macedonia (Skopje) were visited. The team consisted of Jur. Dr. Katrin Metcalf from Estonia and Agneta Johansson, lawyer and Executive Assistant in ILAC. In December 2002 a mission to Albania was made by Mark K. Dietrich, lawyer from the USA. Finally in January and February 2003, Bosnia Herzegovina (Sarajevo and Banja Luka), Croatia (Zagreb) and Montenegro (Podgorica) were visited by Katrin Metcalf, Agneta

Johansson, and this time the team also included Judge Finn Lynghjem from Norway. ILAC's Executive Director, Christian Åhlund has taken part in the preparatory work as well as in finalizing the report. The views and opinions expressed in the report are the consultants'.

Executive summary

The aim of this report is to provide a basis for Sida on which it can construct a regional plan within the framework for their general strategy for assistance to the justice sector in six countries or areas in the Western Balkans. The regional sector strategy should be understood as a supplement to the different country strategies, and will be subordinated to these. The aim of the missions to the countries in the Western Balkans has not been to make a comprehensive study of the general situation in the legal or judicial sector in the countries concerned. For this, there is sufficient material available from other sources, not least the EU assessments in the Justice and Home Affairs Sectors that have recently been undertaken in several countries. Instead these specific missions were to concentrate on needs and areas where foreign assistance can make the most difference.

Certain concepts were used as basis for the study and the questions put to interlocutors. These included the concept of a "chain of justice" – to analyse the entire cycle from legislation until the implementation of the law, through education, public awareness, etc. The importance of donors emphasising the rule of law and the importance of the political will among beneficiaries for reform in this sector as well as of the respect for the capacity of beneficiaries to receive aid were put forward.

Certain areas were chosen prior to the mission, on which special emphasis should be put. This included war criminals, corruption, involvement of civil society, role of the police, prosecutors, lawyers and the prison system and also human rights and the rule of law. The study should especially identify where a regional approach can be beneficial. The administrative as well as the criminal justice sector were studied.

There are certain similarities in the different countries/regions studied. A generally poor donor co-ordination was one such similarity, with Bosnia Herzegovina and Kosovo being special cases because of their nature as, more or less, de facto international protectorates. In Kosovo, the heavy international presence and the way the province is governed mean that most projects are somehow channelled through the UN system. Generally, Croatia differs from the other states in the region in that it is ahead in many ways. Croatia will submit its application for EU membership in February 2003 and will probably soon obtain formal status as a candidate country. Reform efforts in Croatia are much motivated by EU membership. The aid from the EU tends to be adapted to the beneficiaries' needs thanks to the involvement of the beneficiaries in designing projects and the EU also provides some co-ordination of aid from its Member States. The US is an important donor through various channels. Other organisations such as the Council of Europe or foundations like the Soros Foundation are also present in

the region. There is some tension between US and European projects in the justice sector, as the US has not in all cases respected the European legal traditions of the beneficiary states nor need for harmonisation with the EU. How much of a problem this is varies, often depending on individuals involved.

The inequality of assistance between different institutions in the justice sector was also evident in all countries in the region. There tends to be more support to judges and to the police (especially border police) than to prosecutors and lawyers and the prison service or to court administration. There is also a surplus of training projects and a deficit of infrastructure projects. NGO:s and civil society tend to get a lot of help, the effectiveness of which varies greatly. Certain issues such as trafficking are at the moment very topical and attract a lot of donor support, particularly in Kosovo, Serbia and Macedonia. Generally, frighteningly many donors select what areas they want to provide assistance to without consulting the beneficiary or finding out what ongoing projects there are. Beneficiary states are generally reluctant to refuse aid, as they are afraid that this may lead to donors stopping to give any assistance at all.

The most advanced country, Croatia, is also the one most capable of directing aid to where it wants it.

Basic legal education is in need of support in all parts of the region visited. The universities are only beginning to have more international contacts – they are still often very conservative and part of the old system. This means that the students are ill prepared for a modern administration of justice after their studies. The universities are independent and in some cases do play a role in drafting law proposals, commenting on reforms etc, although they could often do more in this respect. The best such action appears to be in Serbia.

The entire region is undergoing major changes in the judicial system based on new or amended procedural codes, changing from the system of the investigative judge to a more active role for prosecutors. The reforms are slightly different in all countries and are at different stages.

The new systems will not be as unified as when all countries used some form of the old Yugoslav system. Because of the important reforms but also due to general needs, the courts in all the studied areas are in need of practical help. This includes reforms of the court administration, well-targeted training for judges, prosecutors and lawyers as well as means to deal with the backlog of mainly small cases that prevent the efficient functioning of the system. Ideas of alternative dispute resolution are being studied in the region. Practical matters such as the availability and accessibility of legislation remain a concern. The independence as well as the efficiency of courts needs to be strengthened. Corruption in the courts as well as in the administration remains a big problem, even if measures are taken against it and these have had some effect. Ombudsman institutions function in the different areas and as these are relatively recent, they are still in need of support to be able to use their full potential.

All interlocutors recognised the importance of a regional approach. There are however major political problems with co-operation be-

tween certain countries, which cannot be disregarded. Some issues, such as organised crime, are easier to co-operate on than other more political issues like war crimes, although the need for co-operation is at least as great in the latter case.

International Donors

The European Union is a very important player in the Western Balkan region. This is shown in different ways. The most central one is of course the aim of all countries in the region to eventually join the European Union, even if they are not yet formal candidate countries. Croatia will submit a formal membership application in February 2003. Croatia and Macedonia have a Stabilisation and Association Agreement, which entails some harmonisation with the EU. The agreements are not formally in force as not all EU Member States have yet ratified it, but this is seen only as a formality and the agreement is followed by Croatia.

The European Agency for Reconstruction (EAR) is an important donor for Montenegro and it is also very well respected and perceived as efficient. The Stability Pact, the special mechanism for the Balkan states administered by the EU is important through its various activities in the field. The High Representative in Bosnia Herzegovina is also the EU special representative. Through its special role, the EU is in a unique position to make demands on all the states in the region and has to quite an important extent used this to further principles of good administration, human rights and respect for minorities and other matters.

The EU through its different actors generally provides a certain co-ordination of projects and a coherent approach. However, it is often not capable of co-ordinating projects by other non-European or even European non-official donors. Many European countries are active bilaterally and also in the EU family co-ordination could be better. Even if meetings and fora may exist for co-ordination this is too often restricted to talking but not co-ordinating in fact or to presenting projects only after they have started. The situation in Croatia with its very strong EU focus was a bit different and co-ordination functions better. This is helped by the US also taking a more European approach in Croatia, seeking European assistance to co-ordinate and adjust its assistance. Croatia is also the country where the state bodies themselves are the most able to put demands and channel assistance only to where they want it.

The United States has a multitude of projects, especially in some parts of the region like Albania, Kosovo and Montenegro. Aid is given through USAID or other sources. ABA CEELI, the American Bar Association's Central European and Eurasian Law Initiative, is an important player, whether on USAID projects or otherwise. The United Nations and its organisations like UNDP, UNHCR and others are involved in different ways throughout the region, playing its most important role in Bosnia Herzegovina (BiH) and in Kosovo but also a significant role in Serbia. OSCE is also an important actor in the whole region, especially in Albania, Bosnia, Kosovo, and Serbia.

There are also various NGO:s like the Helsinki Committee and the Swedish Kvinna till Kvinna, as well as foundations (such as the Soros Foundation/Open Society Institute, the Konrad Adenauer Stiftung, the Heinrich Böll Foundation and others) involved in different ways in the region. Furthermore, the Council of Europe is also important, with short-term missions on specific issues, as a partner in training, etc.

One problem, present in all the areas, is the conflict between the American/Anglo-Saxon and the Continental European legal system. All countries in the Balkans have a Continental legal system and the Common Law system does not fit into the traditional legal system. This is not always respected by especially American projects, where the US type of legislation and legal drafting is used and advice is given by experts who are only familiar with the US system. The local authorities are now beginning to react against this, but especially earlier on in the reform work it was often difficult to resist these “reforms” and occasionally there will still be such projects supported by USAID. This can be detrimental to legal coherence. Any new legal reforms ought to be based on the existing systems. Generally, ABA CEELI has a better reputation than many other US projects and donors for taking local conditions and legal traditions into consideration.

Although there are in most parts of the region different meetings held regularly with the aim of co-ordinating aid, these are often not efficient, as the big donors often do not really share information and sometimes even when information is shared it is not acted upon. Donors may have ideas on what they will do in the country and are set to do it even if others are also active in the same sectors. Not just meetings but also other actions could promote co-ordination. Donors could make their planned projects known on web-sites for example. One problem now is that information is often given only after projects have started. Roundtables on project ideas could be useful before donors themselves commit to a particular project. At times, too much aid to one sector or issue may even have harmful effects, as there may e.g. be so many projects that officials have to take part in that they have problems performing their daily work. The beneficiaries are generally reluctant to say no to aid as they are afraid that may lead to them not receiving any more assistance at all from a certain donor.

Regional Approach

All interlocutors recognised that a regional strategy and regional approach are useful as the countries in the region do come from the same background and have very similar problems. In some areas regional, international co-operation is essential as problems are of a cross-border nature. This includes organised crime, trafficking as well as war crimes and related issues. Local officials recognise the need for a regional approach on e.g. organised crime and there is already quite a lot of co-operation on the ground even if it is often not very structurally developed. The war crimes issue would benefit from a regional approach not least as the problems are the same in different countries in the regions, and courts should be able to co-operate for example regarding getting witnesses to go to one or other state. The Bosnian situ-

ation may be different because of the strong international presence there, but the situation in Serbia and in Croatia is very similar with the same difficulties in getting witnesses to appear, etc. Despite the political situation still being quite tense with the war very fresh in people's minds, co-operation does take place even in highly sensitive areas such as war crimes, although it still appears fragile and one can not be sure of the continuation of such co-operation.

Certain organisations such as OSCE, ODIHR and the Council of Europe exist in different countries in the region and can thus more easily have a regional approach. This is also true for some NGO:s such as the very successful Helsinki Committee. Their co-operation may include promoting legislation on such things as organised crime in all the countries in which the organisations are active. There is a Balkan Network for Human Rights with headquarters in Sarajevo and more than 50 NGO:s as members. Most of the foundations as well as national aid organisations are also present in all or most parts of the region, but may sometimes administer their own aid in with a local rather than a regional approach.

As the level of development of the different states of the former Yugoslavia is rather different, positive examples of reforms can be taken from the more developed ones. Slovenia was generally mentioned everywhere as a positive example and there were no major political obstacles to using Slovene experts and examples. Between other states, political objections may be stronger to co-operation although there appears to be increasing co-operation and exchange also with Croatia, the – apart from Slovenia – in many ways most developed of the former Yugoslav states.

Some General Recommendations

Poor donor coordination is a general problem all through the region. To strengthen local capacities to better coordinate international assistance themselves might be the best way to a more efficient international assistance. This can be done through the Ministry for European Integration in the countries where such a Ministry or Department exists. Donor coordination should also take place before donors decide what project or programme they will support. Bilateral projects must also be a complement to the major EU/EAR projects.

Unfortunately it appears to be the exception rather than the norm that donors make evaluations and needs assessments before deciding what to support, and especially if they do this in co-operation with the national authorities. Generally, donors are more interested in supporting training or legislation projects than infrastructure. Certain issues that becomes popular at certain times also get a lot of support while others “disappear”. At the moment, anti-trafficking projects and judicial training (especially of judges) are very popular with donors and for these issues there is more or less a saturation of current assistance needs.

Police reform and especially border police gets quite a lot of attention from donors. There are some areas that get almost no attention but that are very important for the implementation of laws and re-

forms. Taxation and financial issues and other property related matters are such issues, to which very little attention is paid, but that are very important for legal reform and for the citizens. Generally, little attention is given to protection of ownership or other civil law issues.

In order to make sure that a specific project, or programme, will be useful, or to ensure that it will work in practice, a guiding principle for donors should be to use the “Chain of Justice approach”. It means to check where and how a certain project fits in the “chain of Justice” and how well the rest of the links, or part of the chain, functions. If the other parts in the chain are not working properly, the project might in reality result in little or no impact.

It is important that there is a longer term planning and commitment for different projects. This is often lacking among current donor funded projects. Successful implementation cannot be taught only ad hoc as this will not promote the feeling for proper implementation that is so important for the success of legal reform.

As there was for a long time a certain isolation of the region from developments elsewhere, there is a great interest for and need of information from other countries (and the EU). There is an interest in having access to any laws and other material from other countries, although translation of such materials may at times be burdensome for the recipient countries. Assistance with providing translations or material already in translation would be useful. As there are various laws translated into Serbian-Croatian in Sweden for the benefit of immigrants in Sweden, a co-ordinated effort to provide legal libraries with such translations would be a simple and much appreciated task.

It may also be more beneficial for the recipient countries if Sida sponsors experts from, or visits to, other countries than Sweden, if such countries are more of direct relevance. This includes for almost all areas expertise from Slovenia, and for the EU harmonisation related matters experts from Estonia and Latvia.

Specific issues in the civil and public law field can benefit from a targeted assistance with some expert help for seminars, checking laws and arranging study visits. This can be arranged at relatively low cost and Sweden can choose areas where it has interesting experiences to offer, like consumer protection (for Serbia especially), Labour law, Administrative law etc.

The issue of land ownership remains largely unresolved, and is a significant problem that hinders economic development and contributes to court congestion. No donor is approaching the issue of land ownership, which is fundamental both to ethnic conflict in the Balkans as well as to the shift from a communist to a capitalist economy. Only the OSCE is looking at the issue – others consider it too dangerously political to involve themselves in. Sida could assist by taking a holistic approach, one that would help revise the applicable laws and regulations provide equipment and training for land registration, and train judges and other officials charged with resolving land disputes. While the risks are undoubtedly high, the rewards could be commensurate with those risks.

Support, including infrastructure, is needed for courts and prosecutor's offices all over the region. Since there is reluctance from donors to only finance material needs it might be part of broader programs.

Due to the back log of cases in several of the countries in the region, mechanisms for alternative dispute resolution need to be developed and supported. In this kind of program education should also be an important part.

Possible implementers: International Institute of Arbitration at the Stockholm Chamber of Commerce, the International Association of Prosecutors, and the Swedish or Norwegian DV.

Faculties of Law and legal education need to be supported all through the region. The competence and the knowledge of EU-laws as well as the European system for protection of Human Rights must be improved. One idea is to establish a Balkan equivalent to the Riga School of Law – but as a first step a programme can be developed to send students from the Balkans to Riga. Cooperation with the CEELI Institute in Prague could also be established in order to provide further education in different legal issues to lawyers and students of law from the Balkans.

In all countries in the region, libraries lack up-to-date international information. This includes court libraries, libraries of judicial training centres and libraries of law faculties. In some cases (for faculties) paying for subscription of law journals would be a very welcome and useful donation with a long-term effect. An even less costly and more immediate possibility of assistance would be to send Swedish legislation, administrative acts, etc, in translation into Serbian-Croatian that often exists for the benefit of immigrants in Sweden – this has an interest for comparative purposes and as study material.

Creation of a witness protection law needs to be done in several countries. This requires a regional approach because it is likely that witnesses will need to be relocated to other countries. This could be connected to the ICTY programme and /or could be done through the SECI program in Bucharest. Several states in the region are also in need of equipment to allow special investigative techniques mentioned in the law.

Support to the Helsinki Committee for specific projects such as training and publication, for example about the European Convention for the Protection of Human Rights and Fundamental Freedoms and regarding due process and fair trial, could also be part of a more regional approach.

Bosnia Herzegovina

The Political Situation

The situation in Bosnia Herzegovina (BiH) is still far from normal, even if the visible signs of war are less and less obvious and daily life functions much better than only a few years ago. There is some refugee return although not in any great numbers. There is still a real danger of violence in connection with returns, a brutal murder by a Muslim Bosniak of a Croat returnee family at Christmas being the latest very publicised example. The international military presence has been scaled down.

The present High Representative, Mr Paddy Ashdown, has said that he should be the last one and that the mandate of the High Representative with its very special and far-reaching powers should be terminated within the next few years. Most positions in the Office of the High Representative (OHR) have been opened up to locals, even if there is still a fair number of international staff. OHR is also setting up other bodies that partly belong under it but are structured separately. This might create a situation of uncertainty since it can give the impression, even more than with a predominantly international organisation, of creating parallel structures to the democratically elected ones, without a clear end to the mandate. On the other hand, the IC-bodies are in many areas still necessary in order to prevent attempts to undermine BiH State structures. Furthermore, the High Representative is making very great use of the right to impose legislation.

As for the political will of the people and reluctance to accept BiH as a unified state, there have not been any major changes in the last few years even if there have been more state institutions set up. There are still strong forces that favour a split-up of the country with parts joining Serbia and Croatia. Even if this may not be officially on the political agenda, it is clear that such ideas have not disappeared. The strong showing of nationalistic forces in the elections in October 2002 confirmed this. Many officials will more or less openly admit that the State level institutions are seen as impositions by the international community.

One commentator said that the politics of interests has now taken over from the politics of symbols – flags and other national emblems matter less. But this does not mean that there is more consensus and less divisions, only that these are represented in a different manner. The public attitude is still not in favour of the common good and especially not the common good of Bosnia Herzegovina as a country.

The most vociferous opposition to the BiH policies in the Federation tend to come from the Croat population that has not given up demands for its own entity. But also in the Republika Srpska (RS) the political and popular opposition to much of the work of the international community and the State institutions set up with the help of the international community is still strong. There is some difference between the Western and Eastern parts of the RS, with the Eastern part being the more radical one. Generally, in RS there is very little if any popular support for the unified state of Bosnia Herzegovina with the political will instead favouring uniting with Serbia, like many Croats may still prefer joining Croatia. Neither is seen as a realistic option at the moment not least because of the attitude of the international community. The only possibility of getting some support among ordinary people for BiH as a state is identified by commentators as being if this is seen to give better possibilities for ordinary people – economically, for getting closer to Europe, etc.

This, however, is in itself not likely at the present time. There is a problem in the whole of BiH but perhaps even more in RS than the Federation with criminalised power structures. The international community lacks the will or strength to take decisive measures against these

structures and the known criminals in them. The economy still lacks any sustainability, which makes the struggle against organised and other crime even more difficult.

Some steps toward a form of normalisation still do take place. The UN Mission to BiH was terminated at the end of 2002. The mandate of the police assistance was taken over by the EU. EU also supports the local police (partly through some Member States) apart from the EU police as such. More issues should be handled as co-operation and assistance rather than as imposed outside solutions. In practice, the Communications Regulatory Agency and the National Bank are still the only institutions set up by the international community that have worked according to their exit strategies and are more or less totally functioning as national institutions.

The Government Reform Strategy

With the heavy involvement and the special powers of the international community in BiH it is difficult to talk of any real “own” government initiatives or strategies. What happens in the end still depends more on the international community. The involvement – if any – of national experts and organs in the reform process varies and does not follow any established rules. With the interventionist strategy of the present High Representative, several national officials said that national politicians have become even more unwilling to do anything, as there usually is not the time and patience to try to get agreements instead of impositions.

Several new ministries at State level have been set up following the latest elections and will be up and running soon. This includes a Ministry of Justice and a Ministry of Interior for internal security matters. The exact mandates for the new Ministries will only crystallise later, especially for the Ministry of Justice many of its issues are still under Entity competence and mechanisms for co-operation will have to be carefully established. Such divisions of competence are not yet determined. This was confirmed by the just-to-be appointed new State level Minister of Justice, Mr Slobodan Kovac, whom the delegation met. Another important element of the reforms is the establishment of State level court, decided some time back and now operational. There is also the decision to establish a so-called Court police that reports directly to the Ministry of Justice. This body has the task of getting witnesses to court, to enforce certain decisions, etc. There is thus rather more of a national BiH justice sector – rather than only that of the Entities – than only one year ago, but how this will function in practice remains to be seen.

Legislation and its implementation

Because of the strong involvement of the international community in lawmaking in BiH not least with the special powers of the High Representative who can impose legislation, there is a large body of laws written according to international standards. The problems with these laws tend to be that they follow different international models and are not always consistent. There is insufficient co-ordination and control

that laws fit with the system. Political representatives – including those who in general are favourable to reform and the work of the international community – feel a continuous and even increasing frustration with the international lawmaking and the lack of concern for even trying to follow the normal legislative process. The recent new law on criminal procedure is an example. There were comments made by the judges' association and the parliament, i.a. pointing out clear inconsistencies in the draft law, but these were ignored by the OHR and the law imposed regardless. It is clear that imposition of laws is no longer an exceptional measure as it was when first used in 1997.

There is generally less international involvement in civil law than in criminal law. In the criminal field it may well be that with existing activities and planned ones through EU Cards, there is already sufficient international involvement and bilateral donors should not get involved. However, there are areas such as labour law, company law, bankruptcy law, law on obligation and related matters in the field of private law where reform would be needed and not least work to make sure laws are properly implemented. These areas are less well covered by international donors.¹ A functioning law on restitution would be very important for the country according to many commentators, as would a law on obligations. As for restitution, this has been discussed for a long time but there has been little concrete work. The RS made a law on restitution some time back, which was however cancelled by the High Representative as it was not realistic. Courts are also not well equipped to deal with commercial matters, there are no special commercial courts as what used to exist before the war and judges in the ordinary courts lack expertise for larger and more specialised commercial cases. Environmental legislation is also in need of reform as is consumer protection legislation. The importance of civil law for the functioning of a country and the normal life of citizens (including returnees) often appears to be forgotten by international donors.

Also administrative law is less well covered than criminal law but better than civil law. There is a US supported project for administrative reform in the Federation and a British backed project in the RS. The OSCE is involved with the creation of a Civil Service Law in the Federation and its implementation. As the administrative system of the former Yugoslav area is very different from the Anglo-Saxon ones, there may be a need for some input from countries with a more mainstream European system although additional projects would of course have to be well co-ordinated with existing ones. The aim of a smaller and more efficient administration is the same. As for the central level, such as assistance to the new Ministry of Justice on the State level, there are several donors and exact needs are not yet clear.

One need is that there is a lack of competent people in BiH for legal drafting, in the Entities and presumably at the State level (in the new Ministry of Justice). Posts in the judiciary are quite attractive but that is not the case for posts in ministries, which makes it very hard to recruit the best people and for obvious reasons there is very little left of any

¹ There are some projects, like a German project for company law and the law on obligation.

cadre with long experience. It would be very beneficial to have a “centre of excellence” with very qualified lawyers for legal drafting, like e.g. exiles with also legal experience from outside the country. As it is presently there is no unified or settled system for legal drafting, but it is done in working groups with international and national participants varying from case to case. The British DFID has a programme for support to the Ministry of Justice including legal drafting and OSCE assists with legal drafting at the cantonal level, but there would still be room for more assistance – well co-ordinated with existing projects.

The BiH Parliament would be in need of assistance in order to provide better working conditions such as office space for chairmen of parliamentary committees, a server to be able to link computers, books for the library and other relatively minor practical matters that would improve working conditions considerably. Such assistance is often difficult to get as many donors favour training over infrastructure matters.²

The proper implementation of laws is often lacking. This is exacerbated by the fact that new laws are not always well understood, especially as there is no normal law-making process in many cases. There is also widespread corruption and an even more widespread perception of corruption that erodes any trust in the application of laws. Legal projects often do not include support for implementation of laws, which means that the laws of international standard never have any proper effect.

Legal Education and Training

The EU through the Cards programme supports training for judges and prosecutors related to the new criminal code and the new (coming) procedural codes. There will also be EU supported training in administrative matters for courts, such as case management, information flows, human resources management and related matters. Judicial Training Centres for both Entities are in the phase of being set up together with the Council of Europe and the OSCE. There is a law on the judicial training centre and some states were reported to have indicated interest in supporting the centre, but which states or the nature of the commitment we could not find out with certainty. The Centres are still in the process of being established and the posts of director have not yet been filled. National as well as international judges are expected to act as trainers, it is also possible to investigate using Brcko judges and prosecutors as trainers, as they have experience of the new system that now will be introduced for the whole of BiH. The Entities themselves must be active and also provide substantial parts of the funding for the training centres, which is a requirement from the donors. It is too early to tell how this will work, so far good will has been shown but very little concrete has yet happened. The Bar Associations of BiH would need assistance with training. ABA CEELI is, with some support from Sweden, supporting some education, but there is not much available for lawyers. The Bar Association at least in the RS does appear to have become a bit more active lately however, after having been just an organisation for registration of lawyers. They now do take part in some training and other events.

² The UK has allocated some assistance to the Parliament library. Basic furniture and computers for the Parliament were given by the European Commission.

The US Ministry of Justice sponsors some training for the police and sometimes also prosecutors in the RS. The relationship between prosecutors and police under the new judicial system is a matter of concern in both Entities but most in the RS and training on this would be required for all concerned. Prosecutors in the RS have also indicated to ABA CEELI that organises lawyers' training, that also prosecutors would be interested in taking part in training. There has been various internationally sponsored training on specific matters for different groups (judges, prosecutors, police and lawyers) like on trafficking and organised crime. ABA CEELI has also sponsored workshops on domestic violence, which is an issue that until recently has had very little attention. As for the methodology of training, many commentators agreed that interactive workshops, moot courts and such events were the most useful – preferably organised by practitioners. Many interlocutors pointed out the need for training, for study visits and for international exchanges or any other measures to improve knowledge among members of the judiciary, as the inability to properly use the laws was seen as a problem (not least by the new Minister of Justice).

As for the University level training, the Law Faculty in Sarajevo is not regarded as very good or modern, it lacks basic training in EU law or other internationally important subjects although there is some co-operation with other universities like through the EU Tempus programme (with the law school of Örebro among others). The Faculty is not very involved in the legal debate or the legal reform process although members do take part in working groups. Other educational initiatives like the special Masters in European studies (not specifically only law), in co-operation with UK and Italian universities, tend to be more interesting than the basic studies at the Faculty. The Banja Luka Law Faculty is not very modern either and lacks many essential resources (such as a modern library) but does appear to be quite active and involved with several publications and some public events. There is a separate human rights centre. The Faculty is also through some of its members involved in the judicial training centre and other judicial training as well as in legal reforms. There is a serious lack of resources though, seen e.g. by the fact that the library only holds old material, pre-war issues of legal journals, etc. Some donations have been received, e.g. from Austria, but there are very small resources. There are some contacts with other universities but there are difficulties (mainly financial) with organising student and professor exchanges, etc. Salaries of the professors are extremely low, which prejudices the independence of the University, influences negatively the status of professors and generally makes the work of the Faculty problematic. There are also plans for changes to the laws on universities, prejudicing further the independence. The OHR and the Council of Europe are providing advice and it is hoped some of the proposed changes – very much opposed by the University itself – can be amended. The reform has gone further in the RS than the Federation but because of the controversial nature of many of the proposals, this does not necessarily mean the changes will be adopted soon in any of the Entities.

The Judicial System

The main recent event in the reform of the judicial system in BiH is the setting up of the State Court and State Prosecutor, established on paper some time ago but only fully established at the end of January 2003. Although the Court and the Prosecutor's office have been established and several individuals appointed, there is still a need for more legislative work in order to fully establish the system. The working methods also need to be worked out once the institutions are fully up and running.

The establishment of the Court at State level also entails the need for certain unified rules in both Entities.

Because of what is necessary for the State Court but also as it is in itself regarded as positive to have some unification, the High Representative has prepared and imposed Criminal Codes for the Entities and on the State level and has prepared Criminal and Civil Procedure Code for both Entities and the State level that are expected to be imposed shortly. The exact timing for imposing the Civil Procedure Code is not yet decided. As for these latter, working groups in the Entities, with international help, are working on them. The new codes entail a complete overhaul and change of the judicial system. The old Yugoslav system with an investigative judge and a very passive prosecutor is abolished in favour of increased investigative powers for prosecutors and the police. There will be an entirely new type of co-operation necessary between the police and the prosecutors. The system will be similar to that of Scandinavian countries and it also has some elements of the Anglo-Saxon system. The same system has been introduced with some success in Brcko some years ago. It is hoped that it will be possible through twinning and similar exchanges to have senior international judges and prosecutors to come and work in BiH, in the new state bodies or elsewhere, to help introduce the system.

A High Judicial Council has also been set up as a general overseeing body for the judiciary. It has a potentially important role but if and how it will be able to carry this out remains to be seen as it is just established. There would be a need for an objective and independent body to oversee the judiciary not least to raise the esteem of it in the eyes of the public.

It is perceived that at least ethics are often breached.

In the Federation there is judicial reform going on in the Cantons, reducing the number of prosecutors and judges. There is a need to make the system more efficient and to improve the co-operation between different levels in the court system. By reducing the number of courts and prosecutors offices it will be possible to have a greater level of specialisation. Until now, all prosecutors have basically had to deal with all sort of cases and also among judges specialisation was very rare. In connection with e.g. major economic crime it is evident that there would be need for specialisation and specialist competence. The lack of specialisation (at all levels, including the police) also means a lack of understanding for the kind of major, time-consuming investigations that may be required in large economic criminal cases. There are recent reforms to budgetary issues such as a proposal to pay all judges

from the Federation budget directly to avoid the problems with late payments that the Cantons often have. Generally, courts have to use ingenuity and imagination to manage their matters – the Federation High Court could buy computers thanks to having been able themselves to save on other matters, which was possible thanks to a certain independence of the court in budgetary matters.

Also in the RS there is reform and a reduction in the number of courts. It is known which courts that will be closed and changed, but the work is only starting. There is some unclarity with what exactly the reforms will mean in practice in all sorts of ways, both practical and to do with such things as the role of prosecutors under the new system. Added to this is the uncertainty created by recent constitutional interpretations regarding ethnic representation in the Entities, which in the RS will mean that several high judicial officials such as the president of the Supreme Court of the RS will have to resign to be replaced by Croats or Bosniaks. The uncertainty contributes to a critical attitude to the reforms – as much or more than the actual content of the reforms.

All existing officials will have to reapply for their positions or the slightly or totally modified positions in the new system.³ It is hoped that this process will be finalised during the year (2003), preferably before the summer. The appointments are made from the top down, starting with new appointments for the State level and the highest levels in the Entities. For the top positions there were many applications, there is not foreseen any major problem finding applicants for other positions either although this is too early to tell. There has been quite a significant increase recently in the salaries of judges and prosecutors, which means that the salaries are competitive. This is one reason that it is not so difficult to recruit people even if it is still true that the status of the positions is not so high so the very best young lawyers may not be attracted.

With the major changes in procedural and material codes a lot of training will be necessary for judicial personnel and it would be desirable that the personnel changes take place before the major training efforts so that the right people are trained. At the same time, it is not possible to wait too long with training, which is urgently needed.⁴ The recently established High Judicial Council can demand that judges and prosecutors take part in training. There is also some police training although there are still major needs, especially when it comes to investigative techniques. Lawyers are not required by Bar Associations or anyone else to undergo training although it would not be unthinkable that the Bar Associations would require training. However, the Bar Associations are generally quite weak with no compulsory organisational membership, no binding codes of ethic, etc. There is a limited amount of training available and it is sometimes expensive, entails the need

3 There are now about 250 prosecutors in office. With the new system there will be 258 all over the country, but although the total number is similar there will changes in the offices – i.e. the new positions will not be the same and in the same locations as the existing ones.

4 What is already decided is substantive law training in fields such as organised crime, trafficking and terrorism for the State Court and State prosecutors by the Spanish government and training on the new criminal procedural codes by the US. The training will take place over a one-year period, in segments. There will also be attempt to find in-house people to act as future trainers. The US will sponsor a project for curriculum development for judicial training in February 2003 with training some months later.

for travel and overnight stay, etc (the latter being mentioned as a problem especially in the RS), which makes it unattractive for lawyers who are privately employed or self-employed. Apart from training as such, possibilities for study visits for various players on the judicial scene were mentioned as something desirable and useful. Those from international organisations or similar that had experience of study visits did not have the often negative experiences that sometimes is the case with study visits, but felt participants had a genuine interest in learning. The Scandinavian countries would be suitable for study visits by the judiciary, as the Scandinavian systems are similar to that now imposed in BiH.

Apart from practical efforts at increasing the efficiency as well as training of judges and others, some interlocutors also stressed the need for legal reforms that would increase efficiency of courts. Ethics is another area that is in need of efforts – not just in the judiciary. A Parliamentary Ethics Committee is to be formed shortly that will oversee ethics of members of parliament but also of other institutions in BiH. There is a law on conflict of interest but not much understanding for how to implement this in practice and there are few codes of ethics for any professional groups or politicians. The public perception of the judicial system is that it is corrupt and inefficient in both Entities. In reality, the system may function acceptably in some cases at least when there is no political element or any organised crime involved, but the system is too patchy to provide any legal security.

In the Federation, decisions of the higher courts are published in a Bulletin of Cases. The availability of this for all concerned may however not be satisfactory. In the RS access to legal information, cases as well as laws, is even worse. It is quite common that lower courts do not have all the information and for lawyers to get access to new laws is even more difficult. There is no proper system for publishing laws. The Swedish initiative from some years back with a Swedish-style law book has not been followed up.⁵

One funding gap identified by the OHR staff working with judicial reform is the need for premises, equipment and other infrastructure for the new prosecutor's offices that will be formed as a consequence of the reform, when some offices will be closed and others increased.⁶ There is a need for this centralisation to ensure proper competence in all offices as well as some possibility for specialisation. The basics that exist in all the small offices currently are very limited, both as concerns equipment and competence. For example, there is a lack of computers and even if there are computers these are often not linked to any form of network so the spreading of information is difficult. The EU Cards programme does include training for judges and prosecutors as well as the publication of training manuals but normally not the equipment. The EU gives practical support to the new state court (which is also supported by the USA and Spain) as well as the High Judicial Council, but there are still material needs for the new court and other related

⁵ There is a project for the Independent Judicial Commission (at the OHR) to do a needs analysis on the access to legal information. The current status of the assessment is not known.

⁶ There will be 17 new prosecutors' offices in BiH. Presently there are 28 in the RS and 53 in the Federation. The majority of these will thus disappear.

institutions as well. Courts as well as related bodies such as prosecutors, the police, etc, lack necessary investigative equipment as well as equipment for special things like secure witness testimony. There is a law on witness protection imposed by the High Representative in January 2003 but no technical means to fulfil the law or sufficient knowledge on how to use it. In forensic science the need for equipment is also great. With the legal changes, prosecutors and the police will be expected to perform work for which they do not have the facilities. The equipment that exist is to a large extent obtained through donations and only meets some needs and in a non-coordinated manner. Generally the criminals are thought to have better equipment for things like telephone surveillance. Also very basic equipment like computers or vehicles are lacking or in a poor state. However, it was also pointed out (e.g. by the EU) that there is a general expectance of getting too much from the international community, the local authorities expect to get all equipment and do not budget for any even where it would be possible at least to some extent. The general infrastructure of courts is worse in the RS than the Federation and varies from court to court, in some places it is very poor indeed.

The attitude towards the judicial reform varied very much between interlocutors. The dissatisfaction was mainly due to the fact that the reforms were imposed and that there was insufficient interaction with the local community. As there is a very major change of the judicial system, with the introduction of a major role for prosecutors as the role of the investigative judge disappears, there is a need for a lot of training in order for the new system to work and also for that reason it would have been better to introduce it in a more gradual manner. As for the actual content of the reforms, many felt the changes were needed – the previous system was neither efficient nor secure. Some persons feared that the new system was too influenced by the Anglo-Saxon system, especially through US involvement, although the system is not a fully Anglo-Saxon one.

As for legal aid, this area also needs support. The OSCE has some programmes and DIFID is also currently involved, but still there is no proper functioning for legal aid in BiH. There are certain possibilities of getting free help from courts at certain times, a legacy from the Yugoslav days, but the assistance given in this form can only be limited mainly to how different forms should be filled out. Some NGO:s can provide some limited assistance.

The penitentiary system is neglected by donors, as is often the case in the region. Prisons are rather bad and overcrowded. Another problem is juvenile justice. As there are no special detention centres for juveniles and they cannot be put in ordinary prisons apart from in some special cases, juveniles convicted even of serious crimes are often just released in the absence of any measures available against them. There is no system of alternative dispute resolution in the BiH. Some plans exist for this e.g. with EU assistance and with Canadian help some training has been carried out. In this context further assistance may be required not least for training and exchanges to understand how to properly use this.⁷

⁷ Sida in Sarajevo showed the delegation a project proposal for alternative dispute resolution.

The Ombudsman

The Ombudsman, the Civil Service Commission and the Auditor General are all very important functions as there is still a need for independent control in the absence of real functioning systems or a proper popular understanding of and adherence to rules.

The Ombudsman institutions in the Entities and on State level are very important as watchdogs and as balancing factors in the judicial system. The institutions are up and running since several years back, with international support, and are doing a good job that is generally perceived positively although many feel the institutions could be more efficient. They are still in need of continued support and could have an increased role. The full impact of the activities of the Ombudsmen all through the system is still not felt – the in themselves positive actions tend to only have a limited impact, maybe just on the particular case in hand. There are various reform efforts going on concerning the Ombudsman institutions with plans for unifying the State and Entity ombudsmen. This is controversial, with also personality issues entering the debate. It is important that such matters are not allowed to disrupt the actual work of the Ombudsmen and that organisational issues are not unnecessarily allowed to disturb the work on real topics.

As there is no functioning system for out-of-court settlement of disputes or different forms of mediation in BiH, the current BiH ombudsman has made some suggestions for a mediation system for civil cases and given some presentations on this. These have been met with interest, but more efforts would be needed if such a system should be properly promoted.

Humanitarian Law and War Crimes

BiH has the greatest problems in the region with missing persons, mass graves and war crimes. There is an estimated 40.000 persons still missing in the region, 30.000 of these in BiH. Most are presumably dead, of 250.000 dead most are now identified but there are still thousands unaccounted for as well as unidentified. Many efforts are undertaken but even so the work will need many more years. The main organisation in the area of missing persons is the International Commission on Missing Persons (ICMP) that was established in 1996 and exists in the whole region with its main office and main operations in BiH. Out of a total of about 200 staff, 100 are placed in Sarajevo. ICMP operates with a three-pillar approach – government relations, science and families and civil society.

ICMP and organisations it co-operates with have access to sophisticated technology, which however is very expensive. There are three DNA laboratories in BiH, one in Belgrade and two in Croatia. Regional co-operation is essential as it is often important to get blood samples or other evidence from all over the region, practical matters may span more than one state, etc. The laboratories as such may be used for other crises so they can be kept even if work in the region should end, as they are created to be sustainable and have very valuable competence for mass identification and similar matters. Although ICMP have several donors they are always looking for more to allow

the laboratories to operate in full capacity. Not only the laboratories but also working methods, ideas for contacts between authorities and family organisations and such matters can be “exported” to other areas. The ability to deal with issues of missing persons, exhumations and identifications and all matters related to this has a very great impact on conflicts – actually and potentially.

It excludes at least some of the myths, allegations and denials that conflicts entail. Proper information not only makes it easier for families from the humanitarian viewpoint but also makes the tone of the conflict potentially more balanced.

The war crimes issue is closely linked to the missing persons one. Even if the practical work with missing persons is progressing well, for there to be “closure” on these matters proper war crimes processes must exist. A War Crimes department shall be established in the new BiH State Court. Cases will be deferred to this court by the Hague Tribunal so a statute similar to that of the Hague Tribunal will be needed.

At present the laws are not appropriate for judging this kind of cases. There are judges in BiH considered to have such integrity that they could credibly judge war crimes cases, but involvement of international judges would also be needed. Many national judges feel that war crimes should be the only type of cases where international judges should be involved. There are already now war crimes trials in BiH and all kinds of decisions have been taken, from acquittals to long prison sentences. The judges have often been of the same ethnicity as the perpetrators but this has not prevented the cases from going ahead. The fact that major war criminals such as Mladic and Karadzic are still at large is bad for the credibility of the war crimes process. Karadzic still has some support among people in the RS and in Serbia, more as a symbol than as a real leader but this role is reinforced by the fact that he has not been captured.

There are some voices in favour of establishing truth commissions on the South African model in BiH. Some initiatives have been taken but the issue is still controversial.

NGO:s and Civil Society

The civil society in the BiH is very weak. It is especially weak in the RS. There are some NGO:s that are quite active but on the whole there is not much popular involvement in civil society work. There would be scope for much more civil society involvement not least in the justice sector. The increased involvement of women was pointed out as desirable as women are normally less implicated in war-time crimes and also in other criminal activities. There is a large potential as far as education is concerned, so there are reasons why an increased active involvement in society by women would be positive. The organisation Kvinna till Kvinna, that receives Swedish support, is active in both Entities and generally well regarded and successful in its focussed and specific activities directed at various issues that concern women. By providing a secure environment for women they hope to increase the involvement of women in society and politics, there are also campaigns directed at promoting this. The organisation also deals

with concrete assistance to women in the form of legal assistance, social assistance etc. The organisation in Banja Luka is in great need of support for a shelter; the municipality has provided land but the sums needed for building and equipping premises are lacking. There are now no shelters and even women and children in potentially great danger often have to return to violent men because of a lack of any alternatives.

Generally, it is evident that there is less of an involvement of civil society also in the attitude to certain crimes and crime prevention. This is visible e.g. in relation to trafficking, money laundering and to some extent drug-smuggling. It is perceived that these crimes just “transit” through RS or the BiH as a whole and do not affect the country as such and thus are not of concern for citizens there. It is thus difficult to get any popular opposition to such crimes.

Many different NGO:s in BiH receive assistance from different countries or work closely with international NGO:s, but the impact of NGO:s in society is in most cases very difficult to see. This is probably based on a mixture of reasons, including the special situation and lack of normal society in BiH; the absence of a tradition of a civil society and the fact that international organisations and countries were inclined to give aid indiscriminately just after the war without controlling who or what the money was used for. There are good NGO:s as well, but few that would be very noticeable in society.

Donor Co-ordination

BiH is a special case because of the strong international involvement and the powers of international organisations. It is well known that there has been a very heavy involvement of international donors and organisation since the war and that co-ordination has not always been good.

The OHR should have a co-ordinating role in civilian matters but has not always been able to fulfil this role in a useful manner both because of deficiencies in its own organisation and because of other organisations or states not being willing to allow for the co-ordination. There are many examples of different international efforts going on in the same sphere and overlapping. This said, there is however with the OHR an existing mechanism for co-ordination. There are systems of regular meetings for different issues, for assistance being channelled in various ways, so it is possible for a donor to fit into the system by following the procedures and channels that exist. In some context, like e.g. the help to prosecutors, it appears as if the donor co-ordination works quite well (through the OHR). The EU and the US both have assistance programmes in this sphere but have managed to avoid overlaps. The general Rule of Law taskforce under the auspices of OHR works less well.

Generally there is very little involvement of local bodies in co-ordination, this is left to the international community. There is very little influence of local bodies on what assistance there is and where it is targeted. The involvement has not got any larger over the last few years, it is still very much so that local organisations and bodies just receive the aid.

The BiH Ministry of European Integration is very inactive and does not at all have the key role it does in other countries in the region such as Croatia or Macedonia. There are very few if any proper requests from local bodies for EU aid and not much competence for making applications.

The EU Cards programme covers a lot of issues in relation to justice and home affairs. There are many different projects ongoing and foreseen and any additional project must take the EU Cards very much into account to avoid overlap. In the future the OHR will disappear as such and the High Representative will be the EU Special Representative only (he is now both) for some time. The co-ordinating role may be one role that the office will maintain.

Republic of Croatia

The Political Situation

The main event in the political life in Croatia at the present time is the application for EU membership, which will be formally submitted in February 2003. The decision to apply for membership was taken unanimously in the Parliament and popular support is also very strong. The actual work with EU harmonisation has started and is well under way. Croatia is probably the strongest of the new candidates for the EU and the general feeling is that the country should be able to catch up with Bulgaria and Romania in the accession process. The carrot and stick of EU membership has a positive effect for most reforms, even those not by themselves directly related to the EU.

However, to some extent the reforms and progress in Croatia are superficially very good but only average when looking deeper. The general impression of the country is very positive in most respects, but many commentators point to insufficient proper implementation of reforms, a certain arrogance which may lead to the inability to recognise where further work is needed and a political environment that is still unstable and not always receptive to criticism. Although Croatian authorities are better than most in the region in directing assistance to where it is most needed and in designing projects, they are still often rather slow in doing this which slows down the pace for e.g. EU assistance. The present government is regarded as rather weak and cautious, both as it is a coalition and has to try to find common solutions but also as a general approach of all the parties in the government.

There has been a lot of progress in eradicating discriminatory legislation and in providing some guarantees against discrimination of minorities. Discrimination still occurs in practice not least in smaller towns and rural areas. The feelings of hatred and ethnic fear are still very much alive in Croatia even if they may not be visible in the everyday life. Return of displaced persons is proceeding quite well with relatively large number of Serbs having returned, although there are many practical/legal problems in this context, mainly to do with property issues. However, still in a very recent (January 2003) television poll in reply to the question whether it was time to stop hating the

Serbs, 77% answered no. Although this was not a statistically selected group of respondents, many Croats felt it was still indicative of general popular opinion.

The government's reform strategy

There have been a number of reforms going on in the legal and judicial system since 1995. Lately the main focus of legal reform is EU harmonisation. In the judiciary, the main issue is to deal with the backlog of cases, which amounts to 1 million cases (in 2001). Strategic reforms to deal with this untenable backlog are a priority. The government has elaborated comprehensive reform strategies and established working groups to further implement this. The budget for the reforms has been secured. Basically it is clear that in a regional comparison Croatia stands out positively when it comes to the government's ability to itself design and implement reform. International assistance is used and welcomed for specific matters but there is an impetus within the national authorities for reform. The EU is supporting the court reform in the wide sense, including organisation of the courts, judicial proceedings, infrastructure, case management and other related matters.

The Ministries of Justice and Administration have recently been merged. The public administration was by many regarded as in a worse state than the judiciary, but more attention both nationally and internationally is centred on the judiciary. Most individuals are however more likely to have contacts with the public administration and to be affected if this does not operate properly. There is now some attention directed also at the public administration with various reforms. Other areas in which major reform is going on is on asylum, organised crime and corruption (with the creation of the anti-corruption office USKOK). Administrative courts will also need reform but are less favourable treated in the current reform proposals. Croatia has taken a World Bank loan to improve the system of land registry, which is antiquated and creates many problems. The UK through DIFID and Sweden through Sida are also assisting in this context.

Legislation and its implementation

There is a lot of legislative activity going on in relation to the EU harmonisation. Even if Croatia will only now (February 2003) submit its official application for membership to the EU, the country has started since some time back to harmonise its legislation with that of the EU in most core areas. This means that there is a constant stream of new legislation. Although implementation as always takes longer and is more complicated than legislation itself, in a regional context Croatia is doing rather well – anticipating the strict controls that the official EU accession procedure will entail. The Estonian and Latvian models for EU adaptation are used by the Ministry for European Integration.

The Ministries may need assistance with drafting laws or checking new drafts for EU compatibility and generally international standards. There is not much such assistance available and it may often come too late or be too much of an ad hoc nature. When it comes to completely new issues such as cyber-crime there is often a need for additional ex-

pertise but there is also a need for better drafting skills, for an improved procedure including the parliamentary procedure and for other such matters to give the legislative process higher quality.

In some areas of great importance for a functioning democratic state there is still little if any legislative reform going on. This includes the access to information, where no complete legislation exists and the actual access is also very poor. NGO initiatives, like through Transparency International, are pushing for reforms. Law projects are also sponsored by the Open Society Institute. NGO:s have also been important in connection with various issues regarding conflict of interest legislation and laws on procurement – other matters on which legislative activity could be more extensive and rapid.

Legal Education and Training

The education of most judges and prosecutors is generally regarded as not very good. There is a need for continuous education, which does go on to some extent and is increasing – still not completely sufficient. There is a relatively high number of judges and the quality is not perceived as very high.⁸ A Justice Academy has recently been established for the education and training of judges and prosecutors. There are also regional centres in different parts of the country and regular seminars and other training programmes are organised. Sometimes this is done in the form of interactive moot courts and other such events, which are always very appreciated by the participants. The effect of good seminars is seen in practice. As an example was mentioned, that after seminars for prosecutors on money-laundering, the number of cases concerning such matters increased as the prosecutors could better recognise these cases and push them. The seminars sometimes have international support and/or international trainers. USAID has for example sponsored some training. International help for training would generally be welcome provided it is well co-ordinated and fits into the need's assessments. Mainly, however, the training is carried out by national trainers, financed nationally. The EU Cards programme includes support to judicial training. Especially in specific matters (including anti-corruption or the specific elements of the new judicial system) because of the volume of training needed, there will still be gaps even taking into consideration the Cards programme. The Ministry of Interior organises some training in police matters for police and other officials at different levels. This includes specialised seminars on smuggling, terrorism, trafficking, counterfeit money and other major issues. There is some international support for some such programmes.

Several well-respected NGO:s, such as the Croatian Law Centre and the Helsinki Committee are involved in education. They provide courses on e.g. human rights but also other matters. These courses in many cases receive foreign assistance. The Helsinki Committee has a major project on human rights training together with the Dutch that includes human rights training for judges, the publishing of a book on

⁸ At least according to some sources, the quality of prosecutors is regarded as higher and work as a prosecutor is often a good start to another career. As an illustration of this it was mentioned that 11 out of 12 Croatian defence lawyers at the Tribunal in the Hague are former prosecutors.

trial monitoring. Canada is supporting a project with both the Helsinki Committee and the Croatian Law Centre on the independence and impartiality of judges. In this framework training of trainers for judges' training is one element. The Norwegian People's Aid has sponsored a regional project for educational seminars for judges from all over former Yugoslavia on human rights. The interest for such courses organised by NGO:s is high and has increased over the last few years.

The problem with the training of judges and others on e.g. international conventions like the European Convention on Human Rights is that this training is not systematic, does not reach all judges and generally does not give adequate knowledge in this area where the background knowledge of the judges is often very poor. The knowledge of foreign languages and generally of international matters is not good among judges so they have difficulties following internationally provided courses. Also training on domestic matters such as new legislation is lacking or patchy.

The Law Faculty of the University of Zagreb is not very active in the debate and reform work, although certain individuals are very involved. The Faculty does have some courses in EU law, human rights law and other international subjects, but this training is still generally weak.

The basic education for law students does not include EU law or the European Convention for Human Rights. The University has some exchange programmes and international courses,⁹ but these do not involve the majority of students. Recently a project for so called "Street Law" has been started, dealing with everyday legal matters in the manner of a legal clinic. In October 2000 the Law school in Rijeka also commenced with Master degree studies in European Integration Law including International Criminal Law and Human Rights studies. The Ministry of EU Integration is providing scholarship and guaranties for employment for postgraduates. Generally the Faculty or other law schools in Croatia are not very good at adapting their curricula and giving attention to "new" areas of law.

The Judicial System

Also in Croatia the basic structure of the criminal procedure, with the investigating judge, will be reformed to something which more resembles e.g. the Scandinavian system with more active prosecutors. The reform process in Croatia as opposed to Bosnia Herzegovina is an internal national process, so the exact design of the system will depend on comments and views during the ongoing process. The legislation should be finished in 2003 and implemented from 2004. Training for all involved in the new system (judges, prosecutors but also defence lawyers) will be needed, as it will be a new system and an entirely new structure for the country. International assistance with this would be welcome. There are also other recent reforms like the introduction of a summary procedure for certain cases if there is a confession. The prosecutor's office has been reformed, following to some part EU recommendations. This includes strong measures against corruption and organised crime. A special anti-corruption office has been set up in the State prosecutor's office.

⁹ Like a Danish project for training the trainers in EU law and a German project for teaching EU law.

In 1993 a Council of State Judiciary was created, it operates since 1995. This Council has among other things organised the re-appointment of all judges and prosecutors. Some NGO:s criticised the Council for not having clear criteria in the process of replacement of judges and for being a more political than legal body. Judges and prosecutors have also left their posts for other reasons than disqualification by the Council, which has led to a large turnover and many inexperienced judges. Some people had to leave for political reasons, others do not meet modern criteria, some leave as pay and other conditions are better elsewhere (although judges pay is in a national comparison quite good). It is not so easy to recruit young people, but even so this is not the main problem but rather that there is not a strong cadre of “middle” persons in the judiciary with experience but still with several years to work. This is to some extent also true for prosecutors. A manual for prosecutors has recently been written to try to overcome some of these problems of many new and inexperienced prosecutors at the same time.¹⁰ Judges are in accordance with a new law appointed for life after an initial five-year trial period. This provision has changed a few times over the last few years, which means that there are also judges appointed for life without any trial period and without in some cases having had to meet any very strict criteria.

Many interlocutors felt that the government reform plans for the judiciary were genuine as well as rather good in substance but their success very much depends on the judicial personnel, which may mean it will be difficult to feel the positive effects very soon. Young and inexperienced judges and prosecutors not only have to deal with very large and important cases in difficult areas such as organised crime, war crimes and privatisation but for all in the judiciary matters are complicated by the large amount of new legislation that is adopted. It appears difficult to get convictions in major cases, e.g. corruption cases. This may be due to some corruption also in the judiciary but also to inefficiency and the inexperience of judges and prosecutors. The enormous backlog and how to deal with it is the main preoccupation for the judicial system. This has also contributed to the low esteem of the judiciary among the population. The large amount of personnel changes in recent years has not helped the working situation and the backlog.

The Croatian Bar Association is regarded as quite conservative and not very active. They do not take a proactive part in training, although they take part in some training on human rights and other such matters. They work with ABA CEELI on specific issues but have not made major efforts in the field of training or in otherwise preparing lawyers for the new role they will have with the new criminal procedure or in preparing lawyers to work with EU law. With individual exceptions, it is difficult to interest lawyers to take part in training.

As one element in dealing with the backlog and as a positive reform in itself, alternative dispute resolution is discussed. There have been some steps taken to introduce this for cases under the labour act, but in other areas the discussions are at an earlier stage.

10 The USAID sponsored this manual.

The specialised knowledge of judges for such matters as commercial cases, intellectual property, etc, is poor and there is not much training available. USAID sponsors a programme regarding managing bankruptcy cases for the municipal court in Zagreb.

The spreading of information by the courts functions quite well and in theory very well. Electronic means are used to quite a large extent. The Supreme Court has its own web-site and publishes information on it, the State Prosecutor is planning to have its own web-site as well. However, the technology available at smaller courts is not always that good, which makes the spreading of information less successful in practice, although this is changing for the better. What is also missing is recording equipment. This is now done in an arbitrary manner with very little technical equipment involved. The Helsinki Committee has a pilot project with some courts to introduce modern technical equipment for taping confessions, etc.

There is no complete legal aid system in Croatia. The Croatian Bar Association provides free consultation for certain vulnerable groups according to specified criteria. Some NGO:s also provide assistance to specific groups like returnees, asylum seekers or others. The Croatian Law Centre provides assistance to groups like asylum seekers and minorities but has no resources to deal with individual cases. In general, it can be said that for specific vulnerable groups like returnees and asylum seekers there are sufficient possibilities for legal assistance and initiatives may even sometimes overlap. Other matters for ordinary people are not covered at all or very little and there would be a need for e.g. citizen's advice bureaux or other forms of legal assistance. In the absence of any organised legal aid as it is now, sometimes NGO:s will be operating in a grey zone of legality, almost providing unauthorised practice of law, in areas where nothing else exists. Current procedural rules limit who can represent clients in court, with no provisions for "extra" assistance outside of these limits.

The penitentiary system is quite neglected by any donors in Croatia. The system is not bad in a regional comparison but even so there are some deficiencies, mainly in the lack of any alternative to normal prison. The use of early release, probation or special measures for juveniles are all almost non-existent.

The Constitutional Court is another element that is quite neglected in international attention to reform processes, although this is potentially an important court. The OSCE is working with it and it is still working on finding its role in the process and on increasing its authority.

The Ombudsman

The Ombudsman in Croatia has a good reputation and people often turn to it with complaints. The Ombudsman is placed under the Parliament but is an independent institution. It is publicly funded but feels it is not adequately funded in relation to its workload. The premises it has are not ideal and it relies on donations (like the computers donated by Norway) to be fully equipped. Many complaints concern the slowness of the courts, which is not an area where the ombudsman is competent. The ombudsman can indirectly try to influence

through contacts with the Ministry of Justice, etc. The impact the ombudsman may have in this context depends on the relations with the government and its respect for the ombudsman, which varies depending on personalities and is not necessarily better now with a more democratically inclined and reform-minded government – that instead may be less inclined to accept ombudsman criticism. There are also plans for a Government human rights office, which would in some ways be a parallel institution to the Ombudsman and may weaken it. The budget of the office has been cut each year until this year, when the cut was stopped following a very active public campaign by the Ombudsman.

The ombudsman also receives many complaints in the property area. These are often based on the property relations following the war-time laws on temporary uses of abandoned property that were very often misused. The pension insurance system is another topic of many complaints, including matters related to Yugoslav army pensions and the slowness of reestablishment of pension rights (matters, which have also been taken to the European Court of Human Rights). Various problems of victims of war including the benefits – recently very much reduced – for war veterans are often taken to the ombudsman as are illegal building matters. Thus the Ombudsman has a wide variety of issues to deal with. The effectiveness of its work varies from issue to issue, from concrete proposals to general remarks. The Ombudsman would ideally need an analytical department that could deal with such more wide-ranging matters as making proposals for new laws or legal changes, taking a more pro-active approach, etc., but there is no room in the budget or any space at the current premises for that at the moment.

The EU does not fund the ombudsman or include it in its programmes, but the OSCE works with the Ombudsman and there are also a number of bilateral donors.

Humanitarian Law and War Crimes

The issue of war crimes gives rise to strong feelings in Croatia. The government's co-operation with the tribunal in The Hague is controversial among people, with strong protests at any extradition. The government is however well aware of the need to co-operate with the tribunal if it wants its application to join the EU to have a favourable treatment.

There is no special court in Croatia for war crimes. It has been suggested to form such a court but there are no concrete proposals. There have been some trials in ordinary courts, with different outcomes. It is difficult to have a general view on how biased the trials may be, it is clear that there is political pressure on the courts, but there is also a problem of inexperience and lack of specialised knowledge for such difficult trials. There would according to NGO:s be a need to monitor war crimes trials in a more concerted manner – it is now mainly done ad hoc by different groups. The OSCE has a monitoring programme through its field staff. The feelings of fear, ethnic discrimination and all other feeling related to the war are still very cur-

rent in Croatia, which according to some commentators indicate that it is still very early to expect proper war crimes trials to be held and the judicial aftermath of the war to be sorted out. Although this is not an excuse for not doing anything it must still be kept in mind in order to understand the atmosphere and the potential for dealing with these issues. The OSCE however has noticed some progress in dealing with war crimes and missing persons in a more appropriate and objective manner recently. There have also been recent meetings between Croatia and Serbia concerning matters related to war crimes.

NGO:s and Civil Society

Croatia has an active civil society and several important NGO:s in the legal sector. The Croatian Law Centre and the Helsinki Committee were mentioned by many interlocutors as very important organisations with among other things an important role in the legal reform process and for training. The organisations are well respected in society and thus can function well as counterparts for local as well as international actors. They also receive government funding as well as funding from external (domestic or foreign) sources. NGO:s do manage to have some impact on legal drafting if they are proactive and have good, professional suggestions. Transparency International, though a small organisation in Croatia, has e.g. made many suggestions in the process of drafting an access to information law.

Also regarding civil society in general the picture in Croatia is more positive and more in line with the practice in Western Europe and the reformed Eastern and Central Europe than the rest of the Western Balkans. There is a civil society that is allowed to act and that has some traditions at least among higher educated people and in the towns.

Donor Co-ordination

Croatia, being the best organised of the states included in this study, is also best placed to take a more active and determined approach to donor co-ordination. This is also shown by the fact that the state organs are active in asking for assistance for specific things and not just accepting what is offered. The Ministry of European Integration is well organised, other ministries such as the Ministry of Justice have departments for international co-ordination that organise donor conferences. These donor conferences of the Ministry of Justice function well and are the main events for assistance in the justice sector. It is seen again that paradoxically more advanced states have a better possibility to make use of outside assistance.

Several Croatian interlocutors stressed the need for proper co-ordination. They are interested in help but this should be for concrete matters where a need has been identified. The main aim of much of the reform work is EU harmonisation and as this will entail a need for legal reform in many areas, help will be needed. The EU through Cards and other programmes has a lot of projects and these are regarded as the most important by the Croatian counterparts. At the same time, the Ministry for European Integration stressed that they

themselves decide what bilateral projects they want to be involved in and that such projects may still be needed beside the EU aid. EU recently carried out a major assessment of the Justice and Home Affairs sector that will be a basis for future efforts. The US also has quite a lot of projects in the legal and justice sector. Thanks at least to a large extent to practical efforts by individuals, the co-ordination between the EU and the US functions quite well and the US tries to ensure a European input and European angle to its projects – given that EU accession is the ultimate aim for Croatia.

As for bilateral projects, these are best determined when the EU projects in a certain field are clear, to deal with residual issues. There may be such needs but given the extent of the EU programme there are also areas where there is a donor-saturation.

As for regional co-operation, this works well in most fields. The regional Cards programme is just starting. The assessments carried out by the EU in the Justice and Home Affairs sector will provide a focus for the regional programme. Sometimes the feeling is that the EU pushes too much for regional co-operation, which may function better in a more low-key manner, established by the various institutions. Examples from Slovenia are of great interest and that co-operation works well but there is also co-operation with e.g. Serbia. Slovene examples and Slovene experts were very important in the reform process to make e.g. the prosecutor's office more efficient. In twinning projects, supported by EU or bilaterally, Slovenia as well as EU members are interesting examples.

Kosovo

The Political Situation

The situation in Kosovo is very special with the international administration and the continued undetermined status of the province. On the question about the status of Kosovo, nobody is willing to give any answer and indeed that is the answer as given by UN or other involved organs: that the matter remains undetermined for the moment. From the point of view of Kosovo Albanians nothing less than independence would be acceptable but the international community is not yet willing to support this officially. The strategy of the head of the UN Mission in Kosovo (UNMIK), Mr Michael Steiner, is that the province has to achieve a certain standard in the areas of democracy, combating organised crime as well as market economy, before the status of the area will be discussed. There is however more and more discussion about the status nevertheless and many commentators think there will be a decision in the coming 2–3 years.

For the moment the strange situation prevails that institutions are set up and legal acts made without the final status of the province being known. The legal basis is found in the relevant UN resolution (UN Security Council Resolution 1244) and the legal acts are made in a form of *vaccum*, without any attention paid to constitutional structure and systems. Although there are projects to involve locals in institu-

tions and a lot of institution building to replace the purely international institutions is going on, Kosovo remains a special case under UN administration and with little “normal” progress. International donor involvement is to a large extent channelled through organisations. It may be difficult for donors to undertake new projects in Kosovo in the legal sector because of the already heavy international involvement and the special legal nature of the province.

The situation for Serbs in Kosovo is very bad. The few who remain live isolated in special areas and there is very little if any contact between Serbs and Albanians. Serbs are often victims of attacks and return of Serb refugees is virtually impossible. In the summer of 2002 an agreement was signed between UNMIK and Belgrade about Serb judges and prosecutors. This deals with various practical issues for these professionals and did lead to applications by Serbs to work in the Kosovo justice system, but practical matters of security remain and make it difficult for Serbs to work in Kosovo in any case.

A four-pillar structure has been created for the management of Kosovo. The pillars are;

- I) Police and Justice
- II) Civil Administration
- III) Institution and democracy building and,
- IV) Human rights and reconstruction.

UNMIK is responsible for pillar I and II, OSCE for the third one, and the European Agency for Reconstruction (EAR), for the fourth one. To strengthen human rights, there are different groups such as a high-level Human Rights Oversight Committee and an inter-pillar working group on human rights. There are also flexible possibilities of forming ad hoc working groups for different issues like review of different pieces of legislation.

The local institutions' reform strategy

There are institutions created in Kosovo that for most accounts and purposes resemble state institutions. This includes departments or ministries and an assembly. These are created as national institutions but with international help in setting them up. There is work with creation of legal acts and other matters within these structures (like good governance legislation in the Assembly for example) even if formally no “real” legislation exists due to the undetermined status. Even if there are some national institutions and more are being created, the main players are the international organisations with their special tasks.

There is a justice department in Kosovo that has recently been created. This is responsible for administration of justice (unless UNMIK retains the right over a certain issue), war crimes and property rights among other things. Gradually it will take over more tasks of the international institutions to become a normal justice department. Currently there is still quite a lot and even increasing international involvement in the department. At the top level there is even an

absence of locals although it is a local institution. Also in other initiatives and organs being set up, there are attempts to engage locals with systems of co-directorships or even only local directorships. Despite this, there are still problems in involving locals and for internationals to have profitable professional contacts with locals. There are problems finding qualified and suitably educated Kosovars, not least as the normal education system did not function at all for Kosovars for at least ten years under Milosevic. Generally, it is not so difficult to find dedicated and competent people for the highest level, where not least returnees from abroad are important, but it is very difficult to find good people for the middle level. There is a great need for training, study visits and other such activities to also instil new perceptions of the importance of the rule of law and functioning of justice in Kosovo. For this to be successful, obviously the right people must be found for different positions so that the training efforts have a durable impact.

The main “local” players are however UNMIK and OSCE. UNMIK deals with justice and civil administration issues and a lot of legislation. The OSCE is responsible for human rights and rule of law. The human rights department deals with property issues, non-discrimination, victim support (e.g. in cases of trafficking), legal systems monitoring, law enforcement and promotion and training in the sphere of law enforcement. The OSCE also runs a police school. The OSCE human rights department also has sectors in the field. Due to its important role under the so-called pillar structure for administration of Kosovo and the lack of other functioning local institutions, the OSCE presently has the role of monitoring itself. This should of course change when government structures start operating better. In the international system there is a Human Rights oversight committee and an inter-pillar working group for human rights, to underline the importance.

Legislation and its implementation

Despite the undetermined status of Kosovo, what for all accounts and purposes resembles legislative activity is going on – almost exclusively with international involvement. No co-ordination is made with any legislative activities going on in Serbia, as there is no planning for Kosovo being part of any union with Serbia or of the new State Union of Serbia and Montenegro.

Crime is a huge problem in Kosovo and affects most parts of society. Apart from problems with corruption, the high incidence of crime and threats also affects administrative functions in other ways. Officials who try to enforce laws on urban planning or other such matters run the risk of becoming victims of violent crime. These problems have only been marginally reduced in Kosovo since the end of the war. New criminal and criminal procedure codes, meeting international standards, are in the process of development since quite a long time back and should be ready relatively soon.

Property issues are very important in Kosovo due to a lack of functioning and reliable recording systems, proper systems for claiming

property, proper systems for privatisation and so on. Legislation is going on also in this field but there are major problems with enforcing decisions.

The dissemination of legal regulations, translation of these into the local languages and generally the availability and accessibility of legal texts are important problems in Kosovo. Not even all courts or administrations have access to all legal acts. Apart from OSCE and different projects, also UNMIK is working on this. OSCE supports the publication of a quarterly law review and compilations of applicable legislation.

The poor availability and accessibility of legal acts compounds the difficulties due to the uncertain legal situation of knowing what rules are actually in force.

Legal Education and Training

There are a number of different programmes for support to education and training in the legal sector going on, with some OSCE involvement in different ways. There is support to the law faculty through help with the library, student's union, scholarships and international contacts. Various countries are involved in this such as France, Greece, the Netherlands, Austria and Belgium. The law faculty as well as the university as such has no contacts with any universities in Serbia, nor does it have any Serb students, but has developed into a basically mono-ethnic university independent from any formal ties with any other university. The university in Mitrovica, with Serb students, is run as a section of Belgrade University and has no contacts with Pristina. Other education related projects include law clinics organised in conjunction with the University, the publication of a quarterly law review and compilations of applicable legislation.

Because of the years of isolation of Kosovar academics and because of the current relative isolation of the university, international input and contacts are essential to ensure the quality of the education, which generally is low. The influence of the academic society in the development of Kosovo is low. Continued academic education is very poor to non-existent.

The OSCE rule of law department is involved in institution building supporting e.g. institutions that deal with training in different forms. These include the Kosovo Law Centre and the Kosovo Judicial Institute. The Judicial Institute (developed in co-operation with the Council of Europe) is a training institute for all people involved in courts, such as judges, prosecutors, clerks, bailiffs (once they will be created) etc.

The Institute is only just beginning to develop programmes for its activities and to act other than in just a reactive manner. It will be the main body for continuous legal education. The Kosovo Law Centre will become a completely independent NGO, active in the legal sphere.

The Centre works with different projects. One example is the cooperation with the law faculty in order to reform the faculty, but the Centre also organise seminars and workshops on different issues. The Centre

publishes a legal journal and also has a law library. This institution still needs support, financial and perhaps also other as it is still funded by the OSCE but this support will not remain indefinitely.

The Judicial System

OSCE has a legal community support section that is involved with such issues as the bar exam oversight, re-creation of a Kosovo Bar Association etc. The first bar exam was organised under the auspices of OSCE in December 2001 and several have been organised since.

Among institutions created by the OSCE are the Criminal Defence Resource Centre, the Kosovo Law Centre and the Kosovo Judicial Institute. The two former are now totally independent but OSCE is represented on the board – the final one will soon become totally independent. The Criminal Defence Resource Centre provides resources for defence attorneys to strengthen criminal defence, as there has otherwise been more support for prosecutors and the accused have ended up in a less favourable situation. The Judicial Institute, mentioned above, is a training institute.

The Kosovo Law Centre will become a completely independent NGO active in the legal area. The OSCE has a legal system monitoring section to monitor trials and other such events.

Courts function to a large extent with seconded international judges and prosecutors, a concept introduced in late 1999. This was not immediately successful, due to the difficulty of finding suitable judges as well as to the fact that an international judge on a panel may be out-voted and consequently unable to hinder ethnically biased verdicts, etc. The role of international judges and prosecutors was later revised and strengthened. The reliance on international judges may however potentially hinder the development of a qualified national judiciary, if the international judges and prosecutors do not act as mentors and trainers to national judges. The very weak status of the judicial sector makes this mentoring role difficult. There was almost no Kosovar justice sector under Milosevic and what existed was run by Serbs that have now left for Serbia. The poor functioning of courts is due to lack of experience, corruption, ethnical bias but also to legitimate confusion about laws in force. Application of international instruments such as human rights law, which was very poorly known and understood, did not make it easier.

Witness protection is a big problem for functioning trials. This makes important trials especially difficult as the problem is compounded by the clan mentality and it is thus very hard to get people to dare to testify. Possibilities of gathering and using forensic evidence are also very poor. Measures are taken to remedy this, e.g. with the help of KFOR as well as UNMIK. The EAR is involved with projects for legal aid and has a current major project in this field.

A Kosovo Judicial and Prosecutorial Council and a Judicial Investigation Unit have been established under the auspices of UNMIK to deal with the important oversight of the judicial professions. These units have not been able to be very effective due to lack of resources, difficulties for local staff to investigate colleagues, etc. Even so, the

bodies have investigated a number of cases and it is hoped that they will contribute to less corruption and a better respect for the judicial system. Despite positive efforts such as this, the judiciary does not yet have the sort of independence that is needed in a state ruled by the rule of law. In addition, the physical conditions of the judiciary are poor and this makes it difficult to attract the best people. The judiciary still depends on UNMIK which may still be necessary for some time but which should not mean that no transition plan is developed.

As mentioned, the OSCE since some years back runs a police school. This has been successful and the police are quite well trained and function rather well, but there is no functioning police administration.

There is a proposal for a project with UNDP assistance to create such police administration, which is becoming more and more urgent if the police are to be able to function properly. The police also often lack the efficient support of other sectors of the legal community, which means that there is no full impact of the relatively successful police training.

The border police are receiving rather a lot of support, mainly from the EAR. Prisons are in need of support, there is no concept of rehabilitation in the prison service and physical conditions are also very poor.

USAID has recently announced a major project on judicial system reform and the EAR also has a new project for support to the judiciary. At a recent donor conference in Brussels,¹¹ rule of law and minorities were mentioned as key issues for reform in Kosovo. Also the UN Secretary General Mr Kofi Annan mentioned the importance of rule of law at a recent visit to Kosovo. The enthusiasm among local leaders for strengthened emphasis on rule of law is not so great, but the international community is very strict on this. Not least is the big problem with organised crime a potential threat to Europe as a whole.

The Ombudsman

Among earlier projects undertaken with OSCE support is the creation of the Ombudsman institution, which functions since late 2000–early 2001. OSCE does not have any formal role in this institution any more.

The institution was in many ways set up in a successful manner but as there is a lack of ongoing support from donors or any other sources, the institution is an example of how something set up with donor support but with the lack of a long-term strategy may run the risk of failing once initial donor support runs out.

Humanitarian Law and War Crimes

War crimes remain important and very complex for Kosovo, as there were many incidents of war crimes during the recent conflict and many still remain untried. There have been quite a lot of resources devoted to the documentation of war crimes. This has however not

¹¹ This was the fourth such donor conference, the previous ones were held in June and November 1999 and February 2001. The meetings are chaired by the European Commission and the World Bank who have the role of donor co-ordination. At the 2002 meeting, representatives of Kosovo's own institutions were for the first time able to address the meeting.

meant that such crimes have been prosecuted to any major extent. In November 2002 cases were initiated against some Kosovar war criminals at the Hague Tribunal, only the second time such indictments were made. The general reaction in Kosovo against any trials of Kosovars is very strong, as the general perception is still that Kosovars were only victims and Serbs only perpetrators. Even if there is evidence of serious crimes committed by KLA and others, there is hardly any understanding of this in the society that has a tendency to justify Kosovar violence as selfdefence. Trials against Kosovars are difficult to organise and have lead to serious popular protests.

In the local cases there has been serious bias and incompetence shown, although the need to build up a proper domestic capacity for war crimes has been recognised by the international presence in Kosovo since the end of the war. The international judges in Kosovo are looking again at cases and several acquittals have been made due to wrongly or poorly conducted trials. The Kosovar community often does not accept these retrials. There are also very few if any successful cases related to the ethnic violence against Serbs or other minorities. Many grave incidents of ethnically motivated murders have not lead to any convictions.

NGO:s and Civil Society

Civil society is weak in Kosovo. The history and recent developments of the province have meant that there has been no normal possibility for development of a civil society. There are some NGO:s, many with international support and contacts and it is often this international element which is most important for the activities of the NGO.

The Council of Europe is involved with awareness training in schools and otherwise, together with the OSCE. A new project to be launched in November 2002 by the OSCE concerns so-called "street law", making ordinary people as well as especially vulnerable groups aware of issues of law concerning them. There is a low level of awareness and a feeling of leaving things to the dominant international organisations.

Donor Co-ordination

The donor co-ordination in Kosovo is not formally the task of any organisation even if the OSCE and the UN have co-ordinating roles as part of their general tasks. The newly created Finance Department will be formally responsible for aid co-ordination. Because of the major role of the UN, co-ordination in reality functions better than in other parts of the region. A major assessment of needs in the justice sector was made by the Council of Europe in 1999, so there was for Kosovo a better basis to determine needs than for some areas. Even so, there are the similar problems as everywhere in the region with a lack of complete overview and co-ordination. The US representation used to organise regular co-ordinating meetings, but this was to a large extent thanks to one individual and has ceased for the moment.

UNHCR used to organise regional meetings in 1999–2001 also covering issues outside of their direct mandate. There is at present no

comprehensive matrix over ongoing projects published or something similar, as used to exist through the UNHCR. To deal with this to some extent UNMIK has recently provided benchmarks to try to streamline the approach by evaluating these and efforts to comply with these. The benchmarks themselves have been criticised as having been developed without any local input or consultation and do not take into regard the need to build sustainable autonomous institutions.

European aid is rather well co-ordinated through EAR. So far, there is an acceptable exchange of information but no real co-ordination. It is also possible that the World Bank and the IMF will play a more important role in the future for aid co-ordination once aid moves away from the more emergency based type.

As in many parts of the region there is a certain tension between US and European aid and reform support. Even if Kosovo has stated its interest in getting closer to Europe and being EU compatible, there is also a lot of sympathy and gratitude towards the US. The US influence in Kosovo is thus greater than anywhere else in the region. The province has adopted very many new laws in a short period, not all of which are EU compatible. It is generally thought that Kosovo will have to decide very soon about the course of future legal reform. There is no real doubt that the EU compatible approach will be chosen, but even so the attachment to the US will not subside. The important role of EAR for reforms and support is not questioned, but the foreign policy role of the EU is weak.

ABA CEELI is not as influential in Kosovo as in some other parts of the region, but are still an important player in the region, with very good logistics and efficient working methods. Thanks to this they have had a positive impact in connection with many legal reforms not least in the sphere of criminal justice. In this particular context, the US-European different viewpoints have not had a major negative impact as ABA is aware of the need to adapt to European practices.

The sustainability and long-term impact of projects is a potential problem, as not so much attention is paid to this. Many projects lack a hand-over strategy and a strategy for integration into the system, which may mean that once donor support ceases whatever the project construed will not be able to carry on at all. There are isolated islands of administration or other functions that function well, but the overall aspect is still not very positive. There is very little of an exit strategy for when the important international support will cease. This applies also to the judicial sector where the reliance on international judges may potentially hinder the development of a qualified national judiciary.

Many issues in Kosovo would gain from a regional approach, as problems are similar and/or spill over into other regions and countries. Co-operation with Serbia is however currently and for any foreseeable future impossible. Even the international organisations do not co-ordinate so much with Belgrade and organisations there. Co-operation with other parts of former Yugoslavia may work better and also in Kosovo, there is a great interest in the Slovene example and in Slovenian experts. Regional co-operation should in a slightly longer perspective be able to reconcile peoples from different parts of the area and have a wider positive effect than just on the projects as such.

Macedonia

The Political Situation

The situation in Macedonia has calmed down after the troubles last year and there is no imminent threat of war. How much the influence of Kosovar guerrillas provoked the trouble is a question with different answers depending on whom one asks. It is clear that there are some problems between different groups, Albanians and Macedonians primarily but also Roma, but the level of problems and discrimination is difficult to assess. Generally, if life for Albanians in Macedonia economically and security-wise would be better than elsewhere in the region, it may be presumed that most of them have an interest in staying in a functioning Macedonian state. The first census in a long time is underway and some experts predict that the percentage of Albanians will actually be lower than what has generally been claimed. The outcome of the recent elections and the new government, which is multiethnic and has a strong reform programme, was generally welcomed and people were moderately optimistic that the government would try to carry out reforms.

One particular problem is that large numbers of people in Macedonia are stateless. This is a consequence of provisions in the citizenship law relying on the old Yugoslav republic citizenship, which in the Yugoslav days was virtually without meaning and thus not always updated. Children may be stateless due to their parents holding other nationalities during the Yugoslav days based on being born elsewhere even if their real attachment was to Macedonia. There was a short possibility after the independence of Macedonia to register citizenship based on domicile but this opportunity was missed by many who were not aware of it or of the consequences of not doing so. There are also cases (especially among Roma) of children not being properly registered at birth. Especially minority groups are the victims of the consequences of the citizenship law. Children may inherit the citizenship problems of the parents, as the citizenship law follows the *jus sanguinis* principle. The matter is serious as social benefits are in many cases based on citizenship. UNHCR is involved in this matter both in suggesting legislative changes, in raising awareness and in practical measures to limit negative consequences.

The Government's reform strategy

The Macedonian government has followed examples from EU candidate countries and created a Sector for European Integration, which is organised in six units: approximation of legislation; translation of EU legal acts; institution building; support to the Working Committee on European Integration; co-ordination of foreign assistance and information and publicity. There is a comprehensive network of organs to further the European integration in different ways. There is also quite a lot of training in EU affairs for civil servants and others. Although this is quite well done, it is still in an early stage and the needs are very big as the basic knowledge of the EU is weak in Macedonia.

The co-ordination among donors is also the responsibility of the Sector for European integration. A National Aid Co-ordinator (the Deputy Prime Minister) has been selected based on the Phare model and especially modelled on Latvia and Estonia. The European integration and aid co-ordination unit functions very well, has very competent staff and a lot of international contacts. It was set up in 1996 but only lately has got proper political support. There is also a “mini-Cabinet” for co-ordination with representatives of different ministries. Proposals from the government on projects in the EU framework are thus well co-ordinated. However, this does not always mean that the co-ordination functions perfectly, as all donors do not give full information about planned projects. Given the importance of the EU stabilisation process (hoping that the Stabilisation Agreement will enter into force next year), the EU aid is the most central and the EU co-ordinates to some extent and recognises that it should have this role in Macedonia. However, not all projects are co-ordinated through the EU and the coordination unit in the Ministry has insufficient capacity. The EU has recently issued several large reports on Macedonia and especially the Justice and Home Affairs sector there, identifying priorities for assistance in this sector. This is what the unit in the Ministry and the national aid co-ordinator use as their basis for identifying suitable projects. Other aid should fit into this general system. Twinning may be useful for certain institutions. Although Macedonia is not a formal candidate country, several similar measures are taken as for candidate states. Macedonia is hoping for some form of quasi-membership in some foreseeable future, which makes EU compatibility of laws and institutions a priority. There is no question about the importance of harmonisation with the EU in the official policies of Macedonia.

The OSCE mission in Skopje, a so-called Spill-Over mission, was established in 1992 to help prevent the ‘spill over’ of the conflict in the former Yugoslavia. It runs various programmes on institution building, anti-trafficking as well as judicial reform. In addition there are field offices dealing with monitoring of police, alleged police abuse cases and trafficking. As OSCE in Macedonia only has an advisory role (as opposed to e.g. in Kosovo) in judicial reform, it is trying to define its role in relation to other actors in the area.

Legislation and its implementation

Although there are many areas where legal reforms are still needed (not least to ensure EU compatibility), in Macedonia as in many parts of the region implementation of laws is a bigger problem than legislation as such. The corruption contributes to this and also to maintaining a frame of mind in which even good laws will not be properly applied. Training is needed but it has to be co-ordinated and focused so that it really contributes to better implementation of laws. Trial monitoring can be useful to create a climate for better application of justice and this is one area where OSCE is active.

Organised crime is an important problem in Macedonia as is trafficking and especially in these contexts international, primarily re-

gional, co-operation is essential. Legislative efforts are needed in this field in addition to practical work (including working with civil society). Measures against trafficking include legislative issues, witness protection, training on investigative techniques, awareness among the population as well as general training and awareness among police and prosecutors. There is a national inter-ministerial committee for anti-trafficking and efforts in this area enjoy a lot of international support.

Plans to set up an independent court budget and to reform the criminal code as and the criminal procedure code as well a general reform of the courts are part of the Stabilisation Pact reforms but have recently been stopped in parliament.

There is a Macedonian Legal Resource centre attached to the law faculty, which e.g. deals with dissemination of legal materials. There is no official system for publishing laws in Macedonia, which makes access to justice a big problem. The dissemination of all forms of legal information is a major problem.

Legal Education and Training

The law faculty in Skopje was the target of a major legal education project supported by e.g. ABA CEELI that was initiated in 1993 but this has had very little visible impact. Most commentators would say that the Law Faculty remains rigid and not modern. Legal clinics on a US model were established through the project and some other reforms made that make the faculty look different but very little of this has had any real impact or been properly followed-up. Generally, more efforts would be needed for reforms of the law faculty and basic legal education, as it is very difficult to target other areas if this basic area is not dealt with first. Students today are not at all practically prepared for work, as there are very few practical elements and very little modern training in the faculty. There are links with some foreign universities, such as Oslo, Oxford and a Dutch university. The basic legal education remains a problem, as students lack training in implementing law, in modern legal areas and also are not at all aware of how to use international law (like human rights conventions) at the national level. The knowledge of or teaching of EU law is basically non-existent.

Judges continued education is managed by the Judges Association. Although this is a voluntary body, almost all judges in the country (90–95%) are members so in reality it is almost like an all-encompassing professional organ. The Association gets only minimal financial support from the state, but is able to carry out projects and training thanks to EU and other donors. The Association is often a partner in different projects. The Association has a board where the Ministry of Justice, the Supreme Court and others are represented.¹² The Association has seven employees but uses external experts (national and occasionally international) for training. Judges also work voluntarily for the organisation. The engagement and involvement of members is generally good. Apart from legal training, the Centre also deals with compu-

¹² Donors like ABA CEELI and Soros are represented on the Board but as non-voting members.

ter education and such things. Recently a major conference on ethics was held, supported by several donors. The issues for training are determined to a large extent based on questionnaires sent to judges about their priorities. This may also be the basis for what projects the Association will take part in. At the moment, one issue is mediation or alternative dispute resolution, for which no law exists but which is studied and which would provide a means to deal with some of the backlog of cases in courts. Independent financing for the training is very important. In the future, joint training with the prosecutors association may be considered but this association is very new so there has not been much of that yet. The Association also foresees though the Centre education for other officials in courts, clerks and others, so that the education permeates to all levels of the court system. Longer courses should also be organised – not just the smaller ad hoc courses that make up most of the education now. There is co-operation with other associations in the region and this co-operation should be developed. The Association in co-operation with the Council of Europe has organised training on different aspects of the European Convention on Human Rights.

The Judges Association publishes (with donor help) a judicial informer as well as a judicial review, which are the main legal publications in the country and the main way of informing about cases. The dissemination of information is otherwise a problem. Judges are also in need of further training in basic issues such as how to conduct hearings, case management, etc. There are Moot Courts organised, modern presentation techniques presented etc to raise the general level of competence of the courts. EU law and issues connected with that is something on which there will be a lot of need for training. Some issues may be covered by different projects in the CARDS framework but it will be an ongoing need for some time.

The Judicial System

In the judicial system, bribes are still widespread and a whole structure is built up around this, which makes it very difficult to eradicate. Lawyers who try to react against the corruption may get known and “black-listed” in the system. Judges do not work independently and there is no supervision. Many in the legal profession are used to this and not willing to make too many efforts against it. For this reason as well as other reasons of pay and status it is difficult to attract the best lawyers to courts, to become judges or similar. Anti-corruption efforts do exist at different levels of the society and although corruption is still big a problem, it is recognised as such and there are real measures taken against it. An Anti-Corruption Commission has recently been set up. As for police abuse, the police themselves usually investigate this, so the same people who are accused of abuse may end up investigating it. This often leads to cases being dismissed.

Another problem is that courts are often overloaded by small cases, as there are no simple procedures for dealing rapidly with these. This also leads to an imbalance between different instances as cases move so slowly from the lowest instance. This also means that it is difficult

for the Supreme Court to properly fulfil its role as it receives so few cases. Mediation and alternative dispute resolution are presently being studied and may be the objects of internationally supported projects. There is not yet any such law but it would be needed and useful to deal with some of the backlog of cases in courts and to introduce a more efficient process.

There are quite a large number of judges in Macedonia, some of whom work only part time often as a consequence of the low pay. They also have to perform tasks that could be performed by clerks or other officials. The ongoing or planned court reforms aim at changing this and making judges work more concentrated on major tasks. The prosecution is generally weak in Macedonia, as is the criminal defence. The system is based on the old Yugoslav model of a strong position for an investigative judge. There is not a lot of international support for the prosecutors, as judges' training is more popular among international donors. Because of lack of efforts from donors or from domestic sources, the prosecutors in many ways are the weak link in the chain. OSCE has a police development unit separate from the legal and judicial reform units. Quite a lot of efforts are put into police reform also from others, like the EAR. Again, there may be an imbalance between different elements in the chain of justice depending partly on different amounts of attention and aid to different sectors. Basically, the needs are great in all parts of the judicial sector, for infrastructure help as well as training.

The Ombudsman

The Ombudsman institution has been created in Macedonia fairly recently, (in the Constitution since 1991, in practice since 1997) but is already the object of reform. There is a pending project about decentralisation of the Ombudsman's office. This is not supported by the Ombudsman's office itself, that claims not to have been consulted and the origin and motivation of the idea was difficult to understand. In a small country like Macedonia there is justification for the Ombudsman's fear that a decentralisation will mean dilution of competencies and that the central office will be deprived of resources and authority. The Ombudsman presently has a system of travelling to the regions. A further development of this practice and making the office generally more accessible would appear more relevant than creating many separate offices. There have been discussions about creating different ombudsmen for different issues (like gender, children or minorities). Currently the Ombudsman has competence over most issues and they also receive complaints about many different matters. Property and urban planning issues tend to dominate and also questions about lacking or wrongful implementation of decisions. There are also many complaints in the social sphere, about payment of support grants and other financial help and about socially owned property. There are some complaints about the police overstepping its authority, and about citizenship issues. The complainants are of all different ethnicity but it is rare that complaints are based on ethnic discrimination as such. It cannot be said that any group uses the Ombudsman to a disproportionate

extent. The Ombudsman's office has a small budget (300 000 Euro per year, to be compared with the office in Slovenia of about equal size with a five times bigger budget.). Donor money is thus very important for the institution.

This has e.g. enabled important study visits. This as well as more ongoing exchanges would be very appreciated.

There is one ombudsman and four deputies, one of Albanian ethnicity. The office has 32 employees, 20 lawyers, and is situated centrally in Skopje. The Ombudsman is empowered to deal with all complaints about the public sector, including utilities. It does not have any competence over the private sector or the judiciary. The Ministry of Justice deals with complaints of the judiciary and this system is under development. The ombudsman gets about 1.200 complaints last year, which was a big increase compared with the previous year, and shows some impact of awareness campaigns in the media.

The Ombudsman's office is still regarded by many as quite weak even if the creation of such an office is an important step. There is a perception that the Ombudsmen are selected so as to fit all political parties.

As far as court corruption and inefficiency is concerned, this does not fall under the remit of the Ombudsman so in this sphere the office cannot have any direct impact. The Ombudsman is transparent, with a comprehensive Annual Report published in different languages, with quite detailed statistics on complaints, examples of cases as well as comments on these and generally on the work of the Ombudsman.

Apart from strengthening the Ombudsman as such and the new law for this there is a need for public awareness campaigns, which the OSCE supports. People are in general not very aware of their rights and how to pursue these. Even so, the Ombudsman has so far been quite successful and gets many complaints. The Ombudsman has published a number of brochures to explain how complaints can be made, etc. Due to lack of funds, some material that exists in draft forms has not been printed.

The material is generally easy to read and published in small and manageable format (like little cards about the rights of individuals) in different languages.

Humanitarian Law and War Crimes

War crimes and issues related to humanitarian law are not of the same magnitude in Macedonia as elsewhere in the region. There are only few alleged or proven cases, so the issue is not one of major attention. However, for those cases that do exist, general knowledge of humanitarian law is weak also in Macedonia and practical problems exist with organising trials. OSCE is involved with war crimes and amnesty issues to facilitate and promote fair trials. OSCE also deals with trial monitoring and training of local trial monitors. The trial monitoring system is of importance not least in the war crimes context.

NGO:s and Civil Society

Macedonia has a large number of NGO:s, at least on paper. There are about 2.850 NGO:s on paper but only few that are active and even fewer that have any impact. Some are very good and e.g. the positive comments on the Helsinki Committee were unanimous. This organisation has been important in awareness-raising as well as practical work.

In the field of institution building, there may still be a need to support local NGO:s that need international – not least financial – support if they are to become an important factor in society. However, the distribution of such aid requires careful consideration as the quality of the NGO:s varies greatly and some may basically only exist on paper. Generally donors like to work with civil society, but it was pointed out, also by NGO representatives, that support to the state and state institutions remains very important, as there can be no effective civil society with any impact if the state is weak.

The media although free in Macedonia is not very active in monitoring rights, etc. The Helsinki Committee and some other NGO:s raise cases in the media of police or judicial abuse, but it is difficult to raise media interest and the public interest. In general there is a need to raise public awareness, as people are not very aware of their rights and how to pursue these. The ombudsman has been quite successful and gets many complaints, which shows that the awareness of this institution is quite good. Legal advice centres especially in areas where nothing such yet exists are other means of raising public awareness of basic rights and access to justice.

Donor Co-ordination

The predominant importance of EU aid and the EU process for Macedonia has been stressed. This does not mean that no donor co-ordination issues exist. The usual problem with a lack of EU-US compatibility is visible also in Macedonia. For example, different systems for court administration have been built up. Both EAR and the USAID deal with structural reform of the justice sector. The Council of Europe has a training programme and continuous education systems – an area where there is a lot of need. Generally, there is also the usual lack of co-ordination as well as lack of long-term strategies for aid and for its sustainability. One example mentioned was a major legal education project supported by e.g. ABA CEELI that has been carried out since 1993 but has had very little visible impact, as the Law Faculty remains rigid and not modern and reforms have neither had any real impact nor been properly followed-up.

In the judicial reform efforts supported by ABA CEELI, there are various elements such as case management, continuous education and automation. ABA CEELI supports the judges association as well as the Bar Association and the Prosecutors Association and conducts projects through these. There are also projects involving law faculties and publication of legal material. The US justice department together with ABA CEELI has programmes for training of prosecutors.

The Republic of Montenegro

The Political Situation

The main political event in Montenegro at this time is the creation of the new Serbia-Montenegro Federation. It is not very clear what this will mean and opinions are divided about it. Many are unhappy that Montenegro as a “reward” for having been one of the most peaceful of the republics of the former Yugoslavia has not achieved independence and are especially disappointed that it is the EU that has pushed them into this deal. Others see it very much as the temporary measure that it is also said to be and do not appear very worried about it. The final aim is still said to be independence for Montenegro and membership as an independent state in the EU. There may also be a certain element of relief that a solution was found that pushes decisions a bit into the future so that the country may hopefully have a better situation with greater real prospects for independence. What appear completely lacking are any feelings for this new union, people joke about the fact that they even do not know what to call it. Montenegro does not have status as an independent state. It cannot sign international conventions as a full member, but for most accounts and purposes it still acts as an independent state.

Montenegro is a member of the Stability Pact. The European Agency for Reconstruction (EAR) is active in the country. Montenegro is very interested in developing closer ties to the EU with a view to the future membership. The country hopes to be able to join the Council of Europe soon (in some form and manner) and would then be member of the European Convention of Human Rights, which is already applied to some extent.

Montenegro is a very small country (less than 700.000 inhabitants) and this is visible in many ways. People in official positions know one-another and even politically opposing sides are often not that far apart. This has positive effects like a social control but also make eradication of corruption more difficult as there are such close networks. The climate for debate is also restricted by the size of the country as well as by a certain totalitarian legacy – although it is not today dangerous for life and freedom to speak freely, it is still potentially very harmful for the career.

The main domestic political event in early 2003 is the presidential elections that however attract surprisingly little attention. Because of a too low turnout in the first rounds, the result has not been valid and the same looked certain to be the case for the new round in February 2003, in which case the law would probably be changed. Most people appeared not to take much interest in the elections as the result was not regarded as changing anything very much in any case.

The Government's reform strategy

Even if Montenegro is not formally a “full” country it acts in almost all situations as if it were. There are various reforms going on in which the government takes its own decisions and neither Serbia nor the in-

ternational community are allowed to dictate policy. The main long-term aim of the country is to join the EU as an independent state. There is thus a lot of interest in harmonising laws and procedures with EU requirements, even if official candidate status is still quite distant.

The Government has taken quite decisive action against corruption, with the creation of an anti-corruption agency that is pro-active and involved. This is part of the Stability Pact Anti-Corruption Initiative and also supported and sponsored by the USAID. The Agency has been set up in stages since early 2000 is involved in preparing new laws, in implementing international standards, in public campaigns and in co-ordinating activities of civil society and NGO:s with government activities. The Agency is currently also involved (with US support) in creating a system for public procurement and transparency in the public finances. The Agency does not have operative powers or any investigative agents of its own, but relies on normal law enforcement agencies, which unfortunately at times reduces its powers of action.

Judicial as well as administrative reform is ongoing, in some ways similar to that of other parts of former Yugoslavia. Various substantial laws are also in the process of change, often with an EU harmonisation aim, but more distant than for Croatia. This appears to interest and excite people more than the constitutional changes needed as a consequence of the new Federation.

Legislation and its implementation

As Montenegro has not recognised a lot of the legislative and other activities of Belgrade made in the period when Montenegro has been formally a part of Yugoslavia but acting as an independent state, some recent Yugoslav laws like the new criminal code from 2002 are not applied in Montenegro, but instead the older (1970:s) Yugoslav law with some amendments is used. There is a somewhat confusing situation with no clear picture for an outside observer of which laws are in force and used, but the local lawyers appear to have a clear picture even if the constitutional background is less than clear.

As said, there is a lot of legislative activity going on, quite a lot of it with the aim of a future EU accession even if it is realised that this is quite far off into the future. Constitutional acts also have to be adopted following the creation of the new federal state. Generally the country is quick to adopt new laws and make legislative changes, without necessarily too much thought being given immediately to implementation.

The legislative activity includes e.g. major reforms of the judicial system through revised procedural (criminal and civil) codes. Access to information legislation is also in the process as is other legislation for public administration reform including anti-corruption legislation. For the legislation on conflicts of interest for public servants etc, there has been help from Croatia and with Croatian help European standards should be implemented.

The criminal code was amended recently including among other things the abolishment of the death penalty (replaced with 40 years

imprisonment) and the addition of several crimes like trafficking, money laundering and different corruption crimes. To some extent the effect of this is noticeable, at least in the field of money laundering where Montenegro is not 'used' as much as it was some years ago.

New laws in progress for 2003 include changes to the state prosecutors, a petty crime law, amendments to the law on criminal sanctions, a bar exam law and a notary law as well as rules on court fees. With the involvement of the Anti-Corruption Agency, various laws such as on anti-corruption as such, on transparency of public finances, on money laundering and conflict of interest are in the pipeline together with implementation plans for these laws.

The quality of legislation varies. International assistance or assistance by specialised NGO:s is sometimes given (and accepted) for looking through drafts, etc. ABA CEELI organises workshops on drafting of laws and OSCE also provides assistance. The Ministry of Justice recognised legal drafting as one area where help would be needed – with the actual drafting, with checking drafts or with organising roundtables and discussions in the drafting process.

Legal Education and Training

The Law Faculty in Podgorica is active and involved in legal reforms. The recent and ongoing reforms of the judicial system have been elaborated by judges together with law professors. The Faculty has some international contacts and has organised a Masters' programme together with German universities with an EU and international angle. ABA CEELI and the Open Society Institute sponsor clinical legal education and hope to extend it to work on real cases (maybe to be used also as a kind of quasi- legal aid, as is done in Macedonia). Through the EU Tempus programme there are some international contacts, like with a law faculty in Belgium. The Faculty thus functions rather well, it has an acceptable library and international professors that visit as well as occasional opportunities for professors or students to go abroad. The criticism of the Faculty is that it does not sufficiently prepare students for the practical work as judges or lawyers, with too little case-related study.

A Judicial Training Centre was created in November 2000 and functions well. It organises courses for judges on various topics, the participation in courses is generally good even if judges are not required to take part in the training. Some 70% of all judges have taken part on some training. The Centre co-operates with the Judges' Association, which is a voluntary body but with a big membership. The Centre is funded by the EAR and has recently received a large grant for the next few years, which should allow it to extend its activities. The Open Society Institute (Soros) was one of the original founders but will reduce its share.

Local authorities should also support the Centre with premises and infrastructure and do so to some extent, although the Centre will need new premises in order to be able to expand its activities. It is possible that also prosecutors will be included in the training, which they are not at the moment. Training includes human rights but also domestic

law, like the changes to the court procedure, and an English language course for judges is planned. Ethics and independence of judges are other topics.

For lawyers there is not very much training. ABA CEELI organises some together with the Bar Association and there are some NGO:s that have some seminars, but it is in an ad hoc manner and not extensive.

The police is undergoing some training sponsored by different donors including (and with a co-ordinating role) OSCE. There is also a training centre for prison staff, also supported by the OSCE and Unicef sponsors pilot projects regarding juvenile justice and related matters. Although the training centre for prison staff is good it would need additional resources to be able to organise training visits (with Croatia being a good example). The Ministry of Justice together with the OSCE recently organised a round table on new criminal reforms as well as the changes in sentencing after the abolishment of the death penalty.

The Judicial System

Montenegro like most countries in the Western Balkans is in the process of reforming its judicial system to abolish the investigative judge and give a more active role to prosecutors. The new Courts' Act was adopted in February 2002 and procedural rules and other forms of implementing regulations are in the process of adoption. The reforms will not necessarily follow models from other countries in the region exactly, but will be adapted to fit the country. From some higher judges it was noticed that there is some opposition to changing the system too much. In addition, there are plans to set up separate administrative courts as well as to create a new appeals court. How exactly this will be done is also in the process of elaboration even if the basic decisions have been taken. (The courts should be established by June 2004). These reforms are criticised by some members of the judiciary for diluting resources in such a small country.

There are very many judges in the country in proportion to its size, a total of 238 judges. The quality and capacity of the judges vary. It would be beneficial if the number of judges could be reduced though retirement, as the cost for so many judges is too high for the country and as especially many older judges are not up to the modern system with all its changes. The Judges' Association is a voluntary organisation but with a big membership. However, its activities depend on voluntary work and the organisation has few resources, which affects the work it can do and it has no "quality-control" of judges. The status of judges is not regarded as very high as there are some problems in recruiting the best young people. The pay is relatively low but not very low in a national comparison and in any case, this is not regarded as the main problem – the status and future prospects are more important. However, in order to secure the payment the courts are pushing for a reform to have separate budgets and to have judges and judges pay treated differently from other civil servants. This would necessitate a constitutional change.

The Supreme Court of Montenegro is in the process of carrying out an assessment of all judges at all levels in the country. The functioning of the courts as well as the work of the individual judges is assessed by higher judges. The assessment has so far shown important differences between courts, highlighting some problems but also showing that many courts function very well.

Prosecutors have quite a bad reputation in Montenegro. This is due partly to the fact that their role under the old system was rather passive and many did not understand their real role, but also to the fact that high prosecutors have allegedly been involved in recent scandals concerning trafficking. Partly for these reasons but also as they have just “fallen through the cracks”, prosecutors are not the subject for any training efforts or any international assistance at the moment. The Prosecutors’ Association was created in 2002 but has not become active yet.

Delivering court decisions and subpoenas, getting persons to court and also later implementing decisions are all problematic. The system is inefficient (to a large extent based on delivery by postal employees) and has many gaps. Changes to laws as well as training would be needed. Court support staff is also not well trained and this means that judges carry out a lot of administrative tasks themselves. The taking of evidence in court, protection of witnesses and other such important elements of the court process are also subject to important deficiencies. There is no equipment for e.g. taping witness statements and it is not permitted without a special permission for the particular case, which means that the quality of trial records varies very much depending on the judge.

The equipment and premises of courts vary a lot. The EAR has funded computerisation of courts, which is underway. A central legal library for all judicial authorities is planned and this would need external assistance. There is also a need for some help with buildings, furniture and other equipment for the new courts that will be set up. There will be some US help for this. Ideally the authorities would favour a “Palace of Justice” for several courts and other judicial institutions but whether this can be realised is a matter of funding.

The police in Montenegro enjoy more respect and trust among ordinary people than e.g. in Serbia, but it is not well equipped and also lacks proper training. During the years when Montenegro was preparing for a possible independence war, the number of police was very much increased as the country had no armed forces of its own and the police would have fulfilled that role. This meant that people were recruited on very loose grounds and equipped with whatever one could lay hands on. Some of these persons have left but some are still in the police and it is very difficult to get exact numbers of how big the police force is and how it is composed.

The prison system is in need of reforms, not least to build new special wings for high security prisoners that formerly would have had the death penalty. There are projects for new buildings and for a special prison hospital, but funds still have to be identified. Juvenile justice also needs to be developed, for which Unicef is sponsoring pilot projects. The prisons in Montenegro (there are two) are not very bad

in an international comparison, but would need more resources. It is very hard to find donor resources for prisons and related issues. There is work on promoting alternative sanctions, but this is so far mainly promoted by NGO:s.

A trial monitoring project supported by some different donors has just started in Montenegro. It is too early to say anything about its impact.

The Ombudsman

A law on an Ombudsman for Montenegro is in the process of development, supported by the OSCE, EAR, the Council of Europe, the UN Human Rights office and various other organisations. The establishment of the institution should take place during 2003 provided the law is adopted (which is expected).

Humanitarian Law and War Crimes

There are very few if any war crimes related matters in Montenegro and humanitarian law is also not a major issue. Minority issues are also not of any major importance, although there is a Roma population that is in a sometimes difficult situation. A law on national minorities has been proposed by international organisations and work with this may take place in 2003. This will also include transformation of the Ministry for Minorities. There are also targeted activities to the Roma population.

NGO:s and Civil Society

There are quite a few NGO:s in Montenegro given the size of the country and they are in some areas quite active. The Government is also making efforts to involve them, e.g. in the anti-corruption measures. Many NGO:s have been used by foreign governments and international organisations as recipients of aid, which has in some cases given them a quasi status and compromised their independence and ability to act as a critical voice. The Helsinki Committee, its leader based in Budva, is active and has a good reputation as a strong and independent organisation. Among other important ones are the Agency for Local Partnership that works with democratisation and plans to establish citizen information centres and Cedem, Centre for Democratisation. The Humanitarian Law Centre, active also in Serbia, exists in Montenegro as well. NGO:s have also been involved in prison reform campaigns.

The NGO:s are often good but lack experience and lack sustainability (as they are very much created around individuals). The co-operation with government works rather well and the government uses NGO:s for public awareness campaigns and similar. The effect unfortunately varies depending on the NGO. What is positive in Montenegro in comparison with other countries in the Western Balkans is that the government makes conscious attempts to involve NGO:s.

Donor Co-ordination

The European Agency for Reconstruction (EAR) is the major donor in the country and because of the EU aims also regarded as the most important. EAR is involved in different public administration reform projects as well as some projects involving the judiciary (such as the computerisation of courts). They also have a co-ordinating role.

The OSCE is also present in the country. For some issues such as police reform, the OSCE Belgrade office is responsible but for legal reform and institution building there is an office in Podgorica. The Council of Europe assists with some training as well as checking draft legislation. ABA CEELI is very active in the country, they were the first major organisation to set up an office there and are also now involved in many projects. They have made an assessment of the judicial sector based on a selected number of criteria that they use in different countries,¹³ which makes a comparison possible. ABA CEELI is involved in many different types of activities such as training as well as checking draft legislation. They work with their own organisations in different countries and thus can take a regional approach.

The Ministry of Justice should have the domestic co-ordinating role and is beginning to exercise this, with a planned major donor conference coming up shortly.

Serbia

The Political Situation

The political situation in Serbia at the time of the visit (late November 2002) was very complex. There were new presidential elections coming up after the failure of the first rounds to get enough voter turnout for the result to be valid. In addition, the new constitutional structure of Serbia Montenegro was in the creation phase and it was not known exactly what it would mean. It was clear however that the federal ministries and their competencies would be very much reduced and decision making as well as staff would move to Serbian ministries. How big an impact these changes would have on the day-to-day matters was not fully known but most commentators felt it would not mean any major upheavals. It is not a matter which leads to a lot of passionate feelings among the population – something that may change when the full implications are seen and felt, especially if it leads to Montenegro having proportionally more influence than what it is paying for.

As for what the election result would mean, it was even more difficult to predict. There have been important nationalist tendencies shown in the elections, with hard-line nationalists advocating a re-unification of all Serb areas (including in Republika Srpska and Kosovo) and other similar policies. At the same time, the reform process and the steps towards the EU and harmonisation with its policies in order to eventually be able to apply for membership have a lot of support. The mood is more one of a lack of political involvement and interest

¹³ A similar report exists also for Macedonia for example.

than one of extremism and turmoil. There is the general impatience as experienced in most parts of Central and Eastern Europe that reforms do not show positive results for ordinary people fast enough. This impatience is extra great in Serbia that started later on the road to reform. Unfortunately it often leads to disillusionment rather than activity. The younger and most progressive people in Serbia often complain about too much of the old guard still holding positions and resisting the implementation of reform.

Serbia has a recognised problem with corruption at all levels of society. Most interlocutors did feel that this issue has been dealt with to some extent, at least in so far as that the problem is recognised and some measures are taken against it. Even if big problems remain, progress has been made and is also ongoing. The perception among the population of action being taken against corruption is very important in itself, as it should have a positive effect in further reducing corruption as a normal element of the society.

The Government Reform Strategy

The Ministry of Economic Relations of Serbia has a special unit that is responsible for aid co-ordination and fulfils the EU requirements in this respect. However, it was stressed that this co-ordination does not always work, as the Ministry lacks the necessary overview of projects and donors. The EU funded projects are in a category of their own, as they are designed so that the recipient country comes up with the needs and the projects are designed according to this – more or less in co-operation with the recipient (more, if there is a functioning mechanism for it). There can also be demands for ad hoc assistance. The rigorous tender procedures for EU projects ensure some quality. To have more of this generally, legislation on public procurement is in the process and will introduce a new system also in the project evaluation sphere. These efforts are supported by the EU that supports municipalities as well as the Ministry of Economic Relations.

As far as judicial reform is concerned, there is in Serbia a Parliamentary Commission on Judicial Reform that should look at the issue of judicial reform, necessary legislative and practical changes, etc, in a comprehensive way. The international expert responsible for the UNDP funded judicial training centre is the only international member of this Commission. The government also has a Judicial Reform Council that unites the important actors in the area, such as the Supreme Court and the Constitutional Court, professional associations, the national assembly, etc. An overall strategy for reform of the sector is in the process of being developed. The view is an overall one, with attention to constitutional issues, procedural issues, organisational law, the legal professions and access to justice. Court management and management of other judicial bodies are important factors. Procedural laws need to be amended in many cases. It is recognised in the strategy that there is a need for training of members of the judiciary as well as for e.g. codification of professional ethics.

As for donor support to the reforms, it was generally perceived that it was more popular among donors to support training than material

and infrastructure, even if most donors would be aware of needs also in this latter sector. Although there is no denying that training is needed and appreciated, at times too much effort would be put on this and it would mean that it was actually difficult for judges to find time to participate in all offered training – which also sometimes would be overlapping. Beneficiaries generally have to spend quite a lot of time talking to donors in order to try to avoid such overlaps or co-ordination failures.

Despite the existence of an official reform strategy, many interlocutors were critical about the Ministry of Justice of the Republic of Serbia – that should have an important role under the strategy – for its lack of involvement in or understanding of the problems of courts and other parts of the judicial apparatus. A lack of initiative was being mentioned. The web-site of the Ministry presents some general visions and ideas for reform but no concrete proposals and the Ministry has not itself made any specific request to donors. The Deputy Minister confirmed that there are problems of co-ordinating reform efforts and other things going on, as e.g. there is only since very recently a small special department for co-ordination and management of projects. Until now, it has been impossible for the Ministry to exercise any co-ordinating role vis-à-vis different projects in the justice sector, as they themselves do not know everything that is going on. Not all donors inform the Ministry of projects and there is no formalised mechanism for co-ordination in the sector.

Legislation and its implementation

The EU/EAR supported policy and legal advice centre, Savetodavni Centar za Ekonomska i Pravna Pitanja, SCEPP, is the most important ongoing project for legislation. The Centre with international as well as national experts provides advice and drafting help in different spheres of legislation such as telecommunications, environment, transport, trade, competition, company law, etc. Institution building in relation to the areas the centre deals with as well as a lot of training activities are also included. The Centre does not deal with judicial reform as such.

The Faculty of Law as well as the Faculty of Economy are tied to the Centre. The work is carried out in co-operation with ministries and to some extent following the wishes of ministries as to what areas and what laws are the most important. The key is harmonisation and EU compatibility of legislation.

There is a lot of legislative activity going on in Serbia at the moment with some 100 laws waiting to be adopted. There are also very many new laws that have not been implemented yet or not implemented properly as well as many projects for laws. The quality of new legislation varies but is generally acceptable. Among new laws is the recent Serbian criminal code. This was drafted and passed rather quickly and some commentators felt it is not very good although it is generally modern and in line with European standards. Criticism against it included that it does not include sufficient provisions on war crimes and does not meet requirements of the International Criminal

Court statute. Furthermore, it was recognised that it is not properly implemented.

The main problem for the impact of reform in Serbia is indeed that many laws are not properly implemented. The reasons for this are manifold. The political situation with its state of flux is one main reason. Furthermore, even in former Yugoslav days there was not a strong tradition of implementing laws. The legal education is not geared up to proper implementation of laws and in international projects this element is often lacking. International donors and projects very rarely pay special attention to the issue of implementation as such. National experts pointed this out as something that could be the main theme for assistance projects. This could be carried out at the university level, in continuous education for lawyers and civil servants, for ministries and courts, etc.

Legal Education and Training

The legal education in Serbia is a problem both as concerns the basic education at the universities and further education of judges, prosecutors and others in the legal profession. There is a lack of funds for continued education of judges, so this is at the moment dependent on the UNDP project with foreign support or on other donor projects. This means that there may be a lack of a coherent long-term strategy as well as the above mentioned problems with too much donor assistance to some sectors and nothing to others.

The faculties of law at the Serbian universities would be in need of reform but work on that is progressing slowly. There are some international contacts (e.g. contacts between the Faculty in Belgrade and the University of Nancy in France and an Institute for Comparative Law with international contacts and part in many international projects) but the effect of ten years of isolation during the Milosevic years is still felt. The universities would need international contacts and international assistance especially in the “new” areas such as EU law. In this field, there is very little knowledge in the academic world in Serbia. There is a large number of law students (11.000 in Belgrade, there are also law faculties in Nis, Novi Sad and Kragujevac. For the best students, based on entrance exams, studies are free – others pay a fee that is rather high for Serbian standards. This fee has recently been the subject of student protests.

In the field of continuous legal education, the Judicial Training Centre, a project managed by UNDP and supported by various donors like Sida. This is currently the only project in the legal/judicial sector that Sida supports. The project has various practical problems, which according to the Centre itself and Sida were due to insufficient support from the Ministry of Justice. In theory, the project is well supported also by the Ministry but in practice there are problems and delays with issues such as paying electricity bills, providing other facilities, etc, that should be the responsibility of the Ministry. The Ministry recognises the importance of the Centre but according to other actors involved in the Centre, this recognition is in words only with very little practical support.

Donors feel that the Ministry must meet its words of support also with the practical support. The Ministry instead found that the project management from the UNDP was not the best, as the management was not direct enough and small matters could be blown into big problems before they could be resolved. Despite these practical issues the Judicial Training Centre was generally regarded as quite successful and very important. It is unfortunate that because of the popularity of training as international projects, the Centre has to “compete” with other, non-coordinated training efforts.

Apart from the Centre continued legal education, in the form of both academic post-graduate education and professional education, is lacking. This was very poor under Milosevic and has not yet recovered. The weak academic legal environment has a compounded effect as the universities are independent and academics are often involved in the legal reform process. Many politicians in Serbia have legal training. There is however a lack of expertise in several areas. Support to universities, with international exchanges, etc, could have an important effect also outside of the academic environment as such.

The Judicial System

The judicial system in Serbia is generally regarded as being quite independent. However, there are major problems with backlog of cases, long delays, incompetence and practical facilities. The so-called Palace of Justice in Belgrade, housing the district court as well as some municipal courts is in a bad state of repair, with insufficient computerisation, run-down facilities, not enough office space and generally a poor working environment. Co-operation between the different actors in the judicial system such as police, prosecutors, and judges in practice functions quite well. In the debate and on the political level there may be talk about problems in this respect with blame being put on different organs for different things. Several commentators felt that prosecutors generally are quite good and work well and independently, but others pointed to the weak role of the prosecutor in the judicial system. It is a general impression that many crimes go unpunished. The police may also not give enough support for the prosecutors. The police can in many ways be even more of a problem, especially when it comes to investigations of war crimes and similar sensitive crimes. As for defence lawyers their competence and professionalism varies greatly but are generally not very good. The best lawyers would rather look for work in the private, commercial sector. The current system does not promote good work of defence lawyers, as they come in late in the procedure, the procedural legislation is not very clear and there are difficulties in calling witnesses, presenting evidence etc. The investigating judge is generally very important in the former Yugoslav system. The general public often has the impression that the judicial system does not function properly and has no confidence in it. Most people would probably recognise that this is more due to practical problems, delays, etc rather than the independence of courts as such, although corruption and not least the perception of corruption are also important. The public opinion of judges is generally low.

There are about 2,600 judges in Serbia, which is a high number for the size of the country. Among these are many that for various reasons do not meet the demands of the current system. There is an ongoing project of the OSCE concerning lustration of judges to establish if they meet criteria of a modern and independent judicial system. Apart from training judges, there is a need to dismiss some judges as well as of recruiting new ones. The OSCE led campaign has met with some resistance as there are at different levels in the court structures, like in the supreme court, judges of the old school that are against the rigorous demands on judges. The Ministry of Justice may at least at some levels have the political will to change but lacks strength to impose this.

The pay of judges has recently been increased, but even so the sector cannot compete with private sector salaries for experienced and talented staff. The salaries are high enough to recruit some young people to the judicial sector, even if the poor reputation of the sector still means it is not a very attractive employer, but it is not high enough to keep or recruit back slightly older people with good experience and training.

Many judges have left recently and it is a problem with experienced judges leaving – the ones who leave by their own accord are not necessarily those that should leave for reasons of competence or independence. People at different levels in the judicial system are aware of the need for reform of the system but it is difficult to do this, even for those very good and progressive judges and others that do exist. Also the good judges are victims of the poorly functioning procedures and other deficiencies.

The multitude of training opportunities for judges can be very good for those that really want to learn, but the lack of co-ordination means that the training is not the most efficient.

About one-third of cases take more than three years and the judges have an average of about 300 civil cases per judge at any one time. To deal with some of the backlog and to introduce a more efficient system for solving disputes, alternative dispute resolution is being considered in Serbia. The Supreme Court has worked out terms of reference for a project in this sphere, to be supported by the EAR, to be launched soon. This will entail the establishment of a Centre for Mediation, which will be able to deal with certain types of cases and thus help deal with the backlog.

The judicial administration and administration of courts is a big problem. Judges do not have training or competence for managerial tasks and very little time to devote to this, but there are no other trained staff available for this either. Problems with poor facilities, lack of computers and unhealthy working environments exacerbate the stress of huge caseloads, long delays, etc. There are attempts at creating an organisational centre for court administration. This organ could take over administrative tasks from judges, allowing the latter to concentrate on the casework. This entails the need for some legal reforms about court administration, but to some extent improvements can be achieved by implementing existing legislation better. The High Judicial Council is an important player in the creation of an independent and

transparent judiciary. This body will provide mechanisms for internal regulation of the judiciary. Support for this body and its proper functioning is thus very important for the functioning of the judiciary. There are several proposed laws and amendments to laws on judicial procedure in the process to try to remedy legal gaps. The proposals have not yet passed however and there appears to be a struggle between the Ministry of Justice and the judiciary.

The EAR has a major new project, just launched, for support to the judicial sector in Serbia. The project has been tendered and won by a consortium led by a French consulting firm. This will deal with various aspects of support to the judicial sector such as training of judges, IT support, support for the proper implementation of laws, etc. The EAR is also supporting a judicial information project, to provide help to better information in the judicial sector. The OSCE has conducted a survey of judicial reform in Serbia, with questionnaires to judges, prosecutors and others in Serbia. The results will be published (on the web) in January 2003. Other upcoming OSCE projects are for 2003–2004 a project in South Serbia on reintegration of ethnic minorities (like Albanians) e.g. into the legal professions and training in connection with this.

Finally, also in the prison sector there has been some legal reform. What is now most needed here is to make sure laws are implemented and that prison staff gets adequate training. This sector is in this respect lagging behind e.g. judges and prosecutors (especially judges). There are also needs for equipment (such as surveillance equipment) and infrastructure help to the prison sector.

The Ombudsman

The office of the Ombudsman in Serbia is under construction with some international assistance. The law on the Ombudsman exists, but is in a process of change. It is important to safeguard the role of the Ombudsman in this legal reform process, as there have been proposals that judicial remedies must be exhausted before one can turn to the ombudsman and other such things that are not compatible with the general internationally accepted ideas of ombudsmen. Even if international support to the ombudsman's office is important it is equally important that the institution is not wholly internationally supported but that national authorities also show real commitment to it. This does not necessarily appear to be the case at the moment.

One area in which there is not a lot of donor support but where more could be done is information and awareness campaigns for citizens about their rights. There have been some campaigns for refugees but in general people are not aware of their rights. Some NGO:s are active in the field and have some but not a lot of support for this. This means that mechanisms that exist for protection of rights may not be used to the full potential. The Ombudsman's office has for example not yet developed into an important alternative to courts, even if the delays in the latter mean that they are not necessarily efficient means of addressing concerns either.

Humanitarian Law and War Crimes

Humanitarian law and war crimes remain important and complex issues in Serbia. The efforts in the country in this context are not as good or as many as could be desired. The NGO Centre for Humanitarian Law provides education on humanitarian law, which is very poorly known among Serbian lawyers. The training courses have been popular and successful. This is necessary if national war crimes trials will be possible and successful. One important task for organisations such as the Centre for Humanitarian Law is to lobby for creating proper conditions for national war crimes trials in Serbia. The Centre and some commentators feel that there should be a specialised war crimes court in Serbia, where efforts and competence could be concentrated. There are very few judges, prosecutors and lawyers with the specialised knowledge necessary to conduct war crimes trials and in addition major problems occur in connection with the gathering and evaluation of evidence. Such a national war crimes court would probably require international support in different forms, although it is important that it should be a national court. At present however, there is not much political support in Serbia for such a specialised national court – even if the opposition against the Hague tribunal is even greater. There are also big problems with national war crimes trials in the existing system. There is (November 2002) one ongoing trial. As it concerns events in Kosovo, it would be necessary for witnesses to come from Kosovo, but they have refused to do so and thus it is very difficult to conduct the trial. Most available witnesses are also themselves accused of something and thus there are no independent accounts of what happened. The media in Serbia has criticised the trial and generally media does write about war crimes and related matters in an independent manner, but it is very uneven what issues they will focus on and from what angle.

In connection with war crimes trials there is a need for some changes in the legislation as well as a need for changes to implement legislation properly. The definition of war crimes and other similar crimes should be the same as that used by the Hague Tribunal. Currently, only war crimes as such are defined in Serbian legislation. The new criminal code is somewhat weak in this respect, as there is no coherent approach to war crimes and related crimes in the law. Among efforts to bring attention to the matter are regional conferences organised by ICTY on the International Criminal Court. In 2003 OSCE plans a trial-monitoring programme. This will observe (and train for observation of) key trials such as war crimes trials but also trials in corruption cases and similar.

NGO:s and Civil Society

There are several different NGO:s in Serbia that deal with issues connected to the legal sector. In general, with some exceptions, NGO:s are not very strong. Some are very close to certain politicians (that were NGO activists during their anti-Milosevic, opposition years) and thus may have lost their independent approach. Well known NGO:s include the above-mentioned Centre for Humanitarian Law, specialised

in humanitarian law issues especially related to war crimes. Mrs Natasa Kandic, who is the director of the Centre, is a well-known and respected personality. The Centre, which is also well respected, operates also in Kosovo and Montenegro. There is also a Belgrade Centre for Human Rights that provides training in human rights to judges, prosecutors and others in the legal profession. Associations for judges and prosecutors as well as lawyers also provide some such training to their members.

The Associations are furthermore involved through selecting participants to the courses in humanitarian law conducted by the Centre or to other courses. The OSCE as well as other donors has supported the Judges and Prosecutors Associations in different ways. These organs are important as they provide platforms that can retain some independence and provide a critical voice. The Ministry of Justice also appoints participants to courses organised by NGO:s, so there is an interaction between the official society and that of the NGO:s.

Although in general NGO:s in Serbia are not very strong, there are some very active and strong organisations that play an important role in the society. The European Movement, the Centre for Policy Studies and some other organisations have played an important role in pushing for a freedom of information act for example. If there are 15.000 signatures in favour of a motion the parliament has to deal with it so NGO:s deal with collecting signatures and starting popular campaigns. The European Movement together with other specialised NGO:s e.g. conducts campaigns in the sphere of legislation and the citizen to get civil society and civic organisations involved in legal reform work.

Donor Co-ordination

The EU through the EAR and otherwise is very important in Serbia, given the country's aim to apply for membership and its already close relations with the EU. The EAR is responsible for some training in the justice sector as well as for some physical assistance to courts and has the above mentioned upcoming major projects in the field. Among important donors in Serbia are also USAID and ABA CEELI. Canada is active with exchange of judges in co-operation with the International Commission of Jurists. The Dutch sponsor many projects, e.g. on forensic medicine. There are several German actors, both state and NGO. The Germans are active with projects for prosecutors among others. The Council of Europe is involved e.g. in human rights training. The Scandinavian countries have projects concerning police training, development of the ministries of interior and justice, etc. Norway also supports the Belgrade Centre for Human Rights.

The OSCE formally should have a co-ordinating role for international aid but in practice this is not presently very prominent as it has no means of enforcing this and generally there is a lack of co-ordination. OSCE itself is divided into sectors for judicial and legal reform, Human Rights institutions (including the ombudsman but also prison reform) and transparency and anti-corruption. The OSCE undertakes an ongoing revision of the aims of its mission to meet current demands and at least adapt its own activities to current needs. Important

current aims are transparency and independence of the judiciary, professionalisation of the judicial professions and to improve international standards in the judiciary. Institution building and capacity building are very important.

Among the national institutions, the Ministry of Economic Relations of Serbia has a special unit that is responsible for aid co-ordination and fulfils the EU requirements in this respect. The Ministry of Justice should provide co-ordination in the justice sector. These organs have difficulties carrying out this co-ordinating role in relation to international assistance as they do not always get information about everything that is going on but also as they do not have sufficient competence on project management. This is an area in which donor support could be useful, as it would allow not least the Ministry of Justice to ensure better than they can today that the best use is made of any donor support.

Albania

Introduction

Albania is the poorest country in Europe, and during the period 1946–1990 suffered under perhaps the most repressive rule in the region. Since its first democratic elections in 1991, despite slow economic growth and periodic civil unrest, it has taken some important steps towards establishing the rule of law. A new and widely praised constitution was adopted in November 1998, and Albania has also adopted most important international conventions, including the European Convention on Human Rights. It has also enacted a modern penal code (which a number of observers said needed updating), a comprehensive criminal procedure code, and a new administrative code, including a section providing for access to information. Most legislation is drafted by the government in a fairly closed process, but parliamentary committees hold hearings on important pieces of legislation, and parliamentary rules require that draft bills be made available to the public. Overall, despite many contradictions and inconsistencies, most observers believe that the legislative framework in Albania, as written, is largely acceptable – the problem, as in so many other countries, is implementation. Another problem is that the laws are not well organized, and only now is a database being developed to facilitate access to the law.

The donor community in Albania is very active in the legal and judicial sectors. DANIDA and USAID have long-standing programs, and the World Bank has recently started a US\$ 9 million project. In addition, the European Union is expected to begin implementing a 21 million Euro judicial reform program soon. Although the field is crowded (and donor coordination overall is poor), Albania's needs remain great and opportunities exist for SIDA to contribute if it does decide to offer programs in this area. The following sections provides more information concerning the relevant Albanian institutions and includes their requests and recommendations for assistance.

The Judiciary

The judiciary, the key institution charged with implementing the law, continues to face daunting challenges, including an increasing caseload, low funding, and, reportedly, high corruption. There are about 350 judges in the country, including 17 on the Supreme Court (SC). The remainder work at the six courts of appeal (CA) and the 29 district courts (DC) around the country. The judges are supported by approximately 300 clerical staff. There is also a Constitutional Court (CC), with nine members. Judges of Supreme and Constitutional Courts are appointed for nine years, and all others hold their positions up until retirement. The decisions of the SC and CC courts are published, but others are not. The justices of the Supreme and Constitutional Courts are appointed by the President, with the consent of the Parliament. Judges are appointed to the lower courts by the President, on the recommendation of the Higher Council of Justice (HCJ). To be appointed, candidates generally must attend the School of Magistrates.

The management of the courts is divided between the HCJ and the Ministry of Justice (MOJ). The HCJ is responsible for the protection, appointment, transfer, discharge, education, and evaluation of judges. Its members include the President, the President of the Supreme Court, the Minister of Justice, three members elected by the Parliament, and nine judges elected by the National Judicial Conference (made up of all the judges in the country). The budget is decided by the Government and the Parliament, but administered by the courts. Allocations are made to the individual courts by a board chaired by the President of the SC. Judges are paid about 300 Euros per month, and the support staff are paid considerably less.

The HCJ has responsibility for judicial discipline, and has dismissed over 20 judges and reprimanded others, usually for failure to give judgments in a timely basis, partiality, and failure to comply with procedural requirements. The HCJ also evaluates judges based on volume of cases, time taken, difficulty of cases, and the number of successful appeals.

The HCJ is supposed to conduct an evaluation of all judges every two years, but so far has failed to do so, reportedly because of a lack of institutional capacity. Justices of the SC can only be removed by 2/3 vote of the Parliament, subject to review by the CC. Other judges can be removed by the HCJ, with an appeal to SC.

As noted above, the MOJ shares responsibilities for managing the courts with the court system itself. It is charged with hiring and managing the support staff, as well as disseminating information. Its inspectors, however, also are supposed to look into the efficiency of the judges, causing some confusion and controversy between the MOJ and the HCJ, which also has an inspectorate. The MOJ is also supposed to keep statistics relating to legal affairs, although several interviewees were critical of the MOJ's capacity in that regard. The bailiffs, responsible for enforcing civil judgments, are also a part of the MOJ. As already noted, enforcement of civil judgments, especially when the award is against the State, is a persistent program. Prisons are also ad-

ministered by the MOJ. Finally, the MOJ oversees the bar, although a new law that has been passed will make the Chamber of Advocates more autonomous. With the judiciary, more needs to be done to protect judges, to fight corruption and improve their independence. Court infrastructure also needs to be improved, as well as enforcement of judgments.

The President of the SC was firm in his request that donors do a better job of coordination, that “seminars for the sake of seminars” not be pursued, and that all training for judges be funneled through the Magistrate’s School. He also liked DANIDA’s focus on the regions (described in the section about Donor co-ordination) and believes that its efforts have helped to increase the confidence and ability of judges in Dibra. He thought it was very positive not only that DANIDA had conducted trainings there, but had also helped to rebuild a courthouse and provided equipment. Finally, he also spoke highly of the DANIDA Technical Committee, chaired by a member of the SC, which has helped to guide the DANIDA program.

The role of the Constitutional Court (CC) is described above. In 1992 it heard 12 cases, and in 2002 it has heard 250 cases. It is a member of the International Association of Constitutional Courts and of the Association of Francophone Constitutional Courts. One problem with the judiciary is that it is not necessarily organized in a sensible fashion, contributing to the problem with delays. In a conversation with the Chair of the CC he questioned whether three judges needed to hear cases in the first instance, and pointed out that some courts seem to be overworked whereas others are under utilized, but that there is no scientific study of these issues, and the MOJ, which keeps statistics, should do a better job of analyzing and using them. These statistics, moreover, should be published.

The Chairman also highlighted a number of areas where action and assistance is needed. He emphasized, in addition, that the CC had received little donor support. He mentioned that there is not enough information available on the European Convention on Human Rights, which judges are supposed to follow but which has not been translated into Albanian. In addition, judges do not have access to the decisions coming out of the Strasbourg court. The CC also needs funds to publish its decisions from last year and for the current year. These are published in the official gazette, but have not been collected and republished in annual volumes because of a lack of funding, which was previously provided by the donors. There is also a need for some help with the library in the CC. The Max Planck Institute said it would provide assistance but so far the CC has not received any help. The CC may also want to organize a conference on the enforcement of CC decisions in the region, and may want to involve the Venice Commission. A conference on media relations may also be needed, because the manner of communicating with the public, the chairman reported, “is difficult.”

Albania has about 200 prosecutors, located in 26 offices around the country. The prosecutors are not considered a part of the judiciary, although both are called magistrates, both are trained at the Magistrate’s School, and prosecutors are “attached” to the individual courts. The prosecutors are directed by the General Prosecutor (GP), who is

appointed by the President. Office of the GP is divided into investigation and prosecution, external relations, and personnel and inspection bureaus. As with judges, most new prosecutors are now appointed by going through the Magistrate's School. Officially, they are selected by the seven member Council of Prosecutors, and are then appointed by the President. Five members of the Council are elected by a general assembly of prosecutors and two appointed by the MOJ. Prosecutors are paid about 200 Euros per month.

Prosecutors are expected to work closely with the police (of which there are some 13,000) and the "judicial police," who are supposed to investigate crimes. In fact, the lack of coordination among judges, prosecutors, judicial police, and police in crime fighting was frequently cited as a serious problem in the administration of justice in Albania. The GP recently issued a report on the problems facing the prosecutors as well as on justice issues more broadly, which most people interviewed felt was a good and accurate report.

The legal profession was entirely barred in Albania between 1967 and the end of the socialist era. Graduates of the law faculty who wish to appear in court must join the Chamber of Advocates, which has about 1,200 lawyers throughout the country (including 800 in Tirana), organized in a national and 11 regional groups. One joins the Chamber after working for one year as an apprentice with an advocate, and then passing an examination administered by the MOJ. The advocates are licensed by the MOJ. A new law on the bar is pending that would take some power over the Chamber away from the MOJ. A number of concerns were repeatedly registered concerning the Chamber, including that members of the bar are ineffective in criminal cases (the overall acquittal rate is very low), the bar plays little role in building professionalism and ethics, provides no continuing training to its members, and the lawyers are a major conduit of corruption. Several interviewees suggested that the bar needed assistance, but they also had difficulty identifying the form that assistance would take and were concerned about the receptiveness of the bar to outside influence.

Legal aid and free representation are available in criminal matters to those defendants unable to afford it. The government is supposed to pay appointed attorneys, but the fees are low (about \$ 30 for the entire case) and the government pays them late. The quality of representation in such cases is reported to be low. Some NGOs, such as the Tirana Legal Aid Society, provide advice and representation to invalids, pensioners, orphans, and the impoverished, but only in Tirana. The law clinic at the Tirana Law Faculty also provides some representation to criminal defendants, the Women's Advocacy Center (with branches in Tirana and Shkodra) represents victims of domestic violence, and the Clinic for Minors and Refugees provides services to displaced persons. There is some coordination amongst these groups, which held a National Conference on Legal Aid in February 2002. The problem, of course, is that the ability of these NGOs to meet the need for assistance is limited.

The Tirana Legal Aid Society, for example, has four attorneys and two paralegals, and has provided assistance to 2,660 clients since 1999.

Most of these cases have related to welfare benefits (about 50%), property matters (35%), family law (6%), or labor law (6%).

Fundamental problems facing the judiciary include:

- Insufficient courtrooms, meaning that cases are frequently heard in offices of the judges, which adds to the lack of transparency.
- Lack of commentaries on the law.
- Failure to enforce judgments, especially those against state bodies. A new law on bailiffs was passed in 2001, but the impact remains unclear.
- The judicial process is slow. Many cases remain open because lawyers and parties fail to appear; or, in criminal cases, the defendant cannot be located. In addition, judges spend a lot of their time on things that clerks should be doing.
- Inadequate protection of judges and courthouses.
- Lawyers and litigants cannot always gain access to court files, and the clerical staff is poorly prepared and trained.

Legislation and its implementation

Some persons expressed that too much emphasis has been placed on drafting the laws and on the government structures, and not enough on “bottom up” programs. As one person questioned, “The citizens do not trust the people making the laws, so why should they respect the law?”

There is a need for advice on how to improve the legislative framework in general, and in particular revising the penal code, which is now 10 years old and has been amended so many times no one knows what the basic law is. Any new law would, of course, need to include recommendations from the Council of Europe and the European Union. A law on witness protection is needed, as is a law to organize and fund the envisioned special court for serious crimes (which is supposed to target anti-corruption).

Legal Education and Training

The Magistrate’s School (MS), with the support of the donor community, has become one of the leading legal institutions in Albania. Its mandate is to train future and sitting judges and prosecutors. As of now, it is only completely fulfilling its mandate with regards to the training of future judges and prosecutors, and has only recently commenced training of sitting judges. Attendance at the MS has become the primary means for becoming a magistrate. It accepts 12 potential judges and 12 potential prosecutors each year, out of about 100 – 150 applicants. The entrance examination, administered by the School’s Managing Board, is conducted fairly and blindly. Those who are admitted undergo three years of training. The first year is in the classroom, the second two years are placements in courts and prosecution offices. Topics taught include civil law, criminal law, human rights, judicial reasoning and writing, and ethics. The dropout rate is low, and almost all graduates are appointed to the magistracy. Three classes have graduated. There are four full-time and 30 part-time staff, which

consists of leaders in the legal profession. The teaching method is generally interactive, and the students must submit periodic essays. The premises, repaired with donor funding, are in good condition. Students are paid half-salary of judges, about 150 Euros. New judges who have attended the School are thought more highly of than their colleagues who have not attended.

The School began offering continuing education in 2001, and held over 50 programs, an accomplishment that it will replicate for 2002. The topics were chosen according to a needs assessment questionnaire. It sometimes conducts programs in the regions, but most training is done in Tirana, and people are brought to them. One problem is that the government has not provided any support for this effort, which is entirely paid for by the donor community (largely DANIDA).

Another priority for the School will be the development of legal literature, and it has already produced one manual, with the support of East-West Management. It is currently working on four books for the World Bank, on intellectual property, ADR, international private law, and case management. It has also done some training for practicing lawyers, an area into which it may want to expand.

Although the MOJ is supposed to train clerks, that will be done at the MS as well, with World Bank funding. The School's executive director urged the donor community to do a better job of coordination, and cited DANIDA's Technical Committee as a positive approach towards this end. She (and others) also stated that Albania needed to develop an overall strategic plan for legal reform, and that it should involve the donor community in the planning process. This needs to be a 10 year plan, and one that would be supported by all the elements of the legal community.

There are two state law faculties in Albania, in Tirana and Shkodra. The faculty in Tirana graduates about 160 students each year and Shkodra about 100. Until recently, one could also obtain a law degree through correspondence, but that practice is ending – nevertheless, it is estimated that about 1,000 people have obtained correspondence law degrees. There are no private law schools. Almost all persons interviewed pointed out that the law faculties are deeply troubled because they lack sufficient teaching materials, good teachers have left for more lucrative private practice, and the teaching methodology remains theoretical, although the school does host a clinic, funded by Soros (and criticized by some observers as ineffectual). There is no course dedicated to ethics. The teachers do not engage in the societal important task of critiquing the legal system and judicial opinions, or in writing textbooks and other scholarship. Many opined that the law school has not been progressive or reform minded, but that situation may be changing. The World Bank is now supporting a project to “twin” the Tirana law faculty with Middlesex Law School in England that was started with funding from DANIDA.

The Ombudsman

The Ombudsman, or the advocate of the people, is elected by and reports to Parliament and investigates citizens' complaints about acts

by public institutions. The institution has been functional for about 2–1/2 years, during which time it has handled an increasing number of cases, from about 800 in the first year to over 4,000 in the current year. A large percentage of the complaints the office handles relates to problems, such as delays, in the court system. Other common complaints relate to property ownership, building construction without a permit, social insurance, and execution of court judgments. On this last point, the office has intervened directly with the bailiff's office, and has also asked the government to increase the budget of the bailiffs. The Ombudsman releases an annual report.

The Ombudsman currently maintains only one office, in central Tirana, where he is supported by 20 professional staff (including three commissioners, two counsellors, and 15 lawyers) and 27 support staff. The professional staff are paid about 600 Euros per month. The Ombudsman would like to open five regional offices, with one lawyer in each, but does not have the requisite funds. The government's funding of the Ombudsman has remained steady, and has seen slight increases, but remains insufficient to expand activities. The Ombudsman, Dr. Ermir Dobjani, has received substantial support from the donor community, and in fact reported that his institution is "largely a creation of DANIDA," which provided training and furniture and equipment for his offices, and has supported the printing of informational brochures and the annual report. He has also received support from USAID, as well as from Sweden, which reportedly has trained some of his staff (two people went to Sweden for three weeks; in 2003, representatives from the Swedish ombudsman are scheduled to visit). The Ombudsman requested support for the expansion of his activities in the regions, and provided a written proposal for such support. DANIDA may decide to fund this effort, and so coordination with it will be important. The Ombudsman also recommended that something be done to provide better conditions and protection for judges, who are subject to corruption and threats, including to their families. The government reports that it has no money for this. Finally, the Ombudsman reported that enforcing judgments against the state is particularly difficult, and that there are about 450 cases worth \$ 6 million outstanding that Albania would like to close by 2005.

NGO:s and Civil Society

Albania has a vibrant NGO community, largely funded by international donors, with a number of groups working on legal reform issues, including legislative drafting, monitoring compliance with the access to information provisions of the administrative code, advocating on behalf of victims of corruption, improving citizen awareness, improving access to justice, conducting court monitoring, etc. NGOs are reported to be able to influence legislation in the parliament. Other NGOs are providing important services to the poor and dispossessed, as described above.

The Director for the Tirana Legal Aid Society emphasized the need for a national strategy regarding providing legal assistance to the destitute, and hoped that a partnership towards that end could be devel-

oped by the government and the NGO community. Reflecting the problems encountered in the courthouse, she also emphasized the need for training of clerks. Finally, again reflecting their caseload, she said that the “registration of property is a real problem.” It is now done through the notaries or the bailiffs, but should be switched directly to the MOJ.

The NGO leaders made a number of observations and suggestions regarding legal reform programs. A new agency will be created to supervise the declaration by key actors in the government (ministers, MPs, judges, prosecutors, etc.) of their assets. This agency needs help getting started, and a donor could come it and make a significant impact, as DANIDA did with the Ombudsman, by giving it the training, equipment, and credibility it will need if it is to succeed. The need for revising the law and practices in the health sector was also mentioned. One of the NGOs is conducting an assessment of corruption in this field. Finally they felt that more could be done on a regional basis on anti-trafficking.

Donor Community Activities

The European Union is reported to have put out to bid a • 1.7 million project to harmonise legislation and that the EU is going to support a • 21 million project on judicial and administrative reform, but that the precise parameters yet have to be identified. Working jointly with the European Commission, the Council of Europe (COE) has developed an action plan that covers the following areas (n.b., that the COE typically works on the legislative framework in these areas and makes recommendations, but does not do implementation):

- 1) Execution of Court Decisions: The COE conducted a fact-finding workshop on this, and Strasbourg is completing a report.
- 2) Evaluation of Judges: The inspectorates of the HCJ and the MOJ will be trained. Again, a workshop was held, and the COE is developing recommendations.
- 3) Juvenile Justice: Working with UNICEF, the COE held a fact-finding mission in November 2002, which evaluated legislation and recommended changes. It also recommended training of judges and prosecutors on this.
- 4) The Family Code is old, from 1969, but parliament will adopt a new one in January 2003. The COE provided comments on this and is organizing a conference on implementation.
- 5) The State Publication Center: The COE funded it, trained its staff, and provided copies of all the conventions that Albania has signed on to, including the ECHR.
- 6) Prison Reform: The COE has established a steering group of experts. The facilities are very poor, and the staff untrained. In addition, the pre-detention cells are still under the jurisdiction of the Ministry of Public Order, and need to be shifted to the MOJ.
- 7) Magistrate’s School: The COE helped draft the legislation for the school, and paid for the renovation of the premises. It is also help-

ing to pay for the continuing training there. ABA/CEELI has conducted a new needs assessment, which should be available soon.

- 8) Court Administration: The COE recently organized a meeting of all chief clerks.
- 9) Police: the COE is working on human rights training and on ethics, and is also creating a manual for the judicial police.

During 1999–2001, the Organization for Security and Cooperation in Europe (OSCE) focused on legislative drafting, by bringing in experts to comment on draft laws. Now it feels that it is time to assess the implementation of these laws, and it is considering how to do that. In March 2002 it began an intensive effort to understand better what the law says, how it is being implemented, and where the players see themselves.

The resulting report is anticipated to be completed in March 2003. It is considering the following activities for 2003, for some of which it is seeking outside funding:

- 1) Trial Monitoring: in order to determine where Albania is in terms of getting a fair trial. The project will seek to review 100–200 cases per year, but funding is not yet available.
- 2) Witness Protection: OSCE has formed a witness protection task force, and is advocating for the passage of a law on this. It has also helped to obtain refugee status for three witnesses.
- 3) Property Legislation: The restitution and compensation process is “still a mess, and a political nightmare.”
- 4) Prosecutors: More European prosecutors should work with their Albanian counterparts, as the Norwegians did in 1999.

Regarding bilateral European donors DANIDA’s activities in Albania are based on an agreement executed in June 1999 for a four year, US\$ 15 million program that will conclude in the third quarter of 2003. The DANIDA program has three “legs:”

- 1) Support for NGOs such as the Albanian Media Institute, the Albanian Center for Human Rights, the Association for the Victims of Torture, etc.
- 2) Support for six central institutions: the Ombudsman, the General Prosecutor, the Magistrate’s School, the Law Faculty, the Judicial Inspectorate, and the National Council of TV and Radio. As already noted, DANIDA was the key donor in supporting the Ombudsman. DANIDA has been credited with helping the continuing training program at the Magistrate’s School. At the law school, DANIDA trained the administrators and the admissions staff and worked on teaching skills. It also helped begin the twinning of the law school with Middlesex Law School, a project that will be continued with the World Bank. The support provided to the other institutions has been more minor, although it did provide some equipment to the General Prosecutor and is developing a manual for the district prosecutors, to be used to help improve work at crime scenes.

- 3) Support for a regional, cross-cutting project in Dibra. The Dibra prefecture includes three sub-regions, making up 1/12 the land area of Albania. This part of the program takes a holistic approach to the justice sector, and seeks to work with the police, the bar, the courts, etc. to improve the quality of justice in the region. The assistance has largely consisted of training (including monthly programs for the judges), although DANIDA has also provided some equipment and material support (including the total rehabilitation of one court and two prosecutorial offices). The program has sought to improve the communication and coordination amongst the police, the prosecutors, and the judges, as well as between local officials and the central government. Although the success of this project has been difficult to measure, DANIDA feels that it has at least contributed in some way to the increase in public order in the region, where the number of murders per year since the beginning of the project has dropped from 160 to three. DANIDA has also seen an overall improvement in the professionalism of the judges and the police in the region.

One of the outstanding features of the DANIDA project was the early establishment of a committee, called the Technical Committee, which advises and guides the project. It meets once per month, and is chaired by a member of the Supreme Court (Artan Hoxha), but also includes representatives from the MOJ, the prosecutor's office, the lower courts, the HCJ, the magistrate's school, etc. This committee reportedly has helped to ensure that DANIDA's activities enjoy broad support in the legal community and has improved coordination within the legal community. The chair of the committee, recognizing the lack of donor coordination, is considering trying to expand the role of the committee to take on broader donor coordination, and may convene a conference in January 2003 to begin that process. He is also considering broadening the membership of the committee to include representatives from the bar and the office of the President. DANIDA sought to replicate the success of the Technical Committee on the local level in Dibra, but significant turnover among the local officials has hindered this effort.

DFID, the British foreign assistance program, funded KPMG to conduct a regional review of access to justice issues. Although the British Embassy was hoping for a recommendation that DFID invest in access to justice in Albania, that recommendation was not forthcoming. A copy of the report was not available, but SIDA may want to obtain it from either DFID or KPMG.

The World Bank began implementing a US\$ 9.5 million legal and judicial reform project in Albania in January, and awarded the first contract in September 2002. Much of the program will pick up on what DANIDA has been doing, and DANIDA is currently drafting the Bank's action plan. The Bank program has four components:

- 1) Legal education: This component will support the twinning of the Tirana Law Faculty with Middlesex Law School, the provision of equipment, including a computer lab, improving the library, and

providing printing equipment. A survey of the quality of the law faculty graduates will also be completed under this component.

- 2) **Strengthening Judicial Systems and Institutions:** This component seeks to improve court administration and case management, and will target four pilot courts: the Durres and Elbasan district courts, the Durres court of appeals, and the Supreme Court. If successful, it will then be rolled out to other courts. As a part of this component, the MOJ will also conduct a survey of court users. In addition, the Bank will allocate some funds to the Magistrate's School to develop mandatory training programs on intellectual property, private international law, mediation and arbitration, and legal information systems. Textbooks and a moot courtroom will also be provided. Finally, this component also focuses on the strengthening the enforcement of judgments in civil cases and on assisting the Judicial Inspectorate of the HJC.
- 3) **Alternative Dispute Resolution:** This component will support the creation of a Tirana based mediation and arbitration center for commercial disputes. There is no law yet on mediation, but one is expected to be passed shortly.
- 4) **Dissemination of Legal Information:** Working with the MOJ, this component will support the design and implementation of all legal information published by the Ministry. This will include the creation of a centralized database in electronic format.

USAID programs are covered in the descriptions of the activities of their contractors and grantees (see below), but USAID is considering a new program that will address court administration in five district courts. This would be a two year pilot program.

The United States Department of Justice (USDOJ) is training prosecutors through its OPDAT (Overseas Prosecutorial Development, Assistance and Training) program and to police through ICITAP (International Criminal Investigate Training Assistance Program). USDOJ is focusing on organized crime and corruption, as well as trafficking of people, narcotics, stolen cars, weapons, and anti-terrorism. It conducts training and is trying to create an organized crime task force. It is also seeking to bring its training programs to the regions. ICITAP is creating a wireless nationwide communication system for the police because communications are so bad. Evidence will be placed on the network, and eventually prosecutors will be included.

The American Bar Association's Central European and Eurasian Law Initiative (ABA/CEELI), supported by USAID, has maintained a program in Albania since 1992. In the area of judicial reform, it supports the National Judicial Conference (NJC) with institution-building and strategic planning workshops for NJC leadership, including on media relations. It also works with the Magistrate's School, helping it to revise its Internal Regulations and assess institutional needs, training professors to teach Legal Ethics, assisting in the planning and implementation of the continuing training program, and monitoring the sitting and marking of entrance exams for fairness and transparency. With the Office of Administration of the Judicial Budget, CEELI

helped to develop policies and procedures manual and developed mechanisms for statistical support of budget operations. In the area of public education, CEELI published a series of newspaper articles on legal topics, hosts roundtables for civic groups on the Administrative Procedure Code and Right to Information Law, and funds the NGO Center for Peace Through Justice to train village women on legal rights. It has also published a media guide to the courts. CEELI commented on the Ombudsman's policies and procedures manual, and has conducted training programs. At the law faculty, CEELI representatives co-instruct a legal writing and reasoning course and run a moot court competition. CEELI also supports the Albanian Young Lawyers Association.

The East – West Management Institute (EWMI) has been implementing a four year USAID program that is scheduled to close out on December 31, 2002. It has focused on training and institutional development at the Magistrate's School, the Judicial Budget Office, and the MOJ Directorate of Judicial Administration. It also provides support to the School of Magistrates, in particular for training of court staff. The commercial law training was done in conjunction with the International Development Law Organization (IDLO) in Rome, Italy. Fifteen seminars on various commercial law topics were offered three times each at the Magistrate's School. EWMI has also provided basic computer skills training to more than half of the country's judges. With the judicial budget office, EWMI has provided training on forecasting, auditing, and procurement compliance. With the Directorate of Judicial Administration, EWMI has been trying to develop a more systematic collection and use of statistics.

Management Systems International (MSI) is a USAID contractor charged with working against corruption on a grass roots level. Primarily, this program involves funding as number of Albanian NGOs that makes up an anti-corruption coalition that monitors government activities and engage in civic education.

Finally the Soros Foundation provides some IT equipment to courts, but focuses largely on access to justice through the support of the law school clinic and other legal services groups. Soros is also supporting a program to train lawyers in the primary ministries involved in legislative drafting.

Appendix

I. Meetings/contacts

Belgrade 18–21 November 2002

Mr Dusan Protic, Deputy Minister, Ministry of Justice, Republic of Serbia

Ms Marijana Trifunovic, Project Manager, Ministry of Justice, Republic of Serbia

Mrs Karamarkovic, President, Supreme Court, Republic of Serbia

Ms Dragana Lazic, Librarian, Supreme Court, Republic of Serbia

Professor Dr Branko Lubarda, Vice Dean, Faculty of Law, University of Belgrade

Professor Dr Miodrag Trajkovic, Faculty of Law, University of Belgrade – Legal Policy Advisor, Policy and Legal Advice Centre (Savetodavni Centar za Ekonomska i Pravna Pitanja, SCEPP)

Judge Krister Thelin, Head of the Legal Policy Advisor, Policy and Legal Advice Centre (SCEPP)

Mr Oliver Radosavljevic, junior consultant, Policy and Legal Advice Centre (SCEPP)

Judge Christer Karphammar, Judicial Training Advisor, UNDP

Mr David Diaz-Jogeix, Legal Advisor – acting Head of Section, OSCE

Ms Laura Marinelli, Legal Advisor on Judicial Reform, OSCE

Mrs Ljiljana Hellman, Legal Officer, OSCE

Mr Gernot Eberle, Advisor, OSCE

Ms Snezana Nenadovic, SIDA Development Programme Section, Belgrade

Ms Natasa Kandic, Humanitarian Law Centre

Mr Danijel Pantic, European Movement – European Consulting Group

Ms Eva Zillén, Kvinna till Kvinna

Pristina 22–24 November 2002

Mr Alex Hug, Head of Section, Human Rights and Rule of Law, OSCE

Mr Michael Schuetz, Chief Rule of Law liaison, Human Rights and Rule of Law, OSCE

Mr Jean Dominique Bunel, Programme Co-ordinator, Kosovo Law Centre, OSCE

Mr John Cubbon, Legal Officer, UNMIK

Mr Kristoffer Sjöholm, SIDA Pristina

Mrs Kosovare Kelmendi, Humanitarian Law Centre

Mrs Ülle Purga, (former) UNDP Chief Advisor Administrative Reform

Mrs...Helsinki Committee

Skopje 25–28 November 2002

Mr Dragan Tilev, State Counselor and Director, Sector for European Integration, Government of Macedonia

Mr Igor Markovski, Assistant Director, Sector for European Integration, Government of Macedonia

Ms Elizabeta Buova, Head of Unit, Unit for Institution Building, Sector for European Integration, Government of Macedonia

Ms Jelena Kadric, Programme Manager, Association of Judges

Mr Tripun Tanusevski, Deputy Ombudsman, Republic of Macedonia Ombudsman

Mrs Karolina Lindholm Billing, Protection Officer, UNHCR

Mr Victor Ullom, Head of Rule of Law, OSCE Spillover Monitor Mission to Skopje

Mr Andrew Palmert, Senior Rule of Law Officer, OSCE Spillover Monitor Mission to Skopje

Mrs Gerry Bjallerstedt, Senior Rule of Law Officer, OSCE Spillover Monitor Mission to Skopje

Mr Mark.. OSCE Spillover Monitor Mission to Skopje

Mr Jöran Bjällerstedt, Minister-Counsellor, Embassy of Sweden

Ms Annika Palo, SIDA

Mr Torbjörn Sohlström, Head of Cabinet, Office of the Special Representative of the EU

Mrs Mirjana Najchevska, President, Helsinki Committee for Human Rights

Ms Madeleine Austin, Liaison, ABA CEELI

Ms Ketil Ilievski, Staff Attorney, ABA CEELI

Bosnien Hercegovina

Sarajevo 25–29/1

Judge Eija Iivonen, IJC Court Reconstructing Department

Mr. Boris Mihajlovic, State Prosecutor

Ms. Fidelma Donlon, Deputy CIPRU (Criminal Institution on Prosecutorial Reform Unit), OHR

Mr. Javier Mier, State Institution Special Advisor, CIPRU – OHR

Alexis Hupin, EU Commission

Ms. Paraskevi Nazou, EU Commission

Judge Venceslav Illic, State Court of BiH

Judge Sadudin Kratovic, Federation Supreme Court

Mr. Gordon Bacon, Chief of Staff, ICMP

Ms. Kathryne Bomberger, Deputy Chief of Staff, ICMP

Mrs. Klaudia Kuljuh, Exhumation Coordinator, ICMP

Mr. Michael Hryshchshyn, Political Director, OSCE

Ms. Kate Thompson, Legal Advisor – Rule of Law, OSCE

Mr. Charles Briefel, Deputy Director Human Rights Department, OSCE

Mr. Andreas Accardo, Co-ordinator Democratisation Department, OSCE

Mr. Henrik Andersson, IJC, Mostar

Mr. Martijn Viersma, Legal Officer, UNMIBH

Ms. Biljana Potparic, Independent Judicial Commission, OHR

Mr. John Peyton, vice-President HJPC (High Judicial and Prosecutorial Councils), OHR

Mr. Vedran Hadzovic, Secretary General BiH Parliament

Mr. Svein Marius Urke, Chief of Administration, IJC

Ms. Veronica Perzanowska, Sida, Sarajevo

Ms. Slavenka Perkovic, Project Officer, Sida, Sarajevo

Pale 29/1

Mr. Slobodan Kovac, Minister of Justice, BiH,

Banja Luka 3/2–4/2

Mr. Graham Day, Deputy High Representative, OHR

Mr. Dan Wilson, OHR

Dr. Malcolm Simmons, Head of Office, Independent Judicial
Commission

Deputy RS Prosecutor Mr. Jovan Spaic

Ms. Nataljia Petric, attorney, representing “Woman to woman”

Ms. Lana Jacevic, lawyer, Woman to woman

Ms. Alexandra Petric, lawyer, Woman to woman

Mr. Jovo Rosic, Judge, RS Supreme Court

Prof. Milorad Zivanovic, Law Faculty

Croatia

Zagreb 30/1–2/2

Mr. Mladen Bajic, Attorney General

Ms. Natasa Durovic, Legal advisor, Croatian Law Centre

Mr. Zdravko Stojanovic, Assistant Minister, Ministry of Justice

Mr. Willhem van Nieuwkerk, JHA Officer, EU Commission

Ms. Marta Vidakovic Mukic, Deputy Ombudsman

Ms. Mirjana Mladeneo, Deputy Minister, Ministry for European
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Ms. Brenda J. Johnsson, Legal Advisor, US Department of Justice

Ms. Goranka Lalic, Project Coordinator, Croatian Helsinki Commit-
tee for Human Rights

Mr. Peter Semneby, Head of Mission, OSCE,

Ms. Mary Wickoff, Rule of Law, OSEC

Mr. Zorislav A. Petrovic, President, Transparency International,
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Ms. Vida Korén –Holm, First Secretary, Sida, Croatia

Ms. Andrea Kocijan, National Programme Officer, Sida, Croatia

Montenegro

Podgorica 5/2–7/2

Judge Stevan Damjanovic, President of the Supreme Court

Ms. Vesna Rackovic, Senior Advisor Juridical Sector, Ministry of Jus-
tice

Mr. Veslin Sukovic, Director, Anti-Corruption Initiative Agency

Judge Zoran Pazic, vice President of the Judges Association
Ms. Geralyn Busnardo, Rule of Law Liaison, ABA/CEELI
Ms. Olivera Dimic, Officer manager, ABA/CEELI
Mr. Aleksa Ivanovic, Staff Attorney, ABA/CEELI
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Southeast Europe Legal Development Initiative (SELDI)

www.SELDI.net

[Monitoring laws on the economy, in conjunction with IDLO.]

United Nations Development Program (UNDP)

[Reportedly supported a legislative drafting program.]

II. Selection of Material used

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Halving poverty by 2015 is one of the greatest challenges of our time, requiring cooperation and sustainability. The partner countries are responsible for their own development. Sida provides resources and develops knowledge and expertise, making the world a richer place.



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