



A Step Towards Adequate Continuing Legal Education of the Judges of the Court of BiH and Prosecutors of the Prosecutor's Office of the B&H

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Bosnia and Herzegovina needs to invest additional efforts in adopting the European standards and principles integrated through new legislation and in implementing successfully ratified international and European conventions, therefore the continuing legal education of judges and prosecutors in BiH becomes very important not only from the practical but also from the political point of view: one of the priorities in European Partnership and a requirement for accession of Bosnia and Herzegovina to the EU is adequate judicial training.¹

Importance of continuing legal education of judges of the Court of the BiH and prosecutors of the Prosecutor's Office of the BiH

"...inadequate quality of defense in criminal matters, poor understanding of criminal legislation and insufficient training of judges, prosecutors and law enforcement officers remain the core problem of judicial reform implementation."

(European Commission, BiH 2007 Progress Report)

The importance of continuing legal education in strengthening judiciary has been recognized in BiH in past years, especially in the sense of implementation of conducted reform and creation of flexible and future oriented judiciary. Education of judges and prosecutors helps in lessening resistance to change and new ideas; it improves efficiency of courts and prosecutorial, ensures standards and quality of work, encourages implementation of ratified conventions and contributes to independence and credibility of judiciary in general.

Continuing legal education of judges of the Court of BiH and prosecutors of the BiH Prosecutor's Office, as fundamental carriers of reform with jurisdiction over the most serious and most sensitive criminal cases (as war crimes, organized crime, corporate crime, corruption, terrorism, etc) is of an exceptional importance. Judges of the Court of BiH and prosecutors of the BiH Prosecutor's Office are constantly under wake eye of wider public. The unique cases before them carry heavy weight: they have a great responsibility, not only in service of quality and a strong judiciary but in establishing fair relationships inside BiH society. Continuing legal education, therefore, must be organized in a man-

ner that would benefit them the most and help them apply the altered legislative framework, the implementation of ratified conventions and also in forming unified opinions, shaping the penalty policy and harmonization of praxis of the courts.

The research conducted from November 2007 until April 2008, for the needs of the study "Continuing legal education of judges of the Court of BiH and prosecutors of the BiH Prosecutor's Office as an important step towards efficient judiciary" showed that current training system provided by entity JPCTs is not adjusted to the specific professional needs of the state judiciary.

At the BiH level there is no institution for judicial and prosecutorial training. Continuing legal education is provided to judges and prosecutors at the state level through the entity Judicial and Prosecutorial Training Centers (JPTCs). Unfortunately due to limited capacities of the Centers rather small number of curriculums (mostly depending on foreign donors) has been provided and adapted to requirements of this particular target group.

In order to provide state level judges and prosecutors continuing education adjusted to their needs, one should offer relevant academic programs. The institution that provides education must therefore develop a good educational program, evaluation system and system to track the effects of the education provided, as well as good cooperation and communication with its users. The question is how these objectives can be achieved: through improved work of existing JPTCs or by establishing different training system?

Summary

This Policy brief gives an overview of basic findings and recommendations of a study "Continuing legal education of judges of the Court of BiH and prosecutors of the BiH Prosecutor's Office as an important step towards efficient judiciary" made under the Policy Development Fellowship Program 2007-2008, launched by the Open Society Fund BiH.

Study focuses on the continuing legal education of judges of the Court of the BiH and prosecutors of the BiH Prosecutor's Office. Based on review of possibilities on professional advancement provided to judges and prosecutors at the state level, identification of shortcomings of the current training system and analysis of potential institutional frameworks for its overcoming, the study offered recommendations presented in this Brief: a) forming a unified Center for education of judges and prosecutors at the state level as a long term goal; and b) directing the work of JPTCs towards needs of judges and prosecutors at the state level as a short term solution.

¹ Commission of European Communities (2007). Proposed Decision of the Council on principles, priorities and terms contained in the European Partnership with Bosnia and Herzegovina and cancellation of the Decision No. 2006/55/EZ. Brussels: 2007.

Current Training system: What is missing?

The past success of the JPTCs (RS and FBiH) was manifested in establishment of the continuing legal education system and initial training for judges and prosecutors in BiH. In a relatively short time period JPTCs have become institutions of importance concerning judicial reform in general, acknowledged by local institutions and international partners. Thanks to great efforts of staff from both JPTCs, over 800 seminars and other forms of judicial training programs have been organized (independently or in collaboration with different partners).

Unfortunately, constant struggle for additional funds has marked the work of JPTCs and reflected negatively on development of own capacities and education of judges and prosecutors of the state level.

A rather small number of training programs are adapted to State level judges and prosecutors and there are almost no training programs created exclusively for their needs². In some way education of this judicial instance was left to foreign donors, organizations and governments, and was organized *ad hoc* with next to no coordination with the JPTCs.

“The JPTC is aware that the current judicial training system does not equally meet the needs of judges and prosecutors of all levels in the BiH judiciary.”

(JPTC FBiH, Judicial Training Program for 2006)

„The lack of staff in the Training Centers continues to hinder effective training.”

(European Commission, BiH 2007 Progress Report)

“In education, one should target strategic goals relevant to judicial reform, relying more strongly on the problems in practice.”

(A prosecutor of the BiH Prosecutor’s Office)

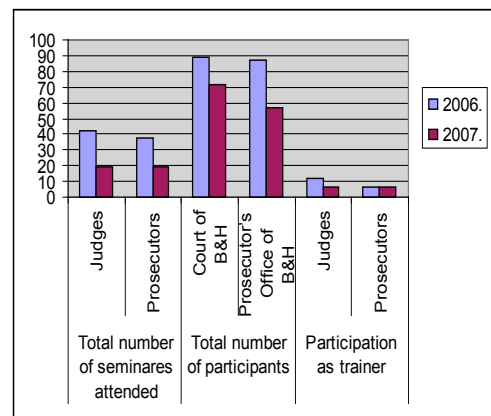
Based on research (interviews with the judges and prosecutors at the state level) and analysis of various documents of JPTC’s, High Judicial and Prosecutorial Council of the BiH and international organizations, a few basic shortcomings of the professional judicial training of state level judges and prosecutors have been identified:

- lack of targeted academic programs;
- uneven quality of training and lecturers;
- inadequate execution of training;
- insufficient participation of state level judges and prosecutors in development of training programs; and
- lack of strategy for continuing education of state level judges and prosecutors.

The most of aforementioned conclusions could be summed up in a general observation: *The JPTCs lack local capacities*. For this reason, they have depended on the assistance of others and therefore were not in a position to impose certain criteria when it comes to selection of topics, trainers (either local or international) or manner of organizing training. *“Regrettably, we must say that JPTC so far did not have sufficient human or organizational capacities to monitor regularly and analyze the content of several seminars and other forms of professional training held.”* (JPTC FBiH, Judicial Training Program for 2008.

Since 2008 Training Centers have made an effort to change relations with foreign donors that could result with opportunity to monitor and evaluate those training programs in the future. Still there is no insight into the possibility of creation of strategically organized continuing education of the state level judges and prosecutors.

When it comes to insufficient participation of state level judges and prosecutors in development of training programs and lack of strategy for continuing education of state level judges and prosecutors, the inevitable question arises: to what extent are the RS JPTC and FBiH JPTC, as entity budget users and entity public institutions, interested in dealing with this issue?



Graph1.

When compared to 2006, interest of judges and prosecutors at the state level in seminars organized by JPTCs, in 2007 decreased significantly (see in Graph 1).

The FBiH JPTC reported a significant drop of about 50% in participation of state level judges and prosecutors in JPTC seminars, while the total number of participants from these institutions dropped by 26.7%

² See the Judicial Training Program of both JPTC's for the years 2006, 2007 and 2008.



How to reach solution?

Concerning the continuing legal education of judges and prosecutors at the state level, it would be ideal to establish such institutional framework able to offer an adequate program of training, mechanisms for its monitoring and evaluation, and to establish good communication with its users in the light of further improvements of services provided.

Through these key elements, four institutional options for providing education to judges and prosecutors at the state level (meaning unified Training Center of the BiH, Training Center for judges and prosecutors at the state level, entity Training Centers and providing education through the work of the Association of judges/prosecutors) have been reviewed and analyzed. The analysis showed that the best organizational structure would include more centralized training system. However, establishment of adequate organizational structure in current political surroundings can only be marked as a long-term goal, so the study offered a number of concrete measures on directing the work of JPTC towards needs of judges and prosecutors at the state level.

Institutional framework:

Center for education of judges and prosecutors of the BiH

"A Unified Center for Education of Judges and Prosecutors in BiH is functionally the best solution."

(Interviewee, JPTC, 2008)

"A Center at the state level is an overall political question."

(Interviewee, JPTC, 2008)

Functionally the best solution for organizing continuing legal education to state judges and prosecutors, but also to all judges and prosecutors in general, would be forming a unified **Center for education of judges and prosecutors at the state level**. Only centralized institution can set standards of initial education and continuing legal education, use unified base of data and trainers, broader system of evaluation and monitoring that would all contribute to developing curriculums adjusted to all and to particular groups. Center at the state level would surely mark unification of the quality in the work of judges and prosecutors in the BiH and overall harmonization of praxis. The political situation however deters its creation, therefore establishing the adequate organizational structure in current political surroundings can be marked as long-term goal only.

Feasible solution: Directing the Work of JPTC towards needs of judges and prosecutors at the state level

Entity Centers (RS JPTC and FBiH JPTC) are institutions well accepted in the current political climate, and therefore they represent the only option within the institutional framework that can provide additional education to judges and prosecutors. In order to improve cooperation with the Court of BiH and the BiH Prosecutor's Office and to go forward in overcoming some of the shortcomings of the current education system indicated for the state instance (especially lack of academic curricula, and no strategy for education of this judicial instance in particular), they need to put in a joint effort to improve their work.

1. Strengthen the available capacities of the Centers

Adoption of the Mid-term Strategy for Initial Training and Professional Advancement of Judges and Prosecutors (2007-2010) proves that the national institutions recognize the need for improvement of the work of the JPTCs. Its full implementation would help overcoming shortcomings of current training system, especially those concerning execution of training and quality of trainings and lecturers. To fully implement Strategy, entity Centers should:

- Develop a joint Action Plan for implementation of the Strategy with short-term and mid-term goals (joint effort of the JPTCs);
- Develop implementation indicators with a timeframe (joint indicators for both JPTCs and indicators for each Center individually);
- Verify Strategy goals yearly and adapt it to current circumstances and trends;
- Verify Annual Program of professional advancement in mid-year;
- Improve cooperation with law schools in the country. Formalize cooperation with law schools and further involve them in designing the program for professional advancement of judges and prosecutors.
- Improve cooperation with regional and international institutions for education of the judges and prosecutors in order to allow exchange of experiences, successful programs, lecturers, etc.



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A "Policy Development Fellowship Program" has been launched by the Open Society Fund BiH in early 2004 with the aim to improve BiH policy research and dialogue and to contribute to the development of a sound policy-making culture based on informative and empirically grounded policy options.

The program provides an opportunity for selected fellows to collaborate with the Open Society Fund in conducting policy research and writing a policy study with the support of mentors and trainers during the whole process. Thirty eight fellowships have been granted in three cycles since the starting of the Program.

All policy studies are available at www.soros.org.ba



Šejla Mujanović was born on 2nd of May 1979 in Tuzla. As a World Vision Youth Ambassador 1997 she represented B&H in a WVYA program "Seek Life's Common Grounds". Aim of the Program, held in the USA, Taiwan, Guatemala & Japan, was to study and promote reconciliation and humanitarian work, for which Miss Mujanovic received Special Congressional Recognition of the United States Congress. Šejla Mujanovic graduated at two faculties of the University of Sarajevo: the Law Faculty in Sarajevo earning a Degree in Law, and the Music Academy in Sarajevo, earning a Degree in Musicology. After completing her studies she worked as an audit assistant in KPMG B&H for audit. Since 2005 she works for USAID, Sida and EKN Governance Accountability Project (GAP) as Legal Policy Advisor concerning local self-governance reform. Currently, she is a student of the post-graduate studies at the Law Faculty in Sarajevo, and also an associate member of Foreign Policy Initiative of B&H.

2. Joint activities of the Judicial Prosecutorial Training Centers

Successful cooperation of the RS JPTC, FBiH JPTC and Judicial Commission of Brcko District with the Court of the BiH and Prosecutor's Office of the BiH, could in the end result with the targeted continuing education of state level judges and prosecutors. In the sense of more successful cooperation, the RS JPTC, FBiH JPTC, Judicial Commission of Brcko District should jointly with the Court of BiH, BiH Prosecutor's Office and HJPC BiH:

- a) Formalize cooperation through Joint Steering Board or Working Group of JPTCs, HJPC, Court and Prosecutor's Office.
- b) Operationalize cooperation through:
 - Development of a Short-term Strategy on education of judges of the Court of BiH that would be implemented through the annual program of the JPTCs;
 - Development of a Short-term Strategy on education of the prosecutors of the BiH Prosecutor's Office that would be implemented through the annual program of the JPTCs;

- Coordination of international funding towards specific strategic goals concerning continuing legal education of the Court of BiH;
- Initiation and organization of different types of training programs for judges and prosecutors of the state instance according to their current special needs.

Shortcomings of the current education of judges and prosecutors at the state level could be resolved through improvement of the institutional framework for providing education or through simply the improvement of quality and content. Even if we opt for a smaller step towards improvement, in the sense of improvement of quality and content of trainings it is an important step forward.

Let us not forget that the adequate education of the judiciary is not just one of the priorities in the process of BiH moving towards the EU, but necessary mechanism in building strong and fair judiciary, therefore BiH society.

Short-term Strategies should consist of a list of priorities regarding the content of education and should be based on:

- Type and number of cases before the Court of B&H (following the trend of increase/decrease of specific cases);
- Comments and suggestions given by the judges and prosecutors;
- Direction of judiciary reform;
- Interest of the public eye and NGOs for application of specific international documents/conventions;
- List of common priorities of the European Judicial Network (ETJN)
- Other suggestions.

Creation of a Short-term Strategy for education of judges and prosecutors at the state level should be a joint program of both JPTCs that would confirm their successful cooperation and mark additional capacity building.

Key Documents:

1. Mujanović, Šejla. (2008). Continuing legal education of judges of the Court of BiH and prosecutors of the BiH Prosecutor's Office as an important step towards efficient judiciary, Open Society Fund BiH: 2008.
2. Commission of the European Communities. (2007). *Bosnia and Herzegovina 2007 Progress Report*. (SEC(2007)1430). Brussels: Commission staff working document.
3. HJPC BiH, JPTC RS, JPTC FBiH, JCBD. (2007). *The Mid-term strategy of initial training and professional advancement of judges and prosecutors 2007-2010*. June 2007.
4. HJPC BiH. (2007). *Strategic Plan for 2007-2012*. HJPC.
5. Public Institution JPT Center of FBiH. 2007 *Annual Work Report*. Sarajevo: January 2008.
6. Public Institution JPT Center of RS. 2007 *Annual Work Report*, Banja Luka: 2008.