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# ASSESSMENT OF THE ADMINISTRATIVE LEGAL SYSTEM IN BOSNIA AND HERZEGOVINA

DECEMBER 7, 2007

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## **DISCLAIMER**

The authors' views expressed in this publication do not necessarily reflect the views of the United States Agency for International Development or the United States Government.



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# ACRONYMS AND ABBREVIATIONS

ALPS	Administrative Law and Procedural Systems Project (USAID)
BiH	Bosnia and Herzegovina
CIDA	Canadian International Development Agency
DG	Democracy and Governance
EC	European Community
EG	Economic Growth
ELMO	Enabling Labor Mobility Project
EU	European Union
FILE	Fostering an Investment and Lender-Friendly Environment
FBiH	Federation of Bosnia and Herzegovina
GAP	Governance Accountability Project
GROZD	<i>Grazhdansko Organizovanje Za Demokratiju</i> (Citizens' Organization for Democracy)
HJPC	High Judicial and Prosecutorial Council
JSDP	Judicial Sector Development Project
LADs	Laws on Administrative Disputes
LAPs	Laws on Administrative Procedure
MoJ	Ministry of Justice
NGO	Nongovernmental Organization
PAR	Public Administration Reform
PARCO	Public Administration Reform Coordinator's Office
RIA	Regulatory Impact Assessment
RS	Republika Srpska
SPIRA	Streamlining Permits and Inspection Regimes Activity
UNDP	United Nations Development Programme
USAID	United States Agency for International Development





# EXECUTIVE SUMMARY

The administrative legal system in a developed country is the most important contact point between a government and its citizens. An effective administrative legal system contributes to the overall confidence that people have in their government, whether it affects the protection of basic human rights or the availability of meaningful economic opportunity. Administrative law cuts across and can affect all social, political and economic sectors or groupings in a country. USAID/BiH contracted with ARD, Inc. to conduct an assessment to determine how well the administrative legal system is functioning in Bosnia and Herzegovina (BiH). As part of this undertaking, the assessment team was asked to provide technical assistance programming options that could improve the legal framework for administrative law in Bosnia-Herzegovina, as well as institutional improvements that could facilitate better compliance with administrative law standards and procedures in the country.<sup>1</sup> The team also was asked to address the problem of the backlog of utility cases in the Entity court systems that have been filed to enforce nonpayment primarily of water and heating bills by individuals and businesses.

The assessment was conducted over a total of approximately two months, beginning with a documentary review and featuring a three-week field study involving interviews with approximately 100 individuals and 50 public and private institutions.<sup>2</sup> The assessment team consisted of the following individuals: Brad Johnson, Team Leader ([bjohnson@bpj-law.com](mailto:bjohnson@bpj-law.com)); Keith Rosten ([krosten@chechiconsulting.com](mailto:krosten@chechiconsulting.com)), Legal and Judicial Reform Specialist; and Malcolm Russell-Einhorn ([russell-einhorn@iris.econ.umd.edu](mailto:russell-einhorn@iris.econ.umd.edu)), Administrative Law Specialist.

This assessment report is organized as follows: first, it outlines the nature of administrative law and its importance as a vital underpinning of the rule of law that cuts across all sectors. Second, the report discusses administrative law in BiH generally, including recent reform work undertaken by USAID under the Administrative Law and Procedural Systems (ALPS) Project from 2002-2006 and more recently by the Public Administration Reform (PAR) initiative, a multinational assistance effort under the BiH Council of Ministers. Third, the assessment surveys the current legal framework and institutional landscape for administrative law in the country based on interviews and analysis carried out by the assessment team during October and early November 2007. This is followed by recommendations for possible USAID programming in the future. Finally, the assessment examines the current legal and institutional environment surrounding the utility case backlog in the two Entities and offers suggestions for how USAID should approach this problem relative to future programming decisions.

The *administrative legal framework* in BiH is adequate, and only a relatively few changes are needed in the individual laws. There are, however, fairly significant continuing problems with the quality and transparency of administrative decision making among the institutions responsible for *administrative legal decision making*. Municipal, cantonal, and ministerial decision makers lack adequate expertise and training in both substantive and procedural matters, particularly where different material laws and different procedures come into conflict. Furthermore, citizens do not know or understand their administrative rights.

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<sup>1</sup> The assessment was commissioned under USAID/BiH Task Order RFP No. 168-07-025 under the Analytical Services IQC, Contract number DFD-I-00-04-00227-00. The USAID/BiH CTO responsible for this assessment was Ms. Jasna Kilalic ([jkilalic@usaid.gov](mailto:jkilalic@usaid.gov)).

<sup>2</sup> A complete list of individuals interviewed and their organizational affiliations is included in Appendix A.

Due to the diffuse nature of administrative law as a procedural framework spread across multiple diverse sectors, as well as the need for focused demand-side pressures to help push reform among often unresponsive government agencies, such capacity-building work should be focused where there is significant societal demand for better and more efficient administrative decision making. The assessment team believes that in the near term, such dynamics can be found in those parts of the public administration in the Federation and the Republika Srpska (RS) responsible for the pending legalization of residential and other construction that occurred during the war and up through 2004. This is a major societal problem and will put significant demands on the administrative legal system in the next several years.

As outlined herein, the assessment team recommends the following six-point approach to *institutional reform of the administrative legal system* in BiH, which could take the form of a free-standing USAID project:

- Strengthen the administrative decision-making capacity of certain executive agencies (including key municipalities) that will carry out pending legalization of residential and other construction activities;
- Improve judicial competence in issuing administrative legal decisions of higher quality, using construction legalization issues as a major focal point for technical assistance;
- Provide grants to enable advocacy activities and impact litigation by legal and civic groups;
- Raise public awareness of citizens' administrative rights, especially regarding construction legalization;
- Assist the multinational PAR effort in the improvement of the Civil Service in BiH specifically through capacity-building in administrative decision making; and
- Assist in the upgrading of key aspects of the administrative legal framework and related legal reference materials that can directly assist the above capacity-building measures.

Even if USAID decided not to support this kind of stand-alone project, several elements of the approach could be integrated into other DG or EG projects. For example, certain capacity-building modules for public servants could be added to projects of the kind that the Governance Accountability Project (GAP), the Streamlining Permits and Inspection Regimes Activity (SPIRA), and the Enabling Labor Mobility Project (ELMO) are currently implementing. Similarly, focused judicial capacity-building activities could be folded into the Judicial Sector Development Project (JSDP) effort or its progeny. Finally, public education and advocacy activities would potentially complement a number of democracy and governance (DG) and economic growth (EG) initiatives alike, including dedicated civil society programming.

With respect to the *utility case backlog*, the assessment team concluded that the problem is not rooted in a structural problem with the judiciary, but instead the result of a perverse set of disincentives for reform among the stakeholders involved. The team recommends a five-point incremental legislative "fix" for the problem, which would include the following activities:

- Change the statute of limitations to three years for the utility cases;
- Require payment of utility bills for transfer of real estate transfer law;
- Adjust the filing fee for filing utility claims in court;
- Mandate consolidation of claims, both already filed and with respect to new cases; and
- Shift the burden of proving notice of service for court claims.

The anticipated result of the approaches to administrative law in BiH would be the development of a modern, competent, fair and transparent administrative legal system that would contribute to an improved climate for rule of law and economic growth in the country. With respect to the utility cases, the team believes that the legislative activities suggested would have an immediate impact on the number of cases currently burdening the judiciary in BiH.

# 1.0 BACKGROUND: WHAT IS ADMINISTRATIVE LAW AND WHY IS IT IMPORTANT?

Administrative law provides the legal framework governing both the *standards* for bureaucratic and regulatory decision making and the *procedures* by which the public can assert their rights in the regulatory process.<sup>3</sup> Administrative law provides rules that give citizens, nongovernmental organizations (NGOs), and businesses structured opportunities to obtain information, to make their views and evidence known in regulatory proceedings, to file appeals, and to seek court redress. Unlike real property law or banking law, however, administrative law is not a discrete body of substantive law unto itself. Rather, it provides a system of procedural rules that is integrated into and disciplines these substantive legal areas. For example, each government benefits program must have a set of rules for eligibility, procedures for filing applications, criteria for assessment, and the opportunity to object or appeal if the benefit is denied. Administrative law provides the framework for these procedures and provides remedies for violations.

When designed and implemented effectively, administrative law ensures basic fairness, transparency, and accountability. The pervasiveness of administrative law means that many development projects deal with these matters in the course of addressing virtually any kind of functional citizen-government interactions that involve regulation or service provision, regardless of whether administrative law reform is a stated project objective. The rules that control the legality, fairness, and effectiveness of these functions are classified as administrative law.<sup>4</sup>

To illustrate, the following interactions capture the essence of administrative law in action:

- A municipal government agency denies the license application of a small business. The business appeals to the ministry responsible for local economic development, claiming that the municipality's rules and the law on administrative procedures were violated by denying the business the opportunity to present evidence in support of its position.
- A new NGO applies to register and to obtain its tax certificate.
- A public housing tenants' association petitions for a public hearing to protest proposed rent increases.

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<sup>3</sup> This section of the Assessment relies heavily on the soon-to-be published Technical Publications Series guide for USAID Democracy and Governance authored by Malcolm Russell-Einhorn and Howard Fenton, entitled *Using Administrative Law Tools and Concepts to Improve USAID Programming*.

<sup>4</sup> This report will use the word 'administrative law' to refer to both material law, otherwise known as substantive law, and regulations used by the bureaucracy and administrative procedures that guide bureaucratic action, although the emphasis is on procedural law. In this report, when we discuss material law specifically, we will use that term.

- The law requires a health ministry revising water quality standards to notify the public about the proposed changes. The ministry fails to allow the requisite 60 days for comments, publish the comments, and then explain whether and how the comments were used in drafting final regulations.
- A labor union uses an access-to-information law to obtain Ministry of Labor inspection reports showing a pattern of hazardous work conditions at two major employers.
- A transportation safety board charges a bus company with operating unsafe vehicles. It schedules a hearing to determine whether the company should pay significant fines and make expensive changes to its buses, or be closed down.

At some point, virtually all citizens come into contact with the administrative law system in any country because of their dependency on the government bureaucracy for licenses, permits, benefits or other services. Far fewer become involved in either the civil or criminal law systems. Improvements in administrative law can make democracy both relevant to large segments of the population and deliver transparent and accountable governance. People form their most immediate impressions about the state's integrity and responsibility, and thus about the depth of democratization, through these administrative relations. Administrative law provides a framework to govern the exercise of authority and bureaucratic discretion by administrative agencies and officials. This safeguarding of stable legal relations and overall regulatory predictability is critically important to economic development and efforts to curb corruption. Thus, a greater focus by a foreign aid donor on improving administrative law, as opposed to criminal justice, civil or commercial disputes, or judicial system independence or efficiency, can be seen as one possible counterbalance to an overemphasis on higher-level legal policy and institutional concerns that less frequently affect the everyday interests of citizens.

Because administrative law cuts across virtually all substantive areas of government regulation and state administration, it is sometimes difficult to identify discrete and manageable arenas for donor-funded technical assistance. For example, in BiH there are numerous critically deficient substantive areas of the law from an administrative law standpoint. These include laws and regulations covering disability benefits, pensions, building and construction permits, inspections and others. Generally speaking, typical entry points for administrative law improvements are governmental bodies that provide citizen services or particular institutions that interface with the administrative law framework (e.g., courts, government training institutions, civil society organizations focused on administrative legal rights, etc.). While administrative law can be viewed as directly underpinning the rule of law, and hence, democracy and governance in a country, substantive programming targets may necessarily implicate both economic growth (EG) and democracy and governance (DG) portfolios (e.g., an administrative law initiative focused on improving certain kinds of government permitting may touch on the former, while another such initiative, the target of which is primarily the justice sector, focused on the courts, may be seen as naturally fitting into the latter).

In summary, although administrative law reform can be complex, requiring considerable coordination and political will on the part of multiple institutional players, there are a number of programmatic anchors for such work, whether at the sector level or within local or regional governments or special government institutions (e.g., courts and/or judicial training organizations). These considerations will inform the assessment's programmatic recommendations in Section 5 below.

## 2.0 ADMINISTRATIVE LAW IN BOSNIA-HERZEGOVINA GENERALLY

Administrative law in BiH is well-grounded in a European tradition influenced originally by Austria, which happened to be the first country in Europe to adopt a comprehensive law on administrative procedure in 1925. The pre-war Yugoslav republic borrowed much of the Austrian law, and this legislation, remarkably, was incorporated into the post-war legal system by Tito's government in 1956. With some changes, the Yugoslav Law on Administrative Procedure was updated in the late 1970s, and was again modified slightly by the two Bosnian Entities in 1998 in the post-Dayton era.

This administrative law tradition resulted in a system of administrative procedure and administrative decision making in the former Yugoslavia that was highly advanced relative to that of other socialist countries in Europe. At the same time, the overall quality of public administration was relatively high (although the prerogatives of the State clearly took precedence over the rights of the individual citizen in particular cases). Had the war not intervened in the 1990s, many of the problems of compliance with administrative procedure experienced today would be much reduced in scope and severity, since so many of these problems relate to matters of staffing, salaries, coordination, professional qualifications, and training. All of these concerns were disregarded during the war and its immediate aftermath. The relatively recent advent of civil service reform at the State and Entity levels has only begun to address these problems. At the same time, the fragmented jurisdictional arrangements in BiH and political gridlock and checkmating led by nationalist parties have thwarted most efforts to create genuine administrative accountability.

As discussed in more detail below, most informed observers agree that the legal framework for administrative law in BiH is quite solid, starting with the laws on administrative procedures (LAPs) adopted by all levels of government in the late 1990s. These laws address the standards and procedures by which public officials render administrative decisions in individual cases, both in the first instance (by municipal or ministry/agency officials, as the case may be) and on appeal by the second instance (by ministry/agency personnel or ministry/agency heads). There are significant problems in implementing these laws. To some degree, these can only be addressed in a comprehensive and lasting manner through a combination of sustained public administration and civil service reform (both of which are only about to be embarked on in a serious way) and increased government accountability to the public (something that will depend on greater commitment of the various political parties to European Union (EU) accession and economic integration, as well as increased awareness and mobilization of civil society). All of this is also dependent on successful constitutional change that enlarges State-level responsibilities (and shrinking or abolishing most of the authorities of the Federation's cantons) while strengthening the coherence and quality of public administration in the Entities.

There has been relatively little direct reform attention paid to administrative law by the various BiH governments or donors. In 2000, with U.S. assistance, laws on free access to information were enacted at the different levels of government, affording citizens the right to request and obtain documentary

information from the government at their own expense. The laws have been inconsistently implemented, but citizen awareness of the right to seek information is relatively high, and an NGO center dedicated to enhancing citizen access has been established and recognized for its significant contribution to education and advocacy.

Starting at about the same time, various foreign donors assisting the then-Independent Judicial Commission (forerunner of the High Judicial and Prosecutorial Council [HJPC]) began drafting laws on administrative disputes (LADs), designed to reform the procedure by which administrative cases were appealed to the courts and to reduce the staggering backlog of administrative disputes in the Entity Supreme Courts (over 13,000 cases in the FBiH Supreme Court as of 2004). Ultimately enacted in 2005, the LADs resulted in the transfer of jurisdiction over such appeals from the Entity Supreme Courts to the cantonal courts (FBiH) and district courts (RS), respectively. Only purely legal challenges without reexamination of the evidence (“extraordinary legal remedies”) from the cantonal and district courts were permitted to be taken to the Supreme Courts. At the same time, the LADs further streamlined judicial decision making by allowing single judges, rather than three-judge panels, to hear administrative disputes, and dispense with oral hearings where facts were not contested. Finally, significant sanctioning power was vested in the courts to discipline administrative agencies and individual officials for persistent delay and/or misconduct.

Most significantly, USAID made a major investment in administrative law reform in BiH, launching the USAID/ALPS Project. ALPS was originally designed to address various aspects of the administrative law system in the Federation in a vertically integrated way, focusing on the issue of property return, which was both a major social issue at the time the project was designed (2001) and contributed thousands of cases to the dockets of both Entity Supreme Courts. However, by the time the project began work in November 2002, the number of cases had already begun to drop sharply at both the municipal and ministry levels and in the courts. The OSCE, principally in charge of assisting local governments with decisions in such cases, had turned the tide nearly a year earlier. As a result of this change, and lacking another subject matter anchor, the USAID/ALPS Project worked on a number of individual institutional aspects of administrative law operation in the Federation. These included (1) cross-training of legal professionals who apply administrative law in their work (judges, ministry legal department personnel handling second instance appeals, municipal lawyers, and legal aid attorneys); (2) later-stage drafting assistance and then training for judges on the FBiH LAD; (3) training and technical assistance to several FBiH ministries on improving their second-instance administrative decision making; (4) establishment of several administrative law clinics for law students at five Bosnian law faculties; (5) work on streamlining business inspections to make them more compliance-oriented and consistent with the provisions of the Entity LADs; (6) a local governance transparency initiative in 19 Bosnian municipalities that introduced public hearings and a notice-and-comment methodology for municipal ordinances; and (7) an integrated administrative justice initiative led by the legal aid organization *Vasa Prava* that focused on vindicating citizens’ rights in four areas of administrative decision making (pensions, civilian victims of war benefits, property return, and residential property construction), utilizing litigation, structured advocacy, training of municipal officials, a sweeping media campaign, and the threat of disciplinary sanctions against recalcitrant bureaucrats.

The USAID/ALPS project achieved a number of successes, particularly in regard to raising citizen awareness of administrative rights, helping cantonal courts adjust to their new administrative disputes jurisdiction, and creating a new era of open decision making in numerous FBiH municipalities. USAID won much praise from the Bosnian legal community and from NGOs for focusing attention on citizens’ rights in the administrative law system and bringing together legal professionals from different parts of the system, usually for the first time, to solve difficulties with various administrative law provisions and their implementation. Due to the lack of the anchoring focus of the original property return issue, however, the USAID/ALPS’ disparate areas of involvement in the administrative law system meant that

the whole of its activities were sometimes not greater than the sum of its parts. At the same time, the virtual absence of meaningful civil service and local government reform in the Federation during the period of the project meant that other levers for administrative accountability were not working in unison at the time. Today, by contrast, the enabling environment for administrative law reform is much more fertile than five years ago. This can be attributed to the reduction of administrative dispute backlogs, better judicial training efforts, a more cooperative FBiH Ministry of Justice, nascent EC-led public administration reform efforts, and advances in civil service and local government reform in both Entities.





# 3.0 CURRENT ADMINISTRATIVE LEGAL FRAMEWORK

Several key laws bear on the functioning of the administrative law system in BiH. These include the LAPs and LADs, as well as legislation concerning open lawmaking and access to information. These are discussed briefly below.

## 3.1 LAWS ON ADMINISTRATIVE PROCEDURE

As noted above, in the late 1990s, separate laws on administrative procedure were adopted by the four main jurisdictions of BiH (the two Entities, the Brcko District and the BiH State). These four LAPs are based on the previous law of Yugoslavia and are quite similar to one another, although they differ in some textual and substantive matters. The only truly salient differences for purposes of safeguarding citizens' rights are that the FBiH, Brcko District, and State LAPs provide for monetary sanctions based on breaches of procedure, while the Republika Srpska (RS) LAP does not. Another key difference between the versions is that formal decision-making authority is delegated from the head of an agency to subordinate officials in the Federation, while the RS LAP is silent on the matter. This can have important implications for accountability and efficiency, as discussed below.<sup>5</sup>

Most BiH lawyers and outside experts regard the current RS and FBiH laws on administrative procedure as comprehensive and well-drafted, providing very significant rights for citizens and obligations on the part of public officials. No one interviewed for this assessment, including reform-minded legal professionals, believed there were any serious problems with the laws on the books. Most problems with the LAPs relate to their implementation by administrative agencies. The LAPs are default laws that are to be applied when the law does not provide for a special procedure. Unfortunately, too often the law provides for a special procedure that may not be consistent with other laws or with the LAPs.

Although the LAPs are generally sound, there are a few important problems that need to be addressed in the reasonably near future as part of any revision process assistance. These include the following:

- **Time deadlines.** Current decision deadlines are either 30 days, in cases where no evidence-gathering is necessary, or 60 days, where some additional evidence collection is required. While admirable on paper, these deadlines are in most cases unrealistic, particularly when compared

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<sup>5</sup> From a constitutional standpoint, there are significant problems relating to multiple LAPs, most notably the fact that appeals avenues (from first to second instance) often stretch across different levels of government, with accompanying confusion about which particular LAP applies. This is something that will need to be addressed by European authorities in the years to come, most likely through the various planned Public Administration Reform (PAR) initiatives spearheaded by the PAR Coordinator's Office (PARCO). The most plausible and logical scenario would be for a single LAP to be enacted at the State level and adopted separately by other government levels if desired. This is the case in Austria, where a single LAP is applied to both Federal and provincial administrative cases.

with those of many EU countries with better public administration, and because these deadlines are not realistic, the number of special laws has proliferated.<sup>6</sup> As a result, the public has unrealistic expectations about decision making, and statistics present a more distorted picture of efficiency than is actually warranted. Although this would potentially appear politically unpopular, legislators should consider raising the second deadline from 60 to 90 days, thereby providing greater confidence to citizens and bureaucrats alike.

- ***Supremacy of LAP provisions over specialized legislation.*** To prevent procedural confusion, it would help to have a clearer statement of the supremacy of the LAPs over specialized subject area-specific “material law” provisions bearing on procedure (e.g., time limits, evidentiary rights, citizen access to case information), unless such subject matter-specific legislation clearly evidences an intent to carve out an exception to the general provisions of the LAPs).
- ***Explicit statement of the applicability of European decisional principles to BiH administrative procedure.*** There should be a provision at the beginning of the LAPs specifying European administrative law principles that must inform administrative decisions (e.g., proportionality, equality, etc.). This would ensure better conformity with the jurisprudence of the European administrative space and greater attention by public officials to citizens’ individual rights covered by the European Convention on Human Rights (to which BiH is a signatory) and officially protected by the European Court of Human Rights.
- ***Encouraging greater second-instance decision making on the merits.*** There is a continuing failure of second instance decision makers (mostly ministry legal departments) to decide cases on the merits. Instead, such officials tend to return cases to the first-instance authorities for minor procedural errors or to gather additional information, even where such information may be unnecessary to decide a case. The results are often huge delays in case processing with no resolution. The LAPs could be amended to provide, at a minimum, (1) that second-instance decision makers may only return a case to the first-instance if the former are *unable* to decide a case on the merits due to essential missing information (not merely if it is more convenient for the first-instance to gather more information); and (2) that second-instance decision makers may not avoid ruling on the merits in situations of procedural error where a case has earlier been sent back to the first-instance on that basis.
- ***Potential application of “silence as assent” to particular cases.*** There should be a provision allowing for administrative silence as assent, rather than denial, in the case of particular kinds of applications for authorization or certification. This is critical for many kinds of business approvals and certifications, the details of which will be included in specialized material legislation.

In the longer run, other changes may include greater attention to e-government and electronic notifications and authorizations, as well as potential unification of the four LAPs themselves.

### 3.2 LAWS ON ADMINISTRATIVE DISPUTES

As noted above, the FBiH and RS LADs effected a major change in jurisdiction, handing first-instance judicial review of administrative disputes to the cantonal and district courts, respectively, and ridding the Supreme Courts of large backlogs of these cases. A countervailing consequence, however, is less familiarity with administrative cases and less judicial specialization in such cases in certain of the smaller cantons and districts, as the case may be. The quality of decision making may suffer in the short term even as efficiency is increased. Two other major changes as a result of the legislation were (1) increased power of the courts to sanction administrative agencies and officials for repeated delays in decision

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<sup>6</sup> For example, decisions in Italy must be rendered within 90 days and, in Spain, within no more than 180 days.

making or failure to decide a case (so-called “administrative silence”)<sup>7</sup>; and (2) limitation of additional judicial appeals (to the Supreme Courts in each Entity) to legal matters (“extraordinary legal remedies”), which may be accepted for decision at the discretion of the Supreme Courts.

As a legal matter, there does not seem to be much criticism of the LADs on the books. The only area of some contention seems to revolve around the particulars of the “extraordinary legal remedies” provisions. In some quarters—among some practicing attorneys and administrative decision makers—there is some displeasure that the opportunity for second-instance judicial review of legal matters is discretionary. They see a need for more judicial access and, hence, clarity on legal matters. According to some individuals interviewed for the assessment, the two Supreme Courts have been unnecessarily restrictive in granting review, which not only deprives individual claimants of the opportunity to be heard on potentially important legal matters, but may result in less systemic uniformity in legal interpretation among the lower courts in each Entity. An unnecessary sense of judicial confusion and perception of a lack of judicial leadership may result. The assessment team heard of several instances, including in matters of tax law, where significant inconsistencies in lower court decisions in the Federation had occurred, ostensibly due to the Federation Supreme Court refraining from accepting appeals seeking an extraordinary legal remedy. On the other hand, some cantonal and district court judges, perhaps not wanting to be second-guessed, are dismayed at the numbers of cases that the respective Supreme Courts *are* accepting on appeal. Based on these findings, the team agrees that there should be greater attention paid to judicial information-sharing and training aimed at producing better judicial guidance and consistency of interpretation. The Supreme Courts also should be encouraged to hear more appeals based on such remedies.

### **3.3 NORMS GOVERNING PUBLIC CONSULTATION IN REGULATORY DRAFTING/DEVELOPMENT**

Administrative law captures not only the standards and procedures by which the public administration makes decisions in individual cases, but also the procedure by which new administrative acts are developed and promulgated. The objective is to have an open and informed drafting and development process that results in better quality regulatory enactments, greater regulatory legitimacy, and ultimately better societal compliance with new regulations and administrative requirements. This is an area where European practice is relatively underdeveloped and left to the discretion of individual ministries and agencies. Only recently has the idea of a uniform procedure applicable to the entire public administration (or levels of government) begun to gain adherents in the European Union. One driver in certain countries has been the attractiveness of requiring some kind of regulatory impact assessment (RIA) to be conducted with respect to new legislation or regulations.

USAID has been at the forefront of efforts to introduce such legislative or regulatory requirements in BiH. The first effort consisted of the aforementioned local governance transparency initiative under the ALPS Project that introduced a notice-and-comment procedure for all new municipal ordinances in 19 Bosnian Federation municipalities. The second was the JSDP’s support for legislative drafting rules at the State level (required of all legislation and regulations adopted by the BiH Council of Ministers) that imposed similar notice-and-comment and public consultation requirements on all State ministries. Thus far, with JSDP’s assistance, the State Ministry of Justice is pioneering the use of such rules in connection with its legislative agenda for 2007-2008.<sup>8</sup> Reportedly, the EC is interested in introducing RIA at the State

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<sup>7</sup> The assessment team found that the problem of administrative silence is no longer an issue for reform in BiH.

<sup>8</sup> The State Ministry of Justice (MoJ) is also modeling the use of the CoM Rules in connection with the BiH Justice Sector Reform Strategy that was initially assisted by the U.K. Department for International Development (DFID).

level in the relatively near future, an activity that would likely require some kind of harmonization with the CoM drafting rules. At the same time, USAID has supported the efforts of the SPIRA Project to introduce the rudiments of an RIA system in the RS, first through a pilot initiative in the tourism sector, addressing the regulation of spas and other resorts. Obviously, there is much more work to be done in BiH in this regard, either at the State level, where there is already some donor pressure and momentum established, or at the Entity level, in an appropriate ministry or sector, where a comprehensive approach utilizing both RIA principles and extensive public consultation procedures could produce real learning and possible replication elsewhere in BiH.

### **3.4 ACCESS TO INFORMATION**

Over the past several years, USAID has supported an NGO, the Center for Free Access to Information, in helping to implement free access to information laws in BiH. Currently, the Center has a grant from JSDP to help better educate judges about the provisions of the laws and their impact. While continued support for the Center around implementation of the laws makes sense, the fact is that a *responsive* system of information provision (i.e., a system that relies on individual citizen requests) is often difficult and not cost-effective for developing and transition countries. Instead, an *affirmative* mechanism may be introduced in individual agencies or ministries, or across an entire public administration, alongside such a responsive system. An affirmative approach relies on the government to designate certain categories of information—usually the most important and frequently sought information, such as information on budgets, government organization and staffing, statistics, procurement and other procedures, and other information pertaining to government operation and resources—and to make such information available in certain formats and under certain conditions. This allows agencies to concentrate their compliance efforts on broad categories of information, rather than responding to a multitude of individual requests.

# 4.0 CURRENT INSTITUTIONAL ENVIRONMENT AND IMPLEMENTATION OF THE LEGAL FRAMEWORK

In addition to asking the assessment team to review the legal framework governing administrative law in BiH, USAID also requested the team to examine closely the functioning of the administrative law system through interviews with knowledgeable participants and key experts and other observers. The following describes our conclusions, organized generally according to the key institutional players in the system.

## 4.1 PUBLIC ADMINISTRATION GENERALLY

Efficient and high-quality administrative decision making is in relatively short supply at all levels of government in BiH. This is in large measure a result of the war and its dislocations; there has been a consequent migration of many talented people overseas, and within BiH, from the public to the private sector due to poor salaries and working conditions in government. At the same time, as already noted, civil service reform is in its infancy in all BiH government levels, and the nature of fragmented government (particularly in the Federation) as well as political gamesmanship and ethnic politics (including ethnic quotas at the State level), have worked against the imposition of appropriate internal and external oversight and accountability on the public administration. Precisely because political parties have often treated government as their possession, and because of the highly political nature of public administration reform, civil service reform has been left to a large degree to the end of the overall reform process: not only has such reform just gotten underway for all intents and purposes, but public administration reform *per se* has barely begun. The PAR process contemplates targeting personnel and institutions at the Entity level and in Brcko, but will not reach municipalities. The governance of the PAR process itself is unwieldy, with no single responsible figure (e.g., a Minister for Public Administration) to exercise authority over the various governmental participants.

In both Entities, there is a need for some kind of standardized certification of administrative decision makers in administrative procedure—both through an examination in a particular area of decision making (Slovenia, for example, has reportedly done this, with good results) and through some system of in-service training. Thus far, there is relatively little training of this kind provided in either Entity. In the Federation, for example, training is entirely demand-driven by the civil servants, and may end up being highly reactive and scattered due to disparate preferences and funding availability. Eventually, it is

contemplated that there will be a training institute or academy established for public servants in BiH, so as to permit both new employee and continuing education programs. By way of example, Slovenia has an Administrative Academy run by that country's Ministry of Public Administration.

At the same time, even if tighter certification standards take hold and training is strengthened, there is still a lack of centralized responsibility for the quality of administrative decision making. Although there are administrative inspectorates in the different levels of government (see below), these offices function poorly. They are more concerned with pointing out relatively petty failures than with ensuring ongoing quality performance by administrative decision makers. The latter should be part of the work responsibilities of a higher-level official in each ministry who oversees human resource utilization, professional development, and work performance. Such officials should form an internal governmental network that coordinates closely with the respective civil service agencies.

## 4.2 FIRST-INSTANCE DECISION MAKERS

Most first-instance decision makers are municipal officials (and in the Federation, depending on the subject area, they may also be cantonal officials), since most administrative decisions are made by municipalities (and in FBiH, cantons), based on their own competences, or based on competences delegated to them by ministries.<sup>9</sup> A smaller number of first-instance decisions are made by specialized ministry or agency personnel, such as various kinds of inspectors, tax administrators, or pension fund personnel.

**Municipalities.** From interviews with a variety of first-instance decision makers, it is clear that, in most of the larger municipalities and certainly in cities where the GAP Project has operated, significant progress has been made in improving the efficiency, professionalism, and overall quality of municipal decision making. One of the individuals interviewed by the team suggested that reform in municipalities was more likely to succeed because of the ethnic homogeneity in most municipalities. There has been particular progress in making application, certification, and benefit processes more transparent and directing citizens to the appropriate offices or windows for information (particularly through case management/tracking software and citizen service centers). One-stop shop application processes also continue to gain ground. While smaller and more rural municipalities are doubtless suffering from much of the poor quality decision making that was noted by the ALPS Project (especially in many Herzegovina municipalities), it is safe to assume that the trend generally in BiH is toward better, more accurate, and more consistent decision making, and that the GAP Project will broaden and accelerate this trend.

Despite this general trend, there is a persistent perception on the part of senior ministry officials and judges that administrative decision making at the municipal level is subpar and chaotic because of poor education and training. There is no way to systematically substantiate this perception short of a systematic, in-depth review of local public administration that would be significantly more intensive than the PAR Coordinator's *System Review of Public Administration of BiH* published a few years ago; however, there is some reason to believe that this view is either exaggerated, misplaced, or both. Although there is certainly a continuing problem with poor municipal decision making, particularly in smaller municipalities *and in discrete subject matter areas like urbanism and construction permitting where the law is hopelessly confused for decision makers at all levels of government*, the problems appear to be different and more complicated than those commonly identified by either judges or ministry personnel (or the general public, for that matter). Rather than making baldly incorrect or sloppy decisions,

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<sup>9</sup> In some cases, this produces significant information problems, as municipal or cantonal officials may not be adequately informed about or trained in the procedures or standards governing Entity ministerial programs.

or being uniformly poorly educated across the board,<sup>10</sup> municipal decision makers very often operate under the following real or perceived handicaps:

- *Municipal administrative decision making is confused with other municipal public administration problems.* This occurs because so many other municipal employee positions are not being staffed with civil servants, and overall problems with unaccountable and under-educated employees are attributed to those rendering administrative decisions. In some cases, this confusion is understandable, because some municipal employees who interact directly with the public are among those who are not civil servants and, in many cases, they render inadequate or incorrect information about legal procedures and where to seek information about applications for benefits or authorizations. In many municipalities, particularly those where GAP and its predecessor projects have operated, the latter problems are on the wane.
- *Inadequate resources hamper efficiency and transparency.* Lack of computers, lack of staffing, insufficient copies and circulation of new legislation, and use of pre-printed forms in most instances, often result in decisions that are delayed or inadequately explained, though often correct as to the result.
- *Lack of clear guidance from second-instance decision makers and judges.* Where errors are made by municipal decision makers, or where errors appear to have been made, second-instance review authorities are very often terse or uncommunicative in sending cases back to the first-instance for correction. Second-instance review authorities in many Federation ministries were able to rid their dockets of appeals on the flimsiest of procedural grounds, whether or not the procedural flaw materially affected the decisional outcome. At the same time, they do not provide adequate guidance about factual errors or additional evidence-gathering when these are identified as problems.
- *Inadequate professional training in material legislation.* As discussed above, there is an across-the-board problem with practical, case study-driven training for civil servants at all levels of government. There is a particular need for *cross-training* between legal professionals in different parts of the administrative legal system to, for example, iron out practical differences in interpretation between first- and second-instance decision makers and to work out procedural rules of the game regarding the format and specific contents of decisions. This training, which can also build important social capital, is especially critical in a complex and confused area of the law like urban planning. At the same time, some very focused and tailored training for municipal officials on administrative procedural issues could pay significant dividends in terms of further improving procedural compliance.<sup>11</sup>

Of course, the foregoing does not exclude the possibility that incorrect or unjustified decisions in some situations and in some municipalities may have been made on the basis of corrupt influences, but that is a problem distinct from either general professional incompetence or carelessness.

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<sup>10</sup> Although there is at present no way to verify this, it is likely that, on the one hand, there is poorer screening for educational attainment in the RS at the municipal level given that municipal employees are as yet not civil servants. On the other hand, the quality of public administration generally in the RS is perceived to be somewhat higher, due in part to more straightforward hierarchical controls and accountability and the absence of the cantonal government layer, which has bred a considerable lack of accountability in the Federation.

<sup>11</sup> For example, some municipalities—even those like Banja Luka which is quite professional and well-resourced—still have a long way to go in fulfilling their obligation to collect all or the most official documents required to make a decision, as required by the LAPs. Municipal officials could also benefit—practically and philosophically—from training in key principles of modern European administrative legality, particularly those addressing matters of proportionality as well as the opportunity to be heard relative to Article 6 of the European Convention on Human Rights.

In terms of efficiency, there is no sense that any sector at the municipal level is overwhelmed with cases, with the possible exception in some larger municipalities of urban planning cases. It is also worth noting that this workload problem will rise very significantly in the coming year or so with the implementation by most municipalities of Entity-level framework legislation allowing, on more streamlined, accurate, and permissive terms, the legalization of illegal construction that occurred prior to the advent of systematic aerial surveying in June 2004. Municipal urbanism departments are only now grappling with the realities of staffing this process (which may require hiring relatively expensive consultants on a temporary basis) and anticipating the problems (most notably, unclear ownership claims) that will likely result in a large number of appeals to responsible Entity ministries responsible for spatial planning matters.

**Cantons.** Cantonal administration suffers from all of the aforementioned problems, but probably to a more severe degree based on greater jurisdictional uncertainty in many areas of law and a greater lack of accountability in most cantonal governments (a lack of accountability that in many ways is itself a product of the lack of jurisdictional clarity and the fact that municipalities are more visible to the public, and municipal personnel more exposed to public complaints and displeasure).

**Ministries and agencies.** Resource and information deficiencies are much less of a problem for first-instance decision makers in most ministries, inspectorates, and other agencies, but problems with the use of standard procedures such as filling out pre-printed decision forms and inadequate guidance from second-instance decision makers on appeal result in many of the same problems that plague first-instance municipal decision makers. At the same time, there are special accountability problems with certain inspectorates that are very powerful as a matter of authorities that they wield and fines that they can collect. Ongoing inspectorate reform being undertaken by the USAID SPIRA Project and the World Bank will dramatically reshape this landscape in the next several years, resulting in clearer, fewer, and less arbitrary decisions, but the need for meshing compliance-oriented inspections training with the precepts of the LAPs and European human rights jurisprudence will loom as a major professional education priority.

### 4.3 SECOND-INSTANCE DECISION MAKERS

Second-instance decision makers can include municipalities (usually the mayor), cantonal authorities, and Entity ministries or agencies, but in terms of sheer numbers, and for purposes of this assessment, it is the Entity ministries—in almost all cases through their legal departments—that render the vast majority of second-instance decisions on appeal, relying on the provisions of the Entity LAPs.

Generalizing about the quality and efficiency of these legal departments is hazardous. Their workloads, staff quality, and exposure to training (whether given in-house or provided by outside agencies or donors) varies tremendously. In general, the more high-profile ministries with high volumes of cases (e.g., Ministries of Finance, Ministries for Spatial Planning, pension funds) have had the best-trained legal departments and thus the capacity to render the highest-quality decisions.<sup>12</sup> On the other hand, the high volume of cases and their complexity (e.g., tax cases, urban planning cases) often have caused large backlogs to develop and insufficient time to be spent on individual decisions. The result was often hastily written opinions, many of which summarily returned cases to the first-instance with little or no explanation, often on trivial procedural grounds. In other instances, factual problems, some of them

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<sup>12</sup> However, that being said, in some instances, it was clear that ministerial legal personnel were less well-educated, less well-paid, and less knowledgeable about the subject matter they dealt with than their first-instance counterparts. This was especially true in the case of the Federation Ministry of Finance, where certain members of the Legal Department were not as well-credentialed as the legally trained members of the Tax Inspectorate or the Tax Administration, and were less familiar with the complexities of tax law.



legitimate, were alleged, but with inadequate guidance as to the specific evidence-gathering thought to be necessary. As noted above, these issues were, and still are, characteristic of a reluctance on the part of many second-instance decision makers, removed from the pressures of the litigants themselves, sometimes hazy about the substantive law, and responding only to their own need for efficient docket-clearing, to decide cases on the merits. The problem is especially acute in the highly fact-specific context of urbanism and spatial planning, where there is genuine confusion about both the law itself and its application to particular fact patterns.

It is clear that with decent resources and good, knowledgeable leadership, improvements can be made in the quality and efficiency of second-instance decision making. USAID/ALPS focused considerable time on substantive and process-oriented training for many ministerial legal departments in the Federation, suggesting, in particular, ways to create tiers of cases based on complexity and to work out different work quotas. In the case of the Ministry of Finance, very capable leadership by the head of the department, combined with the acquisition of new staff and resources and the transfer of new customs and other indirect taxation cases from Federation jurisdiction to State jurisdiction, resulted in a dramatic drop in that Legal Department's caseload from a backlog of over 2,500 cases in spring 2004 to under 600 today, all of which are less than six months old. Reportedly, the department is deciding more cases on the merits and taking more seriously its obligation to provide better guidance to first-instance tax and other authorities. Elsewhere, workloads were, and continue to be, relatively manageable. Historical evidence suggests that pension case backlogs were sizable, but stable, and that once property return cases plummeted in number, there were no other major sources of backlog, in terms of time, other than urbanism cases. In most ministries, anywhere from two-thirds to three-quarters of all cases were typically affirmed.<sup>13</sup>

In general, the assessment team had the clear impression that improved training—procedural (European standards; writing clearer decisions, avoiding unnecessary or inappropriate remanding of cases to the first-instance), managerial (e.g., time management), and above all, substantive (in new and complex areas of law)—would benefit second-instance decision makers enormously. Such personnel continue to thirst for better, clearer guidance from judges about unsettled areas of law, and the assessment team heard from several people, particularly from the Federation, that contradictory, sometimes unprincipled, decisions from different cantonal courts were being handed down without adequate efforts to clarify and harmonize the law on the part of the Federation Supreme Court through its power to accept and rule on petitions for “extraordinary legal remedies.” At the same time, there is frustration with new legislation that appears without adequate prior discussion or consultation and without adequate explanation or guidance (including commentaries) from the drafters themselves or other substantive experts. While the two Entity judicial training centers have begun more thorough substantive training of judges in specialized areas, few such opportunities remain for ministry personnel. In the near term, donors could make a very significant contribution by offering the kind of cross training conducted by the ALPS project (which delivered such training and hosted workshops for judges, first- and second-instance decision makers, and practicing lawyers on several occasions in the areas of pensions, civilian victims of war benefits, and residential construction permitting).

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<sup>13</sup> In interviewing the head of the legal department in the RS Ministry of Labor and Veterans Affairs, the assessment team learned that as many as 90% of all appeals were confirmed, a somewhat suspiciously high number, but again, it is hard to generalize about the quality or grounds of decision making without examining a sampling of cases intensively. It is also worth noting, however, that this legal department receives a very manageable flow of only about 20 cases per month on appeal, to be handled by as many as three attorneys (although only two such lawyer positions were filled at the time of our visit).

## 4.4 COURTS AND JUDICIAL TRAINING INSTITUTIONS

As a whole, the judiciary in BiH has benefited significantly from impact of the new LADs adopted a few years ago. The two Entity Supreme Courts have been able to shed very large backlogs of administrative cases, and cantonal and district courts in the Federation and RS, respectively, have had the freedom to process such cases in a much more efficient manner, thanks to the elimination of mandatory three-judge panels and unnecessary oral hearings.<sup>14</sup> At the same time, the elimination of two judicial instances of right for administrative disputes has also allowed the two Entity judiciaries to further streamline their work in this area, and allowed them to focus more carefully on those legally grounded appeals (“extraordinary legal remedies”) that are deserving of being heard in the respective Supreme Courts. Reportedly, the Supreme Courts are turning away very few of these cases, as most are indeed appeals seeking relief on legitimate legal grounds or on the basis of gross procedural error by the lower courts.

While the two Entity Supreme Courts continue to have specialized administrative departments deciding on administrative cases, most cantonal and district courts only have two judges devoting some or all of their time to administrative disputes (in Sarajevo and Banja Luka, there are typically six such judges handling administrative disputes). These judges are typically part of the civil department of the court. In some courts, however, other judges are brought in to assist with heavier caseloads when needed. In Doboj, for example, a judge in the criminal department assists on a part-time basis with certain kinds of administrative disputes. The typical caseload seems to average between 22 and 30 cases per month. There is some concern about how the random case assignment features of the new case management software starting to be introduced into the courts on a pilot basis by the JSDP Project will be reconciled with the current case assignment specialization among a handful of judges in the smaller cantonal and district courts. In the meantime, by all accounts, these courts are keeping up with their workload; for example, in Doboj District Court, during the first nine months of this year, it resolved 132 cases and received 86 cases.

Nationally, overall efficiency in administrative disputes seems high, notwithstanding that the two Entity Supreme Courts are still addressing the large backlogs that exploded earlier in the decade. However, it should be noted that the head of the RS Supreme Court indicated that there are only 630 administrative disputes still pending at that court and that, by March 2008, the court will have resolved all of the backlog cases. The table below, based on High Judicial and Prosecutorial Council (HJPC) statistics, provides a fairly crude measure of how efficient the courts are, but it is instructive nevertheless in showing that the courts appear to be doing a very good job of handling their current caseloads.

	ALL COURTS	BIH COURT	BOTH SC	FED SC	RS SC
Beginning of year	18,140	1,560	9,032	6,306	2,726
New cases	9,492	1,902	853	598	255
Subtotal	27,632	3,462	9,885	6,904	2,981
Resolved	12,005	1,250	3,322	1,959	1,363
End of year	15,627	2,212	6,563	4,945	1,618

<sup>14</sup> There is still some controversy about exactly how and under what circumstances such hearings should be held pursuant to European Court of Human Rights jurisprudence and Article 6 of the European Convention on Human Rights. In general terms, such a hearing may be required if a proper hearing was not afforded within the public administration and there are important factual issues that should have been raised below.

	FED CANTON	RS DIST	BOTH		
Beginning of year	6,632	1,323	7,955		
New cases	5,133	1,825	6,958		
Subtotal	11,765	3,148	14,913		
Resolved	5,628	1,905	7,533		
End of year	6,137	1,243	7,380		

Note that the only court that took in more cases than it resolved was the BiH Court, which has jurisdiction over final administrative acts issued by executive departments of BiH and the Brcko District.

Even if efficiency has improved, it remains to ask whether the quality of judicial decision making has suffered as a result of the changes effected by the new LADs. This is a complex question, but given dire predictions that the cantonal and district courts would not be prepared to handle what are often more complicated administrative disputes originating from Entity executive agencies (as opposed to the municipal—and in the Federation, cantonal—agencies from which these courts already accepted appeals), the anecdotal evidence suggests that they are doing a competent job. There appears to be a fairly standard range of outcomes for administrative disputes in most of the district and cantonal courts, with roughly half or slightly more than half of the cases affirmed, and anywhere from one-third to two-fifths of the cases returned for further factual findings or other reconsideration due to procedural errors. Only about 5-10% of cases are decided on the merits directly by the courts. It has helped that customs and other indirect taxation cases have been removed from the jurisdiction of the Entity courts; what remains is a large number of sometimes complex tax cases. These cases may or may not be receiving good treatment in many cantonal and district courts, due either to their legal difficulty or the intrusion of local politics. The other difficult area is urban planning, where one might well expect certain district or cantonal courts to be out of their depth if judges in those courts had little experience with such cases.

The issues of specialization and training continue to loom large in the area of administrative justice. Regardless of the subjective opinions of judges, lawyers, and litigants about the quality of individual opinions, there is real concern that the changes occasioned by passage of the LADs (with the bulk of administrative disputes handled by cantonal or district court judges, many of them non-specialists) have left administrative law poorer as a field than before, with possibly significant long-term consequences for individual justice, EU integration, and perhaps most important of all, the investment climate in BiH and the confidence of the business community. The idea is that specialization is a critical concomitant of administrative justice in a modern democratic and market-oriented state, and that the dispersion of expertise among judges in the cantonal and district courts is liable not to keep pace with legal and economic developments in the years ahead. Moreover, administrative cases are often considered of lower prestige, with the result that judges are often harder to attract into the judiciary.

Most other countries in Southeastern Europe (and most European countries generally) have a separate Administrative Court and, of course, such courts existed in the former Yugoslavia (veterans of those courts now sit in the two Entity Supreme Court administrative departments). Although there are valid concerns about the unnecessary administrative and managerial costs associated with setting up a specialized court—and the HJPC in BiH seems loath to consider such a possibility<sup>15</sup>—both Slovenia and Macedonia have opted for this solution, and the costs have been far lower than expected. One way of

<sup>15</sup> It is unclear what all of the HJPC's objections may be, and whether it reflects a minority view or the view of a majority of the judicial leadership, but there is genuine reluctance to fragment the court structure and hierarchy beyond the basic civil and criminal branches, or to contemplate the additional administrative costs that might be required to establish a separate administrative court branch in a relatively small country like BiH. However, many other similarly small countries have embraced separate administrative courts (e.g., Slovenia, Lithuania, Estonia, Macedonia, Montenegro and Bulgaria).

keeping costs lower is to reduce the number of first-instance administrative courts, situating them on a regional basis (thus, in BiH, one might contemplate lower administrative courts in no more than two locations in the RS and three in the Federation). This is not something that is or should be addressed in the very near term, but it has a bearing on changes that BiH politicians and the HJPC might entertain in the coming years as a compromise position: namely, that within the regular court system, administrative judges be clustered in special units or chambers in a smaller number of regional locations at the district and cantonal court level, respectively, so as to cultivate the benefits of specialization and information-sharing. At the same time, creative ways should be explored to bolster the *esprit de corps* of administrative judges and ensure that they are not treated as second-class citizens (with respect to either monetary or non-monetary rewards).

Such specialization could have a very valuable effect on information-sharing and training. At present, systematic judicial training in general on a modern European basis is in its infancy. The two Entity-based Centers for Judicial and Prosecutorial Training are making huge strides forward in developing and presenting basic training for new and veteran judges, including offering a wide variety of courses for continuing judicial education purposes. They also offer training for judicial assistants. However, the training for new judges is still very much in a developmental stage. Last year, the RS Center had 61 separate activities and involved nearly 200 judges and 100 prosecutors. However, as may be surmised, setting aside important training modules on time and case management, only a very small proportion of that training was directly relevant to administrative judges specifically. Indeed, the only such relevant training was a short module on the RS LAP. At the same time, despite movement in a more case-study-oriented direction, many of the substantive courses are not directly focused on problem-solving. The last training offered of this kind for administrative judges, which was offered under the auspices of the training center, and involved municipal and ministerial lawyers as well, was organized by the ALPS Project two years ago. There is widespread recognition that this kind of training is desperately needed, but additional outside funding may be required in the short-run to launch it. The administrative law community right now is fragmented and starved for practical information and opportunities to discuss and solve problems collaboratively, particularly in complex areas like urban planning. There is an opportunity here for foreign donors to make a difference.

#### **4.5 OMBUDSMEN AND ADMINISTRATIVE INSPECTORATES**

In theory, both ombudsmen institutions in BiH and administrative inspectors should provide additional oversight of administrative decision making as a whole, and provide an impetus for improved accountability. In fact, both institutions suffer from inadequate stature, leadership, resources, and understanding of their roles. Although these matters can and will be addressed, probably only very slowly in the years ahead, these are not areas in which donor involvement will produce significant, cost-effective results.

There are ombudsmen at both the State and Entity levels, but only at the Entity level are matters of everyday public administration relevant in terms of the types and volume of matters addressed by the public administration (the State ombudsmen, which like other State institutions are structured on the basis of ethnic quotas, serve mainly to publicize significant human rights issues and are highly politicized). The Entity ombudsmen have a potentially more useful role to play, but tend to be highly reactive in their focus, and as a result, often get involved in high-profile individual cases rather than in the exploration of systemic structural problems involving public administration (although in matters of human rights and discrimination, they have often been highly effective and garnered significant domestic and international attention). In the near term, the ombudsmen will need to determine if they have the time and energy to make more mundane issues of public administration a focus of their work program. This could potentially happen in areas where administrative procedure and human rights more directly intersect, e.g., in areas

where decision making around pensions and civilian victims of war benefits have resulted in various forms (intentional and unintentional) of ethnic discrimination. Still, the Entity ombudsmen are not powerful political players and, as such, must rely on other groups (NGOs, donors, etc.) to help make their case for them.

As for the administrative inspectorates, there are, in fact, such inspectorates housed in the Ministries of Justice at the State and Entity levels and in Brcko District. Here, too, with respect to everyday public administration touching on the vast majority of the population, only the Entity Administrative Inspectorates are truly relevant institutions. However, as the ALPS Project found to its deep dismay, the inspectorates, officially charged with ensuring conformity of the public administration with the LAPs,<sup>16</sup> are severely under-resourced and totally lacking in both leadership and a strategic management orientation. An outgrowth of Austrian public administration, the administrative inspectorates were, and are, an anomaly in the socialist and post-socialist world, being limited exclusively to the former Yugoslavia. In Slovenia, they have been upgraded and given a systemic mandate to work in cooperation with ministry human resources administrators and the Ministry of Public Administration on administrative decision making. However, in BiH, they tend to focus almost all of their energies on individual workplace disputes and working conditions, and are now years behind in producing accurate statistical reports on the timeliness of administrative decision making in the Entities.<sup>17</sup> The inspectors lack any kind of stature within their own Ministries of Justice, much less within the Entity governments as a whole. The administrative inspectors do not constitute a fruitful target of donor assistance for the foreseeable future.

#### **4.6 CIVIL SOCIETY GROUPS AND VASA PRAVA LEGAL AID**

There are three major groups of civil society organizations in BiH that have the capability and interest to influence the quality of public administration and some of the issues specifically pertaining to administrative law. These are (1) civic groups that have a defined interest in good governance; (2) Entity and regional chambers of commerce, which appear to be the only business groups capable of having a sufficient encompassing interest in the same (rather than in industry- or sector-specific matters); and (3) legal associations or legal aid groups that have a significant proportion of their clients' cases before administrative agencies. As discussed below, at the present time, only the third group—in the form of the legal aid organization *Vasa Prava*—has the specialized knowledge and sustained societal interest to truly serve as a force for change in the administrative law arena.

Today, civil society organizations are still remarkably weak and fragile, and only beginning to form real coalitions and focus systematically on a handful of key problems. Although there are naturally many issue-oriented NGOs that have identified problems with the state of public administration in BiH (albeit often viewing these issues solely through the narrow lens of whether or how it affects their ability to obtain something of benefit from government), there really are only a very small handful of NGOs with an encompassing interest on good governance and state-civil society engagement. These are the Center for Civic Initiatives, the Center for Civil Society Promotion, the Center for the Promotion of Civic Friendship, and Transparency International. In 2005, the Center for Civil Society Promotion saw the need for an overarching civil society promotion coalition that would emphasize collective civic empowerment.

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<sup>16</sup> They also have responsibility for checking on work conditions, rule books, and other human resource policies in the public administration, creating potential duplication and/or conflict with the role of the civil service agencies in the country.

<sup>17</sup> Even in Macedonia, where one of the assessment team members conducted an administrative law assessment for the World Bank, the Administrative Inspectorate has continued to produce such reports and attempt to respond to major structural or sectoral problems.

Within a year, the organization had joined with the other three groups and a handful of others to establish GROZD (*Grazhdansko Organizovanje Za Demokratiju* [Citizens' Organization for Democracy]), a 60-organization coalition dedicated to building democratic culture and citizen engagement. While GROZD has made tremendous strides in putting generalized civic demands before politicians based on its well-known 12-point platform that gained attention during the 2006 elections, it will be quite some time before the organization has the time or willingness to devote particular attention to the one issue relevant to administrative law in BiH, namely “better organized and more effective services delivered by the public institutions.”<sup>18</sup>

As for business groups, chambers of commerce have been lukewarm in their advocacy for improved public administration as part of a more attractive investment climate. While USAID projects have mobilized the chambers to become active members in specific good governance activities (most notably, inspectorate reform and the streamlining of certain business registration and permitting processes), there is as yet very little consciousness of the importance of policy and procedural regularity (the quality and consistency of regulation) as a dimension of good governance—equally, if not more important than, mere efficiency and administrative barrier removal.

Legal groups, including bar associations, associations of judges and the like, should provide an important constituency for administrative law reform. However, these groups by and large mobilize only around issues that affect all of their members or more directly touch on their everyday concerns, such as matters of funding, salaries, access to free legal aid, and professional certification. At the same time, as there is no immediate crisis with administrative law (the removal of the huge Supreme Court case backlog and huge drop in the numbers of property cases put an end to the last crisis), it is difficult to capture the attention of legal professionals concerning this topic. The only group, therefore, that has a consistent day-in-and-day-out-interest in the shape of administrative law in BiH is *Vasa Prava*, the clientele of which is overwhelmingly concerned with such matters as public benefits, property return, and citizenship and residency issues.

*Vasa Prava* has enormous credibility with the public and, increasingly, with politicians and higher government officials. They know that the organization operates nationwide, spanning all regions and ethnic groups, is scrupulously nonpolitical, and is filled with (mostly) highly talented young and not-so-young attorneys. With assistance from USAID, the organization increasingly complemented its individual case representation of indigent clients with impact advocacy and litigation focused on some of the most common problems faced by those clients—as a matter of both material and procedural law. *Vasa Prava* brought important test cases before administrative and judicial tribunals, advocated for structural internal procedural changes within agencies that would provide more efficient and transparent case processing for their clients, and threatened the use of disciplinary sanctions against administrative officials who persistently refused to provide information or render decisions in a timely fashion. All of this unfolded against the backdrop of an 18-month media campaign that made citizens aware, in plain language, of their administrative procedural rights—from the right to see their case files to the right to a timely decision within the prescribed 60-day deadline under the LAPs. At the same time, the organization participated in—and in a few cases even led—training sessions and workshops on topics such as civilian victims of war benefits and residential construction for municipal officials.

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<sup>18</sup> In 2006, GROZD came up with the novel idea of creating a fundamental civic platform that could galvanize its membership, draw the attention of the public, and become a focal point for demands on, and requests for information from, politicians and public officials up to the year 2010. To many people's surprise, GROZD's efforts struck a chord in the 2006 elections, as not only did half a million citizens sign petitions backing the platform, but many newspapers and citizens were heard to seek politicians' views around the platform.

In the last two years, the group has won itself a seat at the table in the working group on drafting a free legal aid law, and testified in Parliament on several occasions regarding pension reform and civilian victims of war benefits matters. It also published an analytical report, *On the General State of Public Administration in Bosnia and Herzegovina*. Although some of its media and analytical work has been curtailed due to a drop in funding from USAID and other donors, and although it has lost over a quarter of its lawyers due to budget issues over several years, it still can be counted on to undertake some of the impact advocacy work that has brought it increasing notoriety and respect. USAID would do well to ensure that the group is part of any administrative law reform activities it may support in the years ahead, particularly with respect to (1) training and workshops on particular subjects; (2) media and public education efforts; and (3) analytical and investigative work on especially complex legal matters such as residential construction issues (as noted above, the imminent legalization of such construction through a specialized procedure beginning in 2008 may make the organization's involvement essential).





# 5.0 PROGRAMMING RECOMMENDATIONS FOR THE ADMINISTRATIVE LEGAL SYSTEM

## 5.1 OVERVIEW

The administrative legal framework in BiH is adequate, and only a relatively few number of changes are needed in the individual laws to effect greater efficiency and better integration with modern European practice. However, the team agrees with the overall recommendation by the PAR Coordinator that integration or harmonization of the laws on administrative procedure and administrative disputes among the State, the Federation, the RS and Brcko is advisable, most probably with European expertise.<sup>19</sup>

With some rare exceptions (e.g., urban planning, a few areas of public benefits processing), administrative case processing appears to be improving and there is no sector that is in crisis as a matter of efficiency. That may change in the area of urban planning in the next few years as a result of Entity-level initiatives to legalize vast amounts of illegal construction over the past 15 years, but the general trend is toward a reasonable degree of efficiency across the public administration, notwithstanding the fact that 60-day deadlines for decision making are often not met. There are, however, fairly significant continuing problems with the quality and transparency of administrative decision making. Citizens are still immensely frustrated by a lack of understanding of procedures, of their rights to obtain and provide information with respect to applications and petitions before administrative agencies, and the lack of clear justifications and explanations for decisions that are rendered by the public administration. Municipal, cantonal, and ministerial decision makers lack adequate expertise and training in both substantive and procedural matters, particularly where different material laws and different procedures come into conflict.

While the overall capacity of public servants can be expected to improve gradually over the next several years through the continuing efforts of judicial reform and municipal governance projects and halting progress by the PAR initiative, the specific procedural problems of administrative decision making are likely to be neglected without attention being paid to training and problem-solving of a highly practical nature. That is, general professionalism and transparency may continue to improve, slowly, in particular

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<sup>19</sup> *System Review of Public Administration of BiH*, pp. 223-225.

pockets of the judiciary and the public administration (most likely at the municipal level). Without a focus on legality and procedural regularity in administrative decision making in particular, however, individual citizens and the business community will continue to lack confidence in public administration, with unfortunate consequences for economic development and efforts toward ultimate EU integration. This is particularly true of continuing problems with cases being decided on the basis of unembellished form templates, not being accompanied by clearly written or legally justified decisions, and/or not being decided on the merits—so that appeals go up and down the various instances in the public administration with no definitive resolution. To tackle this problem, an administrative law intervention may be required that has a clear, intensive, sectoral or issue-oriented focus (to provide both concreteness and targeted demand-side pressures) and that directly addresses both the lack of clarity in the law (which may require legal revisions and streamlining) and the need for the relevant public administration authorities and the courts to work together to produce fairer, more transparent, and more reasoned decisions in a timely manner. This kind of approach, if implemented properly, could have an important demonstration effect and prove replicable in many of its features.

## 5.2 RECOMMENDATIONS

The team considered three alternative recommendations to USAID: 1) whether USAID should refrain from devoting additional resources to administrative law reform in BiH; 2) whether USAID should provide additional resources to administrative law reform by integrating individual components into existing USAID programs; and 3) whether USAID should support a modest stand-alone program devoted to developing the administrative law structure within BiH. For the reasons discussed below, the team recommends a stand-alone program, but only if there is a substantive anchor for the work of the activity. The team agrees that this anchor should be the legalization of illegal construction, which may test the administrative capacity of municipalities in BiH beginning 2008 and continuing through 2009 and beyond. If that anchor proves problematic for any reason—due to coordination issues, resource limitations, or technical complexity—USAID should still explore whether another such anchor, such as pension reform or civil service reform, might serve the same purpose.

The assessment team has summarized below an approach consisting of several different possible interventions that could help to strengthen the government apparatus in BiH to be more efficient, fair and accountable. The team recognizes that aspects of this approach would need to be closely coordinated with other ongoing initiatives that bear on administrative and judicial decision making in BiH, such as the PAR initiative; justice reform programs being implemented by USAID, CIDA, DFID, and others; the GAP Project; and a variety of civil society support efforts. The approach outlined below, however, should complement and enhance the effectiveness of these programs.

Key to the success of this approach is situating it in a sector, or around a problem, that is highly visible and will generate genuine and organic societal demand. In this case, there is an opportunity for USAID to get involved at the very onset of a societal problem—legalization of illegal construction—that is not only highly visible, controversial, and complex (both technically *and legally*), but is not, to the team's knowledge, going to be addressed from a legal and decision-making perspective by any other donor. It is also an issue that will be vexing for the country for an extended period, especially if not targeted effectively for reform. Although the GAP Project is reportedly seeking to provide general organizational and resource support to selected municipalities' urban planning departments in processing such legalization applications, there is no specific focus envisioned on substantive urban planning issues or on the many substantive conflicts in law that plague this area of public administration. The SPIRA project has achieved some traction with construction permitting reform in the RS, but is not focused on illegal construction *per se*. By the same token, there is also no targeted assistance, in these projects or others, aimed at improving the *process of administrative decision making* at the local level, nor is there obviously

any assistance focusing on capacity-building for second-instance decision makers (mostly the legal departments of Entity urban planning ministries) or judges handling administrative disputes.

An integrated stand-alone administrative law project tackling the improvement of administrative decision making in a vertically comprehensive way in both Entities—using the lever of an issue that is both politically and socially important and a big problem for the administrative law system as a matter of both efficiency and fairness—offers a coherent focus for a DG intervention that may have important demonstration effects in the coming years. In particular, it furnishes a real opportunity for demand-side pressures to be brought to bear on policymakers and decision makers—pressures that are usually weak or absent in BiH. These demand-side pressures could include major stakeholders as diverse as civic groups, business associations, and the legal aid group *Vasa Prava* (which has already made illegal construction an area of priority attention over the past several years due to the large number of indigent clients who have themselves built dwellings illegally or been so harmed by others' illegal construction). At the same time, there are other demand-side pressures that can be mobilized among legal and other professionals responsible for navigating the legal morass created by such illegal construction, most notably municipal urban planning experts. Such individuals, as well as second-instance decision makers and judges responsible for administrative cases, have already demonstrated their enthusiasm for joining together under the ALPS Project to address thorny substantive and procedural problems in administrative law. More importantly, these professionals are keenly aware of the need for a better understanding in interpreting and revising the legal framework and processing illegal construction cases, which threaten to clog multiple levels of the administrative legal system in the years ahead.

There are feasible ways to focus this kind of integrated project in such a way as to avoid conflict with other projects such as SPIRA or GAP—both by concentrating attention on the substantive and procedural dimensions of the illegal construction subject specifically, and by selecting a handful of municipalities with higher volumes of cases to anchor the first-instance decision-making, capacity-building activities. These efforts could be replicated if successful. Similarly, it appears feasible to channel capacity-building assistance and training for civil servants to the Entity agencies responsible for civil service strengthening without running afoul of either the PAR initiative's encompassing mandate or broader capacity-building projects like that of DFID in the RS. The same would hold true for judges—they would be provided technical assistance and training that focused specifically on administrative disputes. Insofar as the primary emphasis would be on second-instance decision makers and judges handling administrative disputes, respectively, and illegal construction topics would be used as the primary learning vehicle, there should be little concern about programmatic interference or conflict. In the meantime, to the assessment team's knowledge, no other donors are remotely addressing the quality of administrative decision making (although the PAR initiative may ultimately get around to doing so in the relatively distant future).

Notwithstanding the foregoing, if a decision were made by USAID to incorporate most, if not all of this kind of project into an existing project vehicle, the best such vehicle would be the SPIRA project. Not only does SPIRA have the technical expertise and professional contacts with most of the key administrative legal system players involved in such issues (although its contacts with municipalities and the courts are concentrated in a very few venues), but the project has increasingly become involved in matters of procedural fairness and predictability—matters central to administrative legal reform.

The kind of project discussed above could be expected to have an important impact in several ways. First, it would simultaneously address a major social issue touching the lives of people at all levels of society and a major administrative law problem—in terms of both difficulty and efficiency. This concreteness is often missing in DG projects whose substantive targets are overly diffuse or abstract, or are aimed at the highest levels of government. Second, it would likely result in better and more practical training and capacity-building assistance to all levels of the administrative law system precisely because of its societal importance and urgency, as well as its defined subject matter focus. Third, it could have important ripple

effects on capacity-building in the administrative law system generally, both among civil servants and judges. Finally, it could assist the efforts of a number of civic groups, especially the GROZD coalition, to mobilize public opinion in a more focused way around public administration shortcomings. That, in turn, could lead to more confidence on the part of public officials and the public that better democratic governance can be slowly but steadily built in the country.

The components listed below comprise the integrated administrative law project contemplated by the assessment team. As noted earlier, these components could also be integrated separately into other programs, in which case the substantive focus on illegal construction and administrative law would ensure its complementarity. In either case, the components are ranked in the rough descending order of their importance to improving the overall administrative legal system in BiH. Although another substantive focus might be contemplated by USAID in an administrative law project, it is doubtful that an area other than illegal construction would feature such legal complexity, produce such large numbers of cases, or interfere as little, relatively speaking, with other donor programs.

### 5.2.1 Strengthen Executive Agency/Sectoral Decision Making

**ANTICIPATED RESULT:** *Demonstrated progress in administrative decision-making capacity will be achieved in a concrete area of law—legalization of illegal construction—with important societal impact and visibility that impacts all dimensions and levels of the administrative legal system, thereby generating important demonstration effects.*

The executive agencies in both the RS and the Federation have been left to their own devices to develop administrative procedures to exercise administrative powers and functions. The laws on administrative procedure in both Entities provide extensive guidance on how to process administrative requests. Compliance has been improving, with some executive agencies showing better performance than others. In this activity, the proposed approach will select several executive departments in both the Federation and the RS with which to work on the construction legalization process—to ensure compliance with administrative procedures from the initiation of an application to the disposition of the application, including any repetition of the administrative proceeding after remanding of the administrative act by the second-level proceeding or a court of competent jurisdiction.

Although USAID could, upon further research, choose another area with significant societal importance to anchor its programming in this area, the assessment team believes, for the reasons stated above, that none is as important, complex, or urgent as the upcoming construction legalization issue. Working on this topic offers USAID the opportunity to get involved virtually at the beginning of the legalization process—something that cannot be said of many other substantive areas of law that are otherwise socially significant such as pensions, labor benefits, or tax.

Based on interviews that the team conducted, legalization of construction will require a substantial effort in several municipalities throughout BiH. In Banja Luka alone, there are from 15,000 to 20,000 illegally built structures. The City Assembly in Banja Luka enacted in October 2007 a Decision on Legalization of Illegal Construction. The City Administration is now familiarizing citizens with the Decision on Legalization of Illegal Construction and preparing to receive such applications or requests for legalization starting on January 1, 2008. In Banja Luka, by way of example, the window for submitting applications will remain open for six months, after which the citizens will have no right to submit an application or request for legalization. This Decision will enable legalization of illegally built structures in the town area that had been built prior to aerial photography (i.e., by June 18, 2004). The Department of Urbanism expects that it will have to handle a wave of applications starting on January 2008 through the deadline on June 30, 2008, as many as 200-300 applications or requests per day for legalization. Although the

majority of these applications will be uncontested, there will be a number of disputes—as many as a third of the applications, according to one source. Disputes that may arise from the legalization process will likely relate to unresolved ownership issues (real estate affairs), and will present an enormous challenge in BiH over the next few years. The timing of the application process will differ from jurisdiction to jurisdiction, since the framework legislation dates from 2006 in the entities. Implementation of subordinate legislation (some of which has not yet even commenced) will be crafted by each municipality in the RS and each canton in the Federation, which means that the legalization process will proceed in “waves,” presumably stretching into 2009 and beyond.

This expected spike in legalization applications in Banja Luka and other municipalities throughout BiH provides an opportunity for a new activity to have an immediate impact on how administrative applications are processed in BiH. This proposed approach can work well with the GAP II project. GAP I made very significant strides in improving municipal governance transparency and professionalism (particularly through case management/tracking software and citizen service centers). Focused and tailored training for municipal officials on administrative legal issues such as in these departments of urbanism could pay significant dividends in terms of further improving procedural compliance. Some municipalities, including Banja Luka which is quite professional and well-resourced, still have a long way to go in fulfilling their obligation to collect all or the most official documents required to make a decision, as required by the LAP. Municipal officials could also benefit in key principles of modern European administrative legality, particularly those addressing matters of proportionality as well as the opportunity to be heard relative to Article 6 of the European Convention on Human Rights.

We recognize that focused sectoral approaches to upgrading public administration and administrative procedures are difficult because of overlap with other substantive reform programs, particularly on the EG side of the aisle (e.g., SPIRA, ELMO, etc.) or on the part of other donors (e.g., World Bank relating to pension reform), but also because of problems with weak ministerial leadership, insufficient public demand, or changes in circumstances based on program development lag times (severity of problems/statistics or political context may change relatively quickly). Nevertheless, we think that working closely with GAP II will provide an opportunity to focus on one area that will have the largest impact.

Since the selection of the executive agency is a critical determining factor in whether this activity will be successful, the proposed approach should work with USAID to choose the executive departments throughout BiH after it commences. One major criterion to determine which agencies to work with will be the activity’s assessment of the political will of the key officials in the agency. The project should develop a memorandum of understanding between USAID and the agency to clearly define each party’s respective responsibilities to facilitate the activity.

The proposed activity will work with the executive agency on several activities to expedite processing of the administrative action. These activities may include developing a case tracking system, including deadlines and assignment of the action to the appropriate executive agency official, collection and use of statistical data on case processing, standards for processing the application, training on writing effective second-level decisions, and preparing reports in compliance with the requirements of the law on administrative procedures. The activity will work with the executive agency to develop a manual of procedures for the personnel of the executive agency. It will be intensive and extensive to highlight the ability of the executive agency to expeditiously process administrative actions in a transparent manner.

## 5.2.2 Improve Judicial Competence in Administrative Law

**ANTICIPATED RESULT:** *A better trained and more capable cadre of judges specialized in administrative law matters, who have been neglected thus far in training and technical assistance activities, and whose judgments are important to economic development and the future development of a modern regulatory state in BiH.*

Courts have likewise made big strides in greater professionalism and training, but much more could be done to render more consistent cantonal and district court administrative dispute handling in the Federation and RS, respectively. There is still a lack of adequate training and guidance for judges from these courts by the administrative departments of both Entity Supreme Courts. Both Entity training centers could raise the profile of this kind of training.

Because of the recent amendment in the Law on Administrative Disputes in the Federation, the backlog at the Federation Supreme Court has shifted to the cantonal courts. We understand that some officials hearing administrative matters at the second level have different outcomes for administrative disputes with identical facts. There is a keen need to unify practice between the cantonal courts in the Federation. The new activity should provide support to judges hearing administrative disputes to harmonize the outcomes of cases with similar issues of fact and law. There are several activities that may assist judges in deciding administrative disputes with similar facts and laws similarly irrespective of the cantons in which the dispute is pending.

The first activity is to provide judicial training to those judges who handle disputes throughout the country. This training should be provided Entity-wide so that administrative judges are able to discuss disputes and learn from one another. It would be desirable to have this training conducted under the aegis of the judicial training programs in each Entity. Trainers from other countries may supplement the efforts of local judge-trainers. The training activity should include the requirements of the European Convention for Human Rights, which imposes requirements on signatory countries in processing and deciding administrative disputes. It may include a mentoring component under which judges from other countries may come in for short stays to work one-on-one with judges from BiH. The trainers will develop written training materials for all training activities. Illegal construction should be a key topic focus of the training materials and modules.

The second activity is to develop a desk book for judges for easy reference in handling administrative disputes. A neighboring country has already developed under a USAID program a similar desk book that can be used as a model for desk books in the RS and the Federation. The desk book will cover topics such as initiating an administrative dispute, administrative dispute proceedings, decisions, extraordinary legal remedies, and other topics.

The third activity is to develop practice materials for judges. An editorial board made up of judges handling administrative disputes may select cases from the previous years and synthesize the cases for distribution to all judges handling administrative disputes throughout each Entity. These materials should also be distributed to executive agencies, the ombudsmen, attorneys, NGOs and any other interested citizen. Eventually, they should be made available on a website for the courts.

## 5.2.3 Provide Grants for Impact Advocacy and Litigation

**ANTICIPATED RESULT:** *Credible demand-side pressure will be brought to bear on particular agencies that are the focus of supply-side administrative decision making assistance from USAID or other donors, so as to ensure adequate visibility, benchmarking, and accountability.*

Any approach to improving the quality of administrative decision making in BiH must include not only greater public awareness from the demand side, but real, focused pressure from those organizations that have the expertise, stature, and media savvy to seek to enforce effectively individual administrative rights. *Vasa Prava* has demonstrated its ability to do this most successfully through a combination of advocacy, media work, training and consultations with administrative officials, lobbying of politicians, and sustained impact litigation work (including invoking the threat of disciplinary sanctions against recalcitrant bureaucrats). This kind of work should be continued on its own merits, but particularly to ensure that any USAID initiative has adequate demand-side pressure brought to bear on particular agencies or the various levels of BiH public administration as a whole. This approach ensures that while there may be gaps in agency compliance, impact litigation and advocacy can be effective checks on agencies' non-compliance with administrative procedures. Accordingly, this approach should provide grants to one or more NGOs to provide legal assistance to claimants who are otherwise unable to prosecute their rights with an executive agency. Grants could also support focused training and public education efforts. Precisely because *Vasa Prava* has extensive experience with the illegal construction topic, this should be an effective area in which to mobilize public support and engage in focused advocacy and litigation work. Several other civic groups have the capacity to do similar advocacy work in this area, including the GROZD coalition.

#### **5.2.4 Raise Public Awareness of Citizens' Administrative Rights**

**ANTICIPATED RESULT:** *Bringing public awareness of correct expectations for administrative decision making to a new level that would form a strong societal accountability backdrop for other potential components of an administrative law initiative.*

The approach should develop a public awareness program, under which citizens will be informed of their rights and how to exercise their rights in administrative proceedings. This component would work with local NGOs (including *Vasa Prava*, which has deep experience in this area, and perhaps the GROZD coalition) to ensure that this message reaches specific target groups. There is a rich foundation of work under the ALPS Project that this work could build on. The component would be responsible for training representatives of the NGO to craft its message for specific target groups. The NGOs should then be responsible for dissemination of materials and presentations before various interest groups. The public awareness program should include all media, including television, radio and the print media. It should also include pamphlets and other materials geared specifically to various groups, such as pensioners.

#### **5.2.5 Assist with Civil Service Capacity-Building in Administrative Law and Administrative Decision Making**

**ANTICIPATED RESULT:** *Better training and technical assistance for key administrative decision makers through the PAR initiative and through special facilitated workshops and problem-solving sessions—many of them including judges and knowledgeable practicing business and NGO lawyers—will build up a cadre of professional, responsible experts and trainers, as well as a community of more modern European-trained administrative law professionals that has not existed previously.*

In terms of openings and political leverage, local governments offer significant opportunities for influential training programming in the areas of administrative decision making and procedural transparency and consistency. There is also an opportunity for providing training through the PAR initiative. The team is mindful that any initiative in the area of administrative procedure must cooperate and coordinate closely with the PAR initiative. The team recognizes that there is a weak buy-in to the

PAR process. As a matter of political leverage and demand, there is weak buy-in regarding Entity-level public administration reform at present. The PAR process is disorganized and lacking in sufficient donor leadership; moreover, it lacks adequate local stature and leadership at the Cabinet level—via, e.g., a State Ministry for Public Administration, with potential parallel structures at the Entity level. It will take time for public administration efforts focused specifically on administrative procedure to take hold; likewise with standardized, across-the-board civil servant training. Nevertheless, despite its shortcomings, the PAR process is the only game in town and although support is halting at best, the PAR process will proceed. The approach outlined in this report intends to supplement the PAR effort and to integrate activities into that effort.

PAR will undertake a major initiative in training civil servants in both entities. The United Nations Development Programme (UNDP) is completing a feasibility study on a new training institute for civil servants. According to PARCO, in the Federation, municipal workers are civil servants, but not in the RS. The new institute will include training for the ministries, but not for local-level public workers. Consequently, the activity we recommend may undertake training for municipal workers outside the training institute for civil servants, but the activity should train under the aegis of the training institute for ministry-level civil servants.

In the Federation, the Civil Service Agency has already commenced ad hoc training programs on administrative procedures. The Federation Civil Service Agency has five offices that survey civil servants to determine the needs of a training program. They then forward the training proposals to the main office, which in turn approves of the training. According to the Civil Service Agency in Zenica, UNDP has provided some limited funding for a two-day session on the law on administrative procedure, but the desire of civil servants well exceeds the capacity. In the Zenica area alone (which includes two cantons), there are over a thousand civil servants that need this training.

Our recommended approach will provide training to civil servants of the Entities and the State on processing administrative matters, with a substantive focus on the illegal construction topic where possible. The participants will be provided rigorous training on the provisions of the law on administrative procedures, specific provisions of that law relating to communication and notices between the executive agency and parties to the proceedings, evidence in administrative proceedings, authority to make a decision, procedural rules and deadlines for processing administrative matters, decisions reached within the administrative proceedings, shortened administrative proceedings, regular administrative proceedings, the requisite components of a decision at the first and second level, and extraordinary legal remedies. In addition, if both representatives from the first and second level will attend, then they may be able to resolve communication issues in practice and come to conclusions that would help them in resolving and overcoming disputable and unclear issues.

The training should be provided through an institutional counterpart, such as the Federation Civil Service Agency, or eventually the Civil Servant Training Institute for ministry-level civil servants. The team anticipates that, with the contemplated public administration reform, there would be renewed effort to develop an institutional training capacity for civil servants, which currently does not exist. The approach will assist the training center in providing training throughout the country for civil servants who process first- and second-level administrative matters. The team has not been able to determine the number of civil servants who would fall within this target group, but anticipates that the universe of civil servants in this category will be in the thousands. This group should be disaggregated into sub-groups by agency and by level. Accordingly, those civil servants that process pension applications at the first level should be trained separately, but those who process second-level claims should also be encouraged to attend, to foster communication and understanding between the first and second level.



The proposed approach should encourage cross-training so that judges who handle administrative disputes should provide training alongside executive agency personnel. A major problem in BiH, as elsewhere among the transition countries, is excessive compartmentalization and mutual distrust caused by a lack of systematic communication and information-sharing. There are currently no training materials for civil servants. Consequently, there should be separate training materials for every group. Some of the materials will be identical, such as the general provisions of the law on administrative procedure. Other materials in the training manual, however, should be tailored to the executive agency for which the training participants work. These training seminars should generally be one- to two-day seminars in cities throughout the Entities.

While it may prove administratively difficult for USAID to coordinate properly with the PAR initiative, the assessment team believes such assistance would be welcomed, and that little direct conflict, if any, would occur largely because USAID would be out in front with such efforts. The only important thing for USAID to keep in mind is the need to have mostly European trainers steeped in European public administration training initiatives at the head of such activities.

## 5.2.6 Upgrade Administrative Legal Framework

**ANTICIPATED RESULT:** *A more modern, fair and transparent legal framework governing administrative applications, petitions, appeals, and judicial review that is easier for administrative decision makers to apply correctly, and that is consistent with modern European standards.*

The laws on administrative procedure in BiH, though solid, are essentially decades old and have not been critically revised. As discussed in a previous section, there is no urgent need to make major amendments to these laws, but as discussed in the team's analysis, there may be some areas that policymakers want to revisit and make recommendations for changes to these laws. We expect that European assistance under PAR will take the lead in this effort, particularly given EU integration imperatives, the importance of European jurisprudence, and the fact that the Public Administration Reform Coordinator's Office (PARCO) has already identified administrative procedure reform as one of six major areas of reform assistance.

Moreover, whether or not legislative changes were undertaken with or without USAID assistance, there is a need for more learned commentary on both the LAPs and the LADs. The activity we recommend should take the lead in developing these commentaries. Unlike other countries in the region, there is no current commentary on the laws on administrative procedure, although there was a commentary on the Yugoslav law. A practical commentary of the laws on administrative procedure written by a local working group with possible assistance from regional experts would provide a good foundation for the other components of USAID's approach to administrative law reform. It will assist trainers in developing training materials geared to the major issues in the law. It will assist the public awareness program in providing accurate information. In addition, as the working group is writing the commentary on the laws, they can also keep track of areas that may need additional legislative attention. At the end of their work, the working group may provide a list of issues that need to be addressed in any amendments to the laws on administrative procedure. The same thing could be done with respect to the LADs.

Two subordinate areas for legal framework assistance could be additional USAID support for the facilitating the practice of public consultation in drafting and adoption of new regulations or decrees, and assistance in drafting some kind of affirmative information provision legislation, perhaps at the State level. As to the first area, USAID could provide such assistance through the JSDP or a successor initiative. Already the MoJ is being looked at as a leader in this area and its responsibilities at the State level generally are expected to grow in the future. Regarding the second area, such an affirmative access

to information approach could serve as a model for other levels of government, including the municipal level (where such efforts have already been started on a case-by-case basis through the GAP Project). At the State level, USAID could help with the drafting of such legislation and utilize the State MoJ as a pilot venue for implementing such provisions.<sup>20</sup>

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<sup>20</sup> Not only is the State MoJ pioneering a more transparent model of public administration at the State level through use of the CoM drafting rules, but it also has a strategic approach to public relations and website development that would dovetail well with an affirmative approach to information provision.

# 6.0 UTILITY CASE BACKLOG

The assessment team analyzed the issue of the enormous number of utility cases that are clogging BiH courts, particularly the municipal courts in the Federation. As of the end of 2006, there were almost 1.08 million registered utility cases pending in BiH courts, of which 1.05 million were pending in the 28 municipal courts in the Federation—and of these million cases, 800,000 were pending in one court, the Municipal Court in Sarajevo. Proponents of utility case reform in BiH have advocated a variety of approaches to solve the problem, including 1) privatization of the utilities, 2) improved enforcement through the creation of an enforcement agency, and 3) legislative action. In this section, the team discusses the issue of the utility case backlog from the perspective of the major stakeholders and why the burgeoning backlog of utility cases will continue to persist without legislative intervention. The assessment team concluded that there is no political will for privatization in BiH and that creation of an enforcement agency would serve only to mask the underlying structural and institutional problems that are causing the backlog; therefore, it is not the preferred approach at this time.

## 6.1 THE CUSTOMERS

Consumers generally use the services of seven major utilities: telephone, electricity, gas, water, heating, garbage and maintenance. Although there are no data on the source of the utility cases overloading the courts, most of the people with whom the team met suspected that the major source of these cases was from water and heating companies. The other utilities generally have good leverage in requiring their customers to pay. The electric and gas companies, for example, can readily disconnect service, but the water and heating companies cannot disconnect service to buildings in which the water and heating are not separately metered. According to a previous 2005 USAID project report,<sup>21</sup> there are 5,100 of these buildings in Sarajevo.

The heating company in Sarajevo keeps good records on their customers and shared with the team the following statistics: the heating company in Sarajevo has 51,385 current individual customers, of which *41% are currently delinquent* representing 42 million KM in amounts owing. Approximately 5,600 customers, or 11% of the customer base, owe 69% of the arrearages.

## 6.2 THE UTILITY COMPANIES

To deal with this perennial problem of non-paying customers, the utility companies have resorted to the courts. The utility companies have a one-year statute of limitations to file against individuals, and three years against legal entities. To protect their rights against their customers, the utility companies routinely file a multitude of lawsuits. The heating company in Sarajevo files cases twice a year against individual customers to protect its rights against the one-year statute of limitations. Each filing includes approximately 10,000-13,000 cases.

According to judges in the Sarajevo Municipal Court, the utility companies do not endeavor to contact customers before they actually file an action in court. The filing of these actions consists of delivering a

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<sup>21</sup> Fostering an Investment and Lender-Friendly Environment (FILE), "Practical Solutions for Intractable Problems: FILE's Comprehensive Court Report and Recommendations for Bosnia and Herzegovina," (hereinafter the FILE Report).

box of computer-generated invoices to the court. The utilities are required to pay a filing fee on a sliding basis, with a maximum of 5% of the amount owed. The filing fee is due at filing of the action, but in practice, according to several sources, not paid until some later time. This leaves the courts trying to collect the fee, sometimes with the assistance of the municipal tax administration. Judges with whom we spoke at the Sarajevo Municipal Court were of varying views regarding when utility companies pay the filing fee, but once the court fails to collect the fee on filing of the action, the burden shifts to the courts to attempt to collect the fee. In any case, the filing fee does not cover the transactional costs of the court for handling the case.

Some utility companies have undertaken efforts to collect on these debts. While the team was in Sarajevo, the heating company of Sarajevo placed a full page advertisement in a local newspaper “exposing” 160 of the most delinquent debtors owing a total of 1.5 million KM. The heating company shared a chart showing the status of some 180,238 cases filed over a 10-year period, of which, according to the heating company’s records, 56,641 (31%) have been closed. According to these records, another 31% of the cases are in the courts with a pending request for enforcement, and in 55% of the cases, the court has entered a decision for enforcement but there has not been any payment.

The heating company attorney also told the team that there was a law prohibiting the sale of an apartment without the seller showing that all utility bills have been paid. She indicated, however, that some sellers have been able to circumvent this law. She indicated that better compliance with the existing law would decrease the number of outstanding delinquencies. The team attempted without success to confirm that there indeed was a law prohibiting transfer without payment of all outstanding utility bills, but according to one source associated with the municipal court in Tuzla, that there was no law, simply a practice of some municipalities.

According to the heating company’s representative, the heating company endeavored to expedite filing of cases as far back as 1999, by agreeing with the Sarajevo Municipal Court to submit multiple hard copies and only leaving room for the judge’s signature for enforcement. Although this procedure may have been used for a short time, it was abandoned when the president of the court indicated that this procedure violated established court procedures. At the current time, the heating company recognizes that there may be numerous pending cases against one defendant. The heating company would like to combine all cases against one defendant, but because of the mountains of documents at the court, the court is unable to find all of the cases to consolidate them. If the defendant pays on the claim, it appears that the utility companies have no mechanism for voluntarily dismissing its case against the customer.

The CIDA project representative told the team that utility companies receive a rebate from the cantonal government on a portion of uncollected utility debts. To qualify for this subsidy, however, the utility companies are required to file a court claim. According to the FILE report, utility companies may be able to write off delinquent accounts if they file a timely claim in the court, but the team was unable to confirm this statement. We learned that companies pay VAT of 17% on all issued invoices, regardless of whether they receive payment from the customer. Unpaid invoices, after a specified time (which the heating company representative did not know), are excluded from accounting reports, but the heating company continues to seek payment for the bills. Utility companies may give up on collecting the unpaid bill and remove the debtor from the company’s record of active debts, only after the court rejects their case. The board of directors may also decide to forgive or cease collection of a debt. As a matter of policy, the heating company has decided not to pursue any cases under 50 KM in court, but we understand that other utilities routinely file smaller cases.

## 6.3 THE COURTS

The courts have achieved good success in reversing the backlog of cases. In 2006, the courts in BiH resolved more cases than were filed against virtually all of the categories of cases, which the HJPC tracks—with one major exception: utility cases. The onslaught of utility cases continues unabated and will continue unless the government makes some changes in legislation. The major focal point for the backlog is in the Sarajevo Municipal Court, in which 85% of the current backlog is comprised of utility cases. The current backlog in the Sarajevo Municipal Court for utility cases is roughly 706,000 cases<sup>22</sup> out of a total of 935,000 cases, some of which date back to 1999. The 706,000 cases, however, do not include an estimated 100,000 other utility cases that have not yet been registered.

Once the action is filed in the court, the court is responsible for enforcement. The court treats the bill as prima facie evidence of the amount owing. Once the enforcement action is served on the defendant, the defendant has eight days to object. The court has to send a courier to the address indicated on the bill to determine whether the customer named on the bill actually lives there. The minimal filing fee that the utility companies pay—if indeed they have paid—is hardly sufficient to cover the costs of processing the case and enforcing the judgment against the customer. The utility companies are supposed to cover the costs of enforcement of the judgment, but the team was unable to confirm that the utilities routinely pay these costs or whether there is even a mechanism to determine whether these costs are indeed paid. The team was told that there are 23 enforcement officers in Sarajevo, but according to the head of the enforcement department, even 230 enforcement officers would not be sufficient to assist in enforcing these utility claims. If the court's courier is unable to locate the defendant, the court will stay the action.

The Sarajevo Court has recently instituted several measures to address this issue. In May 2007, the court established a separate department to deal solely with the utility cases, which is a separate department from the other new department handling small claims (of up to 3,000 KM). The court staffs this department with judicial associates, rather than judges. The court has recently hired 10 judicial associates to handle the cases. As the judges rightly point out, any time that judges have to deal with uncontested utility cases is time that the judges could better utilize for other judicial work. The court has made some progress in resolving the backlog, but the 21,000 cases that the court has been able to dismiss or resolve in the last nine months represent only a minor portion of the backlog. The courts are keenly interested in removing these enforcement actions from the courts. The team was told that the RS does not have such a bad situation as they have agencies that collect the debts.

## 6.4 THE HIGH JUDICIAL AND PROSECUTORIAL COUNCIL

The High Judicial and Prosecutorial Council (HJPC) maintains statistics for the entire court system for BiH. The annual report for 2006 highlights the extent of the problem. As of the end of 2005, there were 488,456 cases pending, not including utility and minor offense cases. The courts received 538,295 new cases and resolved 563,195 cases, leaving 463,556 cases—a reduction of 24,900 during the course of the year. Based on these figures, the HJPC indicates that the caseload backlog is about 10 months. In contrast, the courts had 843,383 utility cases pending at the beginning of the year, and received 399,800 new cases. The courts were able to resolve 159,812 cases. Based on these figures, there were an additional 239,988 utility cases pending at the end of the year than at the beginning of the year. The courts would require seven years to resolve this backlog even if there were no more cases filed.

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<sup>22</sup> This information is from judges who serve on the court. There is a discrepancy as the number of utility cases according to the 2006 HJPC report in the Sarajevo Municipal Court at the end of 2006 was 803,521, and the judges acknowledged that they have only resolved 21,000 cases this year.

Although both Entities suffer from this onslaught of cases, the problem is especially severe in the Federation. At the end of the year, there were 1,053,870 utility cases in the 28 municipal courts in the Federation. If the Sarajevo Municipal Court is not counted, there were roughly 9,300 cases per municipal court in the Federation. In the 19 RS basic courts, there were only 25,265, or roughly 1,330 cases per court. On average, the courts in the Federation have seven times as many cases as the courts in the RS. The situation in the RS is getting worse, however, as the basic courts were only able to resolve 11,070 cases, but the courts received 21,883 new cases. The HJPC attributes the different rates of utility cases between the RS and the Federation to two factors: a different level of “utility infrastructure”; and the cooperation between the larger basic courts in the RS and utility companies in providing updated information on the debtors and amounts owed.

The HJPC participated in a working group formed in April 2007 along with a project funded by the Canadian International Development Agency (CIDA) to address the utility case backlog. Representatives from the Municipal Court in Sarajevo attended these working group sessions. The HJPC expected representatives from the cantonal ministry, but one representative attended only one of the approximately six sessions. This working group was to produce a paper, but no paper has been produced. The CIDA representative indicated to the team that there will be a conference in December 2007 to address the issue of the utility case backlog and come up with various approaches to address this issue.

## **6.5 THE REGULATORS**

The only utilities currently regulated are the electric utilities. Each Entity has a separate regulator, and the team was able to meet with commissions from each electric utility regulator. The regulators issue licenses to the electric utilities. One of the primary duties of the regulators is to set tariffs for the electric companies. They also protect the customers from the monopoly of the electric utility. The issue of the utility case backlog is a concern of the regulators primarily to the extent that unpaid bills figure into the cost structure of the regulated utilities. The regulators require the utilities not to discriminate against any customer and to seek payment from all customers regardless of the customers’ ability to pay. The issue of filing an action in court is not as great an issue to the electric utilities as it is for other utilities, because the electric company can easily turn off service to those customers who do not pay.

The regulators are relatively new organizations and they seem occupied with other more pressing matters than the utility case backlog. During the team’s interviews, both commissions seemed concerned about the utility case backlog and indicated that, as part of their licensing mandate, they could require the utilities to develop a quicker and more effective mechanism to collect on unpaid bills. The electric utilities apparently already have alternative dispute resolution mechanisms for those who dispute their bills, as part of the general conditions on supplying electricity. According to the commissioners, the regulators have no jurisdiction over those who are “vulnerable customers,” such as pensioners or disabled veterans. They indicated that the government needs to develop a policy for vulnerable customers, not the regulators.

# 7.0 PROGRAMMING MEASURES TO ADDRESS THE UTILITY CASE BACKLOG

## 7.1 OVERVIEW

The utility case backlog has been an enduring topic of donor and BiH interest for several years. In 2005, USAID commissioned a study through the FILE project to address and suggest solutions for several “intractable problems” that impede the ability of the courts in BiH to adjudicate claims in a timely, efficient and predictable manner. The FILE project examined several of these intractable problems, including unpaid utility bills, and concluded, as we do now, that “the [utility] claims should not even be in the courts. . .” Since that report was prepared, however, it appears that the entire burden of these cases has continued to fall squarely on the courts.

There are two major issues that need to be addressed to resolve the problem of the backlog of utility cases. The first issue is what to do about the backlog of one million cases that have already been filed and are currently pending in the courts. There has not been a good analysis of these cases, and currently there are no available statistics concerning which utilities are involved, the amounts of the claims, the status of the defendants (whether the customers are still alive, whether they continue to reside in the country, whether they have assets), how many claims are against vulnerable customers, or how many claims are duplicative or stale. The FILE report suggested one excellent method for substantially reducing these claims: for any case on which there has been no activity for at least six months, the court should deem the case settled or abandoned and should archive or remove the case from its registry of active pending cases. Once the underlining cause of the utility backlog is resolved, these old cases can be catalogued and a system of disposition of stale claims along the lines of the FILE report can commence.

The second issue is more important: how BiH intends to curb these utility claims in the future. Virtually everyone with whom the team met agreed that it is highly inefficient for the courts to process what are essentially collection actions. USAID and other donors have provided excellent assistance to the courts to enhance their ability to process cases efficiently, even through an occasional spike in the number of cases, but no amount of assistance can provide cover from a constant barrage of utility cases. Some of the utilities are government-owned. Consequently, the government is paying out of one budget to subsidize utility companies, paying to the utility companies to file the claims, and paying for the courts to process these claims.

The FILE report offered an extensive list of recommended solutions to bolster the enforcement system available to utility companies, including disconnecting service, prospectively amending contracts to provide for enforcement without resorting to court mechanisms, reporting delinquencies to a credit

agency, creating liens on a customer's property, executing without court involvement, and amending BiH tax policy. These tools are a useful roadmap for utility companies to change their current business practices and to begin to assume the burden for collecting delinquent bills without burdening the courts. The FILE report also suggests a comprehensive legislative fix through amendments to the code of civil procedure, the law on enforcement procedure, the obligations law, and development of a framework for utility law and regulations for private collections. The team agrees with many of these suggested reforms, but does not advocate a comprehensive reform package because we believe that many of these fixes may have unintended consequences. Rather, we suggest an incremental approach to apply the least pressure to achieve the maximum result and then, if necessary, to revisit the issue of utility cases if the number of utility cases filed has not eased.

## 7.2 RECOMMENDATIONS

**ANTICIPATED RESULT:** *Through legislative initiatives, BiH will achieve an improved incentive structure for resolving utility cases. Over time, cases will be removed from the backlog through case consolidation, attrition and resolution.*

The team agrees that without legislative intervention, the problem will continue unabated. Based on their discussions, the team believes that an incremental approach should be implemented. The team suggests implementing less intrusive methods, which may prove successful without larger expensive efforts. The attempt here is to shift the burden back to the utility companies to deal with non-paying customers and remove the incentives for the utility companies to file their actions in the courts. Only then will more fundamental changes become possible. Below is a brief discussion of those areas that could be used immediately.

- *Change statute of limitations to three years.* The current statute of limitations is one year against individuals, and three years against legal entities. The short statute of limitations for individuals requires utilities to file actions quickly. A longer three-year statute will allow utility companies more time to exhaust non-judicial remedies to collect unpaid debts and to consolidate claims when it does become necessary to file an action against a customer.
- *Require payment of utility bills for transfer of real estate.* The team believes that requiring a certificate showing that all utility bills have been with respect to real estate may be an effective means of resolving some of the cases. Courts that register real estate transactions should not register transfers of apartments or other real estate without the appropriate notarized certificate that all utility fees have been paid. The owner of the real estate will have to clear up any arrears before the transfer is finalized. The utility companies will know that they will eventually be paid, obviating the need for filing an action in court.
- *Adjust the filing fee.* The filing of a case should have a minimum fee. The legislation could be changed so that, in addition to the current sliding scale, there could be a minimum filing fee of say 50 KM paid at the time of filing to eliminate smaller claims. Filing fees should be paid at the time of filing or, at a minimum, the courts should not act on any case in which the filing fees have not been paid in full.
- *Mandate consolidation of claims.* If a utility has multiple claims against the same defendant, then the utility must affirmatively advise the court at the time of filing the related claims.
- *Shift the burden of proving notice of service for court claims.* The legislation could be changed so that the defendant must be served with notice of intent to file an action before a lawsuit is commenced. Currently, the burden is on the courts to establish notice of a claim; this burden should be shifted to the utilities.

The recommended changes are budget neutral and deal with introducing relatively minor amendments to existing law. Assuming political will, drafting and enacting these changes could be achieved relatively quickly.



# APPENDIX A: INSTITUTIONAL RESOURCES



## Assessment of Bosnia Herzegovina's Administrative Legal System

### LIST OF INTERVIEWS

1. Cantonal Court of Zenica, 387 32 241 585
  - a. Zijada Alihodzic, President, [kantsudze@bih.net.ba](mailto:kantsudze@bih.net.ba)
  - b. Hilmo Ahmetovic, Judge for Administrative Disputes
  - c. Aleksandra Babic-Stankovic, Judge for Administrative Disputes
2. Center for Civic Initiatives, 387 061 187 217
  - a. Zlatan Ohranovic, Director
3. CIDA/Judicial Reform Project, 387 33 554 235
  - a. Ted Hill, BiH Country Director, [ted.hill@genivar.com](mailto:ted.hill@genivar.com)
4. City of Mostar, 387 036 500 600
  - a. Azra Batlak, Head, Service for General Administration, [azra.batlak@mostar.ba](mailto:azra.batlak@mostar.ba)
  - b. Zjezdana Radovanovic, Head, Legal Department
5. Civil Service Agency of BiH, 387 33 233 498
  - a. Jakob Finci, Head, [jakob.finci@ads.gov.ba](mailto:jakob.finci@ads.gov.ba)
  - b. Hazim Kazic, Assistant Director, [hazim.kazic@ads.gov.ba](mailto:hazim.kazic@ads.gov.ba)
6. DFID Justice Sector Support Project/Athos Consulting Country Programme, BiH, 387 33 665 390
  - a. Sead Traljic, [sead@balkansjustice.org](mailto:sead@balkansjustice.org)
7. DFID/State and Entity Public Administration Reform Program, 387 051 314 875
  - a. Andrew McBride, [andrew.mcbride@separb.org](mailto:andrew.mcbride@separb.org)
8. Directorate for European Integration, 387 33 264 330
  - a. Osman Topcagic, [otopcagic@dei.gov.ba](mailto:otopcagic@dei.gov.ba)
9. Embassy of the United States/BiH, 387 033 445 700
  - a. Vernelle Trim, First Secretary/Political Officer, 387 33 445 700, x2211
10. European Union, Delegation of the European Commission to BiH, 387 033 254 700
  - a. Ferdinand Kopp, Head of Operations Section I, [ferdinand.kopp@cec.eu.int](mailto:ferdinand.kopp@cec.eu.int)
  - b. Paraskevi Nazou, Task Manager, [paraskevi.nazou@ec.europa.eu](mailto:paraskevi.nazou@ec.europa.eu)
11. Federation Cantonal Court/Mostar
  - a. Judge Povic, Head, Administrative Department
12. Federation Civil Service Agency, 387 32 402 326
  - a. Vesna Popov, Deputy Director, [vesna.popov@adsfbih.gov.ba](mailto:vesna.popov@adsfbih.gov.ba)
13. Federation Ombudsmen Institution, 387 33 667 929
  - a. Branka Raguz, Ombudsman, [ombudfbh@hih.net.ba](mailto:ombudfbh@hih.net.ba)
  - b. Esad Muhibic, Ombudsman
  - c. Vera Jovanovic, Ombudsman
14. Global Rights, 387 33 205 319
  - a. Diana Sehic, Senior Staff Attorney, [dianas@open.net.ba](mailto:dianas@open.net.ba)
  - b. Fedra Idzakovic, Staff Attorney, [fedrai@open.net.ba](mailto:fedrai@open.net.ba)
  - c. Aisha Bain, Program Officer/BiH, [aishab@golbalrights.org](mailto:aishab@golbalrights.org)

15. High Judicial and Prosecutorial Council, 387 033 707 500, [www.hjpc.ba](http://www.hjpc.ba)
  - a. Branko Peric, President, [branko.peric@hjpc.ba](mailto:branko.peric@hjpc.ba)
  - b. Amra Jasarevic, Deputy Director of the Secretariat, [amra.jasarevic@hjpc.ba](mailto:amra.jasarevic@hjpc.ba)
  - c. Adis Hodzic, Head of Budget and Statistics Dept., [adis.hodzic@hjpc.ba](mailto:adis.hodzic@hjpc.ba)
  - d. Rusmir Sabeta, [rusmir.sabeta@hjpc.ba](mailto:rusmir.sabeta@hjpc.ba)
  - e. Edis Brkic, [edis.brkic@hjpc.ba](mailto:edis.brkic@hjpc.ba)
  - f. Sven Marius Urke, International Member of the Council
  - g. Simone Ginzburg, Consultant, [simone.ginzburg@hjpc.ba](mailto:simone.ginzburg@hjpc.ba)
16. Law Firm of Ismet Velic
  - a. Ismet Velic, Attorney, [ismet.velic@bih-net.ba](mailto:ismet.velic@bih-net.ba)
17. Ministry of Finance of the Federation of BiH
  - a. Anka Seslija, Head of Legal Department
18. Municipality of Banja Luka General Administration Sector, 387 051 244 406
  - a. Biljana Baric, Head, [biljana\\_birac@banjaluka.rs.ba](mailto:biljana_birac@banjaluka.rs.ba)
  - b. Sanela Kecman, Head, Department of Urban Planning
  - c. Nedjeljko Radulovic, Deputy Head, Communal Police
  - d. Brankica Sipka, Department of War Veterans Benefits
19. Municipality of Vogosca, 387 033 433 900
  - a. Asim Sarajlic, Mayor
20. Public Administration Reform Coordinator's Office of the BiH Council of Ministers, 387 33 551 295
  - a. Suad Music, [dep.coordinator@parco.gov.ba](mailto:dep.coordinator@parco.gov.ba)
21. Regulatory Commission for Electricity in the Federation of BiH, 387 36 449 900
  - a. Risto Mandrapa, President, [r.mandrapa@ferk.ba](mailto:r.mandrapa@ferk.ba)
  - b. Slavica Stojcic, Head, Legal Department, [s.stojcic@ferk.ba](mailto:s.stojcic@ferk.ba)
  - c. Zdenko Simunovic, Commissioner, [z.simunovic@ferk.ba](mailto:z.simunovic@ferk.ba)
  - d. Dulizara Hadzimustafic, Commissioner, [dj.hadzimustafic@ferk.ba](mailto:dj.hadzimustafic@ferk.ba)
22. Regulatory Commission for Electricity of the Republic of Srpska, 387 59 27 24 00
  - a. Cokorilo Milenko, President, [mcorkorilo@reers.ba](mailto:mcorkorilo@reers.ba)
  - b. Staka Mladen, Chief of Staff, [msaka@reers.ba](mailto:msaka@reers.ba)
23. RS Centre for Judicial and Prosecutorial Training, 387 51 213 902
  - a. Biljana Maric, Director, [biljana\\_baric@banjaluka.rs.ba](mailto:biljana_baric@banjaluka.rs.ba)
24. RS District Court/Doboj
  - a. Mladen Ruzojcic, President
  - b. Judge Lukas, Head, Administrative Department
25. RS District Court/Trebinje, 387 59 224 327
  - a. Bojan Stevic, President, [okruznisud.tb@sprinter.net](mailto:okruznisud.tb@sprinter.net)
  - b. Milosav Pikwa, Head, Administrative Department
26. RS Ministry of Labor and Veterans, 387 051 331 666
  - a. Borislav Radic, Chief, Department for Labor and Employment, [bradic@inecco.net](mailto:bradic@inecco.net)
27. RS Supreme Court, 051-212-801
  - a. Zelimir Baric, President, [vrhovnisudrs@vrhovnisudrs.com](mailto:vrhovnisudrs@vrhovnisudrs.com)
  - b. Janko Ninic, Head, Administrative Department

28. Sarajevo Municipal Court
  - a. Aziz Babic, Court Secretary
  - b. Janja Jovanovic, Judge, Head of department that handles utility cases
29. State Ministry of Justice, 033 223 505
  - a. Srdjan Arnaut, Deputy Minister of Justice, [srdjan.arnaut@mpr.gov.ba](mailto:srdjan.arnaut@mpr.gov.ba)
  - b. Fazila Music, Chief Administrative Inspector, [fazila.music@mpr.gov.ba](mailto:fazila.music@mpr.gov.ba)
30. Supreme Court of the Federation of BiH Sarajevo, 387 33 664 752
  - a. Amir Jaganjac, President of the Court, [amir.jaganjac@pravosudje.ba](mailto:amir.jaganjac@pravosudje.ba)
31. Toplane – Sarajevo, 387 33 45 00 30
  - a. Mubera Begic Ziga, [topsopb@bih.net.ba](mailto:topsopb@bih.net.ba)
32. USAID/BiH, 387 33 702 300
  - a. Jane Nandy, Mission Director, [jnandy@usaid.gov](mailto:jnandy@usaid.gov)
  - b. Kristine Hermann
  - c. Jasna Kilalic, Project Management Specialist, [jkilalic@usaid.gov](mailto:jkilalic@usaid.gov)
  - d. Marc Ellingstad, Governance Advisor, [mellingstad@usaid.gov](mailto:mellingstad@usaid.gov)
  - e. Randy Chester, Private Sector Officer, [rchester@usaid.gov](mailto:rchester@usaid.gov)
33. USAID/Governance Accountability Project/Banja Luka, 387 51 304 224
  - a. Tanja Mihajlovic, [tanja\\_mihajlovic@dai.com](mailto:tanja_mihajlovic@dai.com)
  - b. Sinisa Petrovic, [sinisa\\_petrovic@dai.com](mailto:sinisa_petrovic@dai.com)
34. USAID/Governance Accountability Project/Mostar, 387 036 558 410
  - a. Mirela Suton, Regional Coordinator, [mirela\\_suton@dai.com](mailto:mirela_suton@dai.com)
35. USAID/Governance Accountability Project/Sarajevo, 387 33 722 580
  - a. Rudy F. Runko, Chief of Party, [rudy\\_runko@dai.com](mailto:rudy_runko@dai.com)
  - b. Tatjana Muhic, Regional Coordinator, [tatjana\\_muhic@dai.com](mailto:tatjana_muhic@dai.com)
36. USAID/Justice Sector Development Project, 387 033 219 688, [www.usaidjsdp.ba](http://www.usaidjsdp.ba)
  - a. Charles Costello, Chief of Party, [ccostello@usaidjsdp.ba](mailto:ccostello@usaidjsdp.ba)
  - b. Damir Hadzic, Program Coordinator, [dhadzic@usaidjsdp.ba](mailto:dhadzic@usaidjsdp.ba)
  - c. Elmerina Hrelja, [eahmetaj@usaidjsdp.ba](mailto:eahmetaj@usaidjsdp.ba)
  - d. Eugene J. Murret, Court Administration Advisor
  - e. Zlatko Osmanovic, Staff Attorney, [zosmanovic@ewmi.ba](mailto:zosmanovic@ewmi.ba)
  - f. Ermin Sarajlija, Staff Attorney, [esarajlija@ewmi.ba](mailto:esarajlija@ewmi.ba)
37. USAID/SPIRA, 387 33 295 335
  - a. Diana Ruzic Head, Inspectorate Reform
  - b. Steve Farkas
38. Vasa Prava/Sarajevo, 387 033 260 360
  - a. Azra Bukva, [azrab@vasaprava.org](mailto:azrab@vasaprava.org)
  - b. Nezmija Kukricar
39. Vasa Prava/Trebinje, 387 59 223 637
  - a. Boris Radosavljevic, [trebinje@vasaprava.org](mailto:trebinje@vasaprava.org)



# APPENDIX B: DOCUMENTARY RESOURCES





## Assessment of Bosnia Herzegovina's Administrative Legal System

### SELECTED LIST OF SOURCES CONSULTED

1. *Administrative Law Reform Project: Findings, Conclusions and Recommended Activities*. USAID/BiH, December 2001.
2. *Administrative Law and Procedural Systems (ALPS) Reform Project in BiH: Annual Report 2003*. USAID/BiH, December 2003.
3. *Administrative Law and Procedural Systems (ALPS) Reform Project in BiH: 2nd Annual Report*. USAID/BiH, December 2004.
4. *Administrative Law and Procedural Systems (ALPS) Reform Project in BiH: 3rd Annual Report*. USAID/BiH, January 2006.
5. *Administrative Law and Procedural Systems (ALPS) Reform Project in BiH: Review of Administrative Decision-making Within the Ministry of Finance*. USAID/BiH, July 2004.
6. *Administrative Law and Procedural Systems (ALPS) Reform Project in BiH: Methods of Improvement of Second Instance Administrative Reviews*. USAID/BiH, June 2004.
7. Luis Andres, et al. *Do Regulation and Institutional Design Matter for Infrastructure Sector Performance?* Policy Research Working Paper 4378, World Bank, 2007.
8. *Annual Report for 2006 of the High Judicial and Prosecutorial Council*. HJPC, Sarajevo, 2006.
9. *Barriers to Reform in Bosnia: An Administrative State in Disarray*. USAID/BiH, February 2001.
10. *Bosnia-Herzegovina Democracy and Governance Assessment*. USAID/BiH, May 2007.
11. Anton Eberhard. *Infrastructure regulation in developing countries: an exploration of hybrid and transitional models*. A paper prepared for the African Forum of Utilities Regulators 3<sup>rd</sup> Annual Conference, 15-16 March 2006, Windhoek, Namibia.
12. *Federalism Study of Bosnia and Herzegovina*. OECD, May 2007.
13. Ahmed Galal and Bharat Nauriyal. *Regulating Telecommunications in Developing Countries: Outcomes, Incentives and Commitment*. Policy Research Working Paper 1520, World Bank, 1995.
14. Christophe Genoud and Frederic Varone. "Does Privatization Matter? Liberalization and Regulation: The Case of European Electricity." *Public Management Review*, Vol. 4, Issue 2, 2002.
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