



EUROPEAN COMMISSION FOR THE EFFICIENCY OF JUSTICE
(CEPEJ)

SCHEME FOR EVALUATING JUDICIAL SYSTEMS 2009

Country: Bosnia and Herzegovina

National correspondent

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1. Demographic and economic data

1. 1. General information

1. 1. 1. Inhabitants and economic information

1) Number of inhabitants

3842265

2) Total of annual State public expenditure / where appropriate, public expenditure at regional or federal entity level (in €)

| | Amount |
|-------------------------|------------|
| State level | 5395816610 |
| Regional / entity level | |

3) Per capita GDP (in €)

3287

4) Average gross annual salary (in €)

6828

5) Exchange rate from national currency (non-Euro zone) to € on 1 January 2009

2

Please indicate the sources for questions 1 to 4 and give comments concerning the interpretation of the figures supplied if appropriate:

1. source: Agency for Statistics of Bosnia and Herzegovina
<http://www.bhas.ba/eng/Default.asp?;>
2. source: The Central Bank of Bosnia and Herzegovina;
<http://www.cbbh.ba/index.php?id=30&lang=en;>

State public expenditures include: B&H government, Consolidated entity-FBH Government, Cantons, local governments (municipalities and cities), social security funds and PE for road reconstruction and maintenance of entity FBiH, Tuzla and Central-Bosnia Canton; Consolidated Entity - RS Government, local governments (municipalities and cities), social security funds and PE for road reconstruction and maintenance, and Brcko District Government, Brcko District Health insurance Fund, Brcko District Employment Fund;

3. source: Agency for Statistics of Bosnia and Herzegovina
<http://www.bhas.ba/eng/Default.asp?>
4. source: Agency for Statistics of Bosnia and Herzegovina
http://www.bhas.ba/Arhiva/2009/Sao/BPL_2008H2_001_01_HR.pdf

5. the exchange rate is 1,955830 BAM (national currency) for 1 euro.

1. 2. Budgetary data concerning judicial system

1. 2. 1. Budget (courts, public prosecution, legal aid, fees)

6) Total annual approved budget allocated to all courts (in €)

79589970

7) Please specify

This figure represents formally approved budget of: Court of Bosnia and Herzegovina, entity Supreme Courts, second instance Cantonal/District Courts, first instance Municipal/Basic Courts and entity Judicial and Prosecutorial Training Centers. The same institution is responsible for both, judicial and prosecutorial training, so as we cannot separate the cost for training of judges.

8) Does the approved budget of the courts include the following items? Please give for each item (or some of them) a specification of the amount concerned or indicate NA (not available) in case that the information cannot be supplied**Please provide comments to explain the data provided under question 8:**

| | | |
|-----------------------------------------------------------------------------------------|-----------------------------------------|----------|
| Annual public budget allocated to (gross) salaries | <input checked="" type="checkbox"/> Yes | 55058835 |
| Annual public budget allocated to computerisation (equipment, investments, maintenance) | <input checked="" type="checkbox"/> Yes | 1173770 |
| Annual public budget allocated to justice expenses | <input checked="" type="checkbox"/> Yes | 5597961 |
| Annual public budget allocated to court buildings (maintenance, operation costs) | <input checked="" type="checkbox"/> Yes | 7338704 |
| Annual public budget allocated to investments in new (court) buildings | <input checked="" type="checkbox"/> Yes | 309603 |
| Annual public budget allocated to training and education | <input checked="" type="checkbox"/> Yes | 1144385 |
| Other (please specify): | <input type="checkbox"/> Yes | 8966713 |

Comment :

All items are included in court budget, but just two of them have separate line in published approved budget:

- Annual public budget allocated to gross salaries
- Annual public budget allocated to investments in new (court) buildings.

Costs of all items are calculated using the budget execution reports as the best possible estimation.

Annual public budget allocated to (gross) salaries is calculated as sum of net salaries and all taxes and contributions paid by the employer.

Annual public budget allocated to computerization is calculated as sum of gross salaries and benefits of IT staff, costs for purchase of computer equipment and material, and computer services.

Annual public budget allocated to justice expenses is calculated as sum of two items: costs of expertise, witnesses and juries, layers costs for mandatory defense, costs for layers for indigent persons, and legal services.

Annual public budget allocated to court buildings is calculated as sum of cost for energy, communal costs, rent and insurance of the buildings, current maintenance and reconstruction and investment maintenance.

Annual public allocated to investments in new (court) buildings. This amount included only budget lines regarding the completely new buildings. Budget line relating to reconstruction and investments to existing buildings is included in previous item.

Annual public budget allocated to training and education is sum of following expenses: purchasing in educational material and literature and educational services used by courts. Approved budget of specialized court and prosecutor training centers are also included in this amount.

9) Has the annual public budget of the courts changed (increased or decreased) over the last five years? Yes No

If yes, please specify (i.e. provide an indication of the increase or decrease of the budget over the last five years:

In 2004–2008 period judiciary budget which includes only Courts, has been increased by 13,2%, as of 70.282.913 € in 2004 to 79.589.970 € in 2008.

10) In general are litigants required to pay a court tax or fee to start a proceeding at a court of general jurisdiction: for criminal cases? for other than criminal cases?

If yes, are there exceptions? Please specify:

The legislation on court fees prescribes that state institutions, humanitarian organizations, juveniles, students, disabled persons etc. do not have to pay the court fee in order to be eligible to start court proceedings. Also, the said legislation lays down that any litigant in certain types of cases may initiate proceedings without paying the court fee, e.g.: labor disputes, cases concerning retirement etc;

Finally, regardless of the case in question, the court will relieve a litigant who is in adverse financial situation from paying the court fee.

The Court may decide to exempt a litigant from paying a Court tax for a foreign national if it is provided in the international agreement or if there is reciprocity between the states concerned.

11) If yes, please specify the annual income of court fees (or taxes) received by the State (in Euros)

24359620

12) Total annual approved budget allocated to the whole justice system (in €)

Please provide information concerning the budgetary elements that included in the whole justice system budget:

. Amount 163401586

Comment :

The figure mentioned above represents sum of approved budgets for following institutions: all Courts (excluding Constitutional Courts), Prosecutor Offices, High Judicial and Prosecutor Council, Judicial and Prosecutorial Training Centers, Ministries of Justice, Court police, Prisons, institutions specialized for legal aid at regional level and Independent Judiciary Commission of Brcko District.

13) Total annual approved public budget allocated to legal aid (in €)

Please provide comments to explain the figure provided under question 13:

. Amount 5150716

Comment :

This amount is calculated as sum of:

- Costs registered in budget execution reports of all courts and prosecutor offices
 - The total adopted budget for two institutions specialized for legal aid at regional level.
- Two budget lines from budget executions reports are used for calculating the amount:
- Lawyers costs for indigent accused persons
 - Lawyers costs in cases of a mandatory defense

14) If possible, please specify (if no data is available (NA) or if it does not apply to your system (NAP) please indicate it with the relevant abbreviation):

| | | |
|--------|-------------------------------------------------------------------|-----------------------------------------------------------------------|
| | Annual public budget allocated to legal aid in criminal law cases | Annual public budget allocated to legal aid in non criminal law cases |
| Amount | 5150716 | NA |

Comment :

15) Is the public budget allocated to legal aid included in the court budget ?

- Yes
 No

16) Total annual approved public budget allocated to the public prosecution system (in €)

Please provide comments to explain the figure provided under question 16:

. Amount 22323841

Comment :

This amount is calculated as sum of approved budgets of all prosecutors' offices in Bosnia and Herzegovina.

17) Is the budget allocated to the public prosecution included in the court budget?

- Yes
 No

18) Authorities formally responsible for the budget allocated to the courts:

| | budget | budget | of the budget among the individual courts | budget at a national level |
|---------------------|--------|--------|-------------------------------------------|----------------------------|
| Ministry of Justice | Yes | No | Yes | No |
| Other ministry | Yes | No | Yes | Yes |
| Parliament | No | Yes | No | Yes |
| Supreme Court | No | No | No | No |
| Judicial Council | Yes | No | No | Yes |
| Courts | No | No | No | No |
| | | | | |

| | | | | |
|-----------------|----|----|----|-----|
| Inspection body | No | No | No | Yes |
| Other | No | No | No | No |

19) If other Ministry and/or inspection body and/or other, please specify (in regards to question 18):

The Ministry of Finance and the Ministry of Justice send guidelines for budget preparation to all budget users. The High Judicial and Prosecutor Council estimates the funds necessary for each individual court, and judiciary as a whole, and also sends guidelines to all courts and prosecutor offices. Using these guidelines, courts make their individual budget requests and send them to the government.

Governments collect budget proposals from all budget users, make the final proposal of the entire budget and send it to parliament for adoption. The formally approved budget provides funds for separate budget users, and judiciary as a whole.

The management and allocation of budgets is entirely under the responsibility of ministries.

The Ministry of Finance reports on the budget execution and evaluation of the use of funds to the Parliament. The Parliament formally adopts the report on budget execution. The High Judicial and Prosecutor Council also collects and analyzes budget execution reports from all courts and prosecutor office.

You can indicate below:

- any useful comments for interpreting the data mentioned in this chapter
- the characteristics of your budgetary system and the main reforms that have been implemented over the last two years
- if available an organisation scheme with a description of the competencies of the different authorities responsible for the budget process

Please indicate the sources for answering the questions 6, 8, 11, 12, 13, 14 and 16.

- 6. source - Official data of the High Judicial and Presecutorial Council
- 8. source - Official data of the High Judicial and Presecutorial Council
- 11. source - Ministries of finance in Bosnia and Herzegovina
- 12. source - Official data of the High Judicial and Presecutorial Council
- 13. source - Official data of the High Judicial and Presecutorial Council

2. Access to Justice and to all courts

2. 1. Legal aid

2. 1. 1. Principles

20) Does legal aid concerns:

| | Criminal cases | Other than criminal cases |
|-------------------------|----------------|---------------------------|
| Representation in court | Yes | Yes |
| Legal advice | Yes | Yes |
| Other | No | No |

21) If other, please specify (in regards to question 20):

22) Does legal aid foresee the covering or the exoneration of court fees?

Yes

No

If yes, please specify:

Civil Procedure Codes provide that the court shall exempt a party from paying the costs of the proceedings if, according to his/her general financial situation, the party cannot compensate the costs without jeopardizing the necessary support of him/herself and his/her family. Exemption from paying the costs of the proceedings shall include exemption from paying court fees, depositing advance payment for the costs of witnesses, experts, investigation and court advertisements. Criminal Procedure Costs contain almost identical provision, but it does not mention covering of the defendant's court fees.

23) Can legal aid be granted for the fees that are related to the execution of judicial decisions?

Yes

No

24) Number of cases granted with legal aid provided by (national, regional, local) public authorities (if no data is available (NA) or if it does not apply to your system (NAP) please indicate it with the relevant abbreviation):

| | Number |
|---------------------------|--------|
| Total | 2671 |
| in criminal cases | 1392 |
| Other than criminal cases | 1279 |

Comment :

The above data concerns the total of legal aid cases provided in the country.

25) In a criminal case, can any individual who does not have sufficient financial means be assisted by a free of charge (or financed by public budget) lawyer?

- Yes
 No

26) Does your country have an income and asset test for granting legal aid:

| | Yes | Amount in € |
|--------------------------------|-----|-------------|
| for criminal cases | | |
| for other than criminal cases? | | |

Comment :

Please see, in this context, the reply to question 22.

27) In other than criminal cases, is it possible to refuse legal aid for lack of merit of the case (for example for frivolous action)?

- Yes
 No

Please provide comments to explain the answer under question 27:

A request for legal aid will not be granted if:

- it is obviously ill founded (i.e. legal requirements are clearly not met)
- the proceedings in question are unjustified (i.e. the potential client has slim chances to win the case)
- the right to legal aid is misused (i.e. the potential client has provided incorrect data that was relevant for approving legal aid)

28) If yes, is the decision for granting or refusing legal aid taken by:

- the court?
 an authority external to the court?
 a mixed decision-making authority (court and external)?

29) Is there a private system of legal expense insurance enabling individuals to finance court proceedings?

- Yes
 No

Please specify:

30) Do judicial decisions have an impact on who bears the legal costs which are paid by the parties during the procedure in:

| | Yes (the decision has an impact on who bears the legal costs) |
|----------------------------|---------------------------------------------------------------|
| criminal cases? | Yes |
| other than criminal cases? | Yes |

You can indicate below:

- any useful comments for interpreting the data mentioned in this chapter
- the characteristics of your legal aid system and the main reforms that have been implemented over the last two years

The legal aid system in Bosnia and Herzegovina has been subject to considerable reforms of late.

The reform is twofold: first - new legislation on legal aid has been adopted in Republika Srpska and in several cantons in the Federation of Bosnia and Herzegovina (the Framework Law of Bosnia and Herzegovina on Legal Aid will likely be adopted in 2010), second – number of publicly funded organizations providing legal aid to citizens is growing rapidly (e.g. Brcko district and several cantons already have such organizations, while it is expected that the Republika Srpska and more cantons will also have such institutions fully staffed or created in 2010).

Please indicate the sources for answering the questions 24 and 26

Question 24: the High Judicial and Prosecutorial Council.

Questions 25-26: Relevant legislation.

2. 2. Users of the courts and victims

2. 2. 1. Rights of the users and victims

31) Are there official internet sites/portals (e.g. Ministry of Justice, etc.) for the following, which the general public may have free of charge access to:

- legal texts (e.g. codes, laws, regulations, etc.)? Yes
 Internet address (es): <http://www.mpr.gov.ba/hr/str.asp?id=265>; <http://www.hjpc.ba/>; <http://www.fbihvlada.gov.ba/index.html>; <http://www.vladars.net/lt/zakoni>;
- case-law of the higher court/s? Yes
 Internet address (es): <http://www.narodnaskupstinars.net/lat/zakoni/arhiva.php>; http://www.bdcentral.net/Members/skupstina/Zakoni/zakoni_html; <http://www.ustavnisud.ba>; <http://www.vsfbih.ba/index.php>; <http://www.vrhovnisudrs.com/>;
- other documents (for examples forms)? Yes
 Internet address (es):

32) Is there an obligation to provide information to the parties concerning the foreseeable timeframe of the proceeding?

- Yes
 No

If yes, please specify:

33) Is there a public and free-of-charge specific information system to inform and to help victims of crimes? Yes No

If yes, please specify:

34) Are there special favourable arrangements to be applied, during judicial proceedings, to the following categories of vulnerable persons:

| | Information mechanism | Hearing modalities | Procedural rights | Other |
|------------------------------|-----------------------|--------------------|-------------------|-------|
| Victims of rape | No | Yes | Yes | No |
| Victims of terrorism | No | Yes | Yes | No |
| Children/Witnesses/Victims | No | Yes | Yes | Yes |
| Victims of domestic violence | No | Yes | Yes | Yes |
| Ethnic minorities | No | No | No | No |
| Disabled persons | No | Yes | Yes | No |
| Juvenile offenders | No | Yes | Yes | No |
| Other | No | No | No | No |

Comment :

Special measures could be implemented by the court for the victims, including victims of domestic violence, such as to be temporarily placed in “safe houses”, etc.

Given age, physical and mental condition or other justified reasons the witness may be examined using technical means for transferring image and sound in such manner as to permit the parties and the defense attorney to ask questions although not in the same room as the witness. An expert may be assigned for the purpose of the examination.

From the opening to the end of the main trial, the judge or the Panel may at any time, ex officio or on motion of the parties and the defense attorney, but always after hearing the parties and the defense attorney, exclude the public for the entire main trial or a part of it if that is in the interest of the national security, or if it is necessary to preserve a national, military, official or important business secret, if it is to protect the public peace and order, to preserve morality in the democratic society, to protect the personal and intimate life of the accused or the injured or to protect the interest of a minor or a witness.

Neither the course of a criminal proceeding against a minor, nor the decision rendered in that proceeding may be made public, nor may the course of the proceeding be visually or audially recorded.

35) Does your country have a compensation procedure for victims of crimes? Yes No**36) If yes, does this compensation procedure consist in:**

- a public fund?
 a court decision?
 a private fund?

If yes, which kind of cases does this procedure concern?

A claim under property law that has arisen because of the commission of a criminal offense is deliberated on the motion of a victim in criminal proceedings if this would not considerably prolong such proceedings.

A claim under property law may pertain to reimbursement of damage, recovery of items, or annulment of a particular legal transaction.

37) Are there studies to evaluate the recovery rate of the compensation awarded by courts to victims?

- Yes
 No

If yes, please specify:

38) Is there a specific role for the public prosecutor with respect to the (protection of the position and assistance of) victims?

- Yes
 No

If yes, please specify:

The Criminal Procedure Code provide that the term "victim" refers to a person whose personal or property rights have been threatened or violated by a criminal offense. It is also provided that the victim being examined as the witness by the prosecutor shall be asked about his desires with respect to satisfaction of a property claim in the criminal proceedings. In addition to that the prosecutor has a duty to gather evidence and conduct the investigation necessary to decide whether the possible claim under property law of a victim is relevant to the criminal offense.

The Law on Protection of Witnesses under Threat and Jeopardized Witnesses provides that the jeopardized witness inter alia is a witness who has been physically or psychologically traumatized by circumstances of the criminal act. The prosecutor is obliged to inform the jeopardized witness about measures of the protection provided in the law. Also, during the investigation the prosecutor is obliged upon prior consent of the jeopardized witness to inform the social welfare center about participation of the jeopardized witness in the criminal proceedings in order to enable the center to provide legal and psychological support to the witness which could include presence of the expert persons during the proceedings.

39) Do victims of crimes have the right to contest to a decision of the public prosecution to discontinue a case?

- Yes
 No

If yes, please specify:

According to relevant provisions of the Criminal Procedure Code, a prosecutor is obliged to inform the injured party and the person who reported the offence within three (3) days of the fact that the investigation shall not be conducted, as well as the reasons for not doing so. The injured party and the person who reported the offence have a right to file a complaint with the prosecutor's office within eight (8) days. However, the prosecutor's office makes a final decision about the discontinuation of the case, and the victim has no other legal remedy against such a decision of the prosecutor's office.

2. 2. 2. Confidence of citizens in their justice system

40) Is there a system for compensating users in the following circumstances:

- excessive length of proceedings?
- non execution of court decisions?
- wrongful arrest?
- wrongful condemnation?

If yes, please specify (fund, daily tariff):

Excessive length of proceedings: Pursuant to Article II/3.e of the Constitution of Bosnia and Herzegovina all persons within the territory of Bosnia and Herzegovina enjoy the human rights and fundamental freedoms including:

"The right to a fair hearing in civil and criminal matters, and other rights relating to criminal proceedings."

Based on Article VI of the Constitution the Constitutional Court of Bosnia and Herzegovina inter alia has appellate jurisdiction over issues under the Constitution arising out of a judgment of any other court in the country.

According to Article 16, paragraph 3 of its Rules, the Constitutional Court may examine, within its appellate jurisdiction, an appeal when there is no decision of a competent court if the appeal indicates a grave violation of the rights and fundamental freedoms safeguarded by the Constitution or by the international documents applied in Bosnia and Herzegovina.

The Court admits appeals, based on the aforementioned provision of the Rules, alleging that a court of general jurisdiction has breached both Article II/3.e of the Constitution and Article 6, paragraph 1, of the European Convention on Human Rights by exceeding a reasonable time for determining a court case (i.e. any sort of a court case). If the violation is found, the Court orders the court of general jurisdiction to finalize the case in question without any delay and it also awards compensation of non-material damage caused to the appellant by excessive length of proceedings.

The compensation is paid from budget of the government financing the court of general jurisdiction found to be responsible for the excessive length of proceedings.

Wrongful arrest - a person is entitled to compensation of damages in following cases (i) who was in detention, but criminal proceedings were not instituted or proceedings were dismissed or a final verdict was pronounced acquitting the person of charges or charges were rejected; (ii) a person who was subjected to unlawful detention or retained in detention or a correctional institution due to a mistake; (iii) a person who was in detention longer than the sentence to which he was convicted; (iv) a person who served a sentence of imprisonment, and was pronounced a shorter imprisonment sentence in reopened criminal proceedings than the sentence he had served, or was pronounced a criminal sanction other than imprisonment or he was pronounced guilty but freed from sanction; (v) a person who was imprisoned without a legal ground is entitled to compensation of damages if no pre-trial detention was ordered against him or the time for which he was imprisoned was not included in the sentence pronounced for a criminal offense or minor offense.

Wrongful condemnation - A person against whom an effective criminal sanction was pronounced or who was found guilty and freed from sanction, and later, based on extraordinary remedy, reopened proceedings were effectively dismissed or effective verdict was pronounced acquitting the person of charges, or the charges were rejected, is entitled to compensation of damages on grounds of unjust convicted, except in the following cases: (i) if the dismissal of proceedings or the verdict rejecting the charges resulted from the prosecutor dismissing the prosecution in the reopened proceedings, and the dismissal took place based on an agreement with the suspect or the accused; (ii) if in the reopened proceedings a verdict was pronounced rejecting the charges due to lack of jurisdiction of the court, and the authorized prosecutor instituted prosecution before a competent court.

When calculating the compensation, there are no provisions regulating the amount per day of unjustified detention or condemnation compensation, however, when the fine is substituted by imprisonment it is done in a way each 25 Euro started, is substituted by one day of imprisonment.

Additional comment: Pursuant to Article II/3.e of the Constitution of Bosnia and Herzegovina all persons within the territory of Bosnia and Herzegovina enjoy the human rights and fundamental freedoms including:

"The right to a fair hearing in civil and criminal matters, and other rights relating to criminal proceedings."

Based on Article VI of the Constitution the Constitutional Court of Bosnia and

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The Court admits appeals, based on the aforementioned provision of the Rules, alleging that a court of general jurisdiction has breached both Article II/3.e of the Constitution and Article 6, paragraph 1, of the European Convention on Human Rights by exceeding a reasonable time for determining a court case (i.e. any sort of a court case). If the violation is found, the Court orders the court of general jurisdiction to finalize the case in question without any delay and it also awards compensation of non-material damage caused to the appellant by excessive length of proceedings.

The compensation is paid from budget of the government financing the court of general jurisdiction found to be responsible for the excessive length of proceedings."

41) Does your country have surveys aimed at users or legal professionals (judges, lawyers, officials, etc.) to measure their trust and/or satisfaction (with the services delivered by the judiciary system)?

- (Satisfaction) surveys aimed at judges
- (Satisfaction) surveys aimed at court staff
- (Satisfaction) surveys aimed at public prosecutors
- (Satisfaction) surveys aimed at lawyers
- (Satisfaction) surveys aimed at citizens (visitors of the court)
- (Satisfaction) surveys aimed at other clients of the courts

If possible, please specify their titles, how to find these surveys, etc:

42) If possible, please specify:

| | Yes (surveys at a regular interval: for example annual) | Yes (incidental surveys) |
|---------------------------|---------------------------------------------------------|--------------------------|
| Surveys at national level | No | No |
| Surveys at court level | No | No |

43) Is there a national or local procedure for making complaints about the functioning (for example the treatment of a case by a judge or the duration of a proceeding) of the judicial system?

- Yes
- No

44) If yes, please specify:

Please give elements of information concerning the efficiency of this complaint

procedure:

| | Time limit to respond (Yes) | Time limit for dealing with the complaint (Yes) |
|-----------------------------------------------|-----------------------------|-------------------------------------------------|
| Court concerned | Yes | No |
| Higher court | No | No |
| Ministry of Justice | Yes | No |
| High Council of the Judiciary | Yes | Yes |
| Other external organisations (e.g. Ombudsman) | Yes | No |

Comment :

When a complaint is filed against a judge to a court or Ministry of Justice, it is their obligation to immediately forward the complaint to the High Judicial and Prosecutorial Council which has, all in all, two years to investigate the complaint and make a final decision about it, meaning whether to initiate disciplinary proceedings or to reject it as ill founded.

If a complaint is filed against a court employee, then president of the court is responsible to make a final determination about the complaint, but no time limits are given in the law.

If the Ministry of Justice, after investigation (for which there are no time limits) upon complaint or ex officio, concludes that there are some deficiencies in administration of justice, it is responsible to inform a competent court president and/or High Judicial and Prosecutorial Council, which are then responsible to undertake measures to correct these deficiencies.

If the Ombudsman institution, after investigation (for which there are no time limits) upon complaint or ex officio, finds out that there are deficiencies in administration of justice, it can give recommendations to the court or HJPC concerned how to correct these deficiencies.

3. Organisation of the court system

3. 1. Functioning

3. 1. 1. Courts

45) Number of courts considered as legal entities (administrative structures) and geographic locations (please, complete the table. If no data is available (NA) or if it does not apply to your system (NAP) please indicate it with the relevant abbreviation.

| | Total number |
|----------------------------------------------------------------------------------------------|--------------|
| First instance courts of general jurisdiction | 64 |
| Specialised first instance Courts (legal entities) | |
| All the Courts (geographic locations) * (this includes Supreme Courts and/or High Courts) | 93 |

46) Please specify the different areas of specialisation (and, if possible, the number of courts concerned):

There are 67 courts of general jurisdiction in Bosnia and Herzegovina, out of which 3 (i.e. both Entity Supreme Courts and the Appellate Court of Brcko District of Bosnia and Herzegovina) do not decide first instance cases at all.

The courts which, at least to some extent, decide first instance cases are the following:

- 48 municipal/basic courts (i.e. these courts decide first instance cases only)
- 15 cantonal/district courts (i.e. these courts mainly decide on appeals brought against the first instance court's rulings, whereas they act as first instance courts in administrative cases as well as in criminal cases)
- State Court has both first and second instance jurisdiction.

There are also 28 Court branches.

Currently, there are no specialized courts. However, the law requires courts of general jurisdiction to set up specialized divisions as follows:

- each municipal/basic court has a misdemeanour division,
- 10 municipal and 5 basic courts are required to have: department for commercial disputes and department for registration of legal persons.
- both the District Court of Banja Luka and the Supreme Court of the Republika Srpska have set up the divisions in charge of trying the organized crime cases.
- State Court has 3 divisions: Appellate, Criminal, and Administrative.

47) Is there a change in the structure in the courts foreseen (for example a reduction of the number of courts (geographic locations) or a change in the powers of courts)?

- Yes
 No

If yes, please specify:

The 2008 legislation adopted by Republika Srpska People's Assembly provided legal basis for the creation of specialized commercial courts in the Republika Srpska. There will be 5 first instance commercial courts and 1 court that will hear appeals filed against the rulings of first instance commercial courts.

It is foreseen that the aforementioned commercial courts will become functional as of January 1, 2010.

The commercial divisions that are functioning within 5 basic courts in Republika Srpska will cease to exist as of January 1, 2010.

48) Number of first instance courts competent for a case concerning (if no data is available (NA) or if it does not apply to your system (NAP) please indicate it with the relevant abbreviation):

| | Number |
|------------------------------------|--------|
| a debt collection for small claims | 48 |
| a dismissal | 48 |
| a robbery | 48 |

Please specify what is meant by small claims in your country (answer only if the definition has been changed since the previous evaluation cycle):

The definition has not been changed since the 2006 evaluation cycle.

Please indicate the sources for answering the questions 45 and 48:

The legislation on the court system of Bosnia and Herzegovina.

3. 1. 2. Judges, courts staff

49) Number of professional judges sitting in courts (please give the information in full time equivalent and for permanent posts; if there is no data please indicate this with NA)

Please provide comments to explain the answer under question 49:

Number . 857

Comment :

According to the official data of the High Judicial and Prosecutorial Council, there are 857 judges in Bosnia and Herzegovina who are given tenure until retirement.

The mandatory retirement age for judges of courts of general jurisdiction is age seventy (70).

50) Number of professional judges sitting in courts on an occasional basis and who are paid as such:

| | Number |
|--------------------------------------|--------|
| gross figure | 95 |
| if possible, in full time equivalent | |

51) Please provide comments to explain the answer under question 50:

According to the official data of the High Judicial and Prosecutorial Council, there are 95 reserve judges (please note, this figure is not included in the number of professional judges sitting in courts) in Bosnia and Herzegovina, in courts of general jurisdiction, who are appointed on a temporary basis (up to 2 years).

Their role is to assist courts in reducing case backlogs, or to replace temporarily judges who are absent for the prolonged period of time. They are appointed by the High Judicial and Prosecutorial Council upon application by the president of a court.

The reserve judges perform their duties on a full-time basis.

52) Is there in the legal system non-professional judges (including lay judges and excluding jurees) who are not remunerated but who can possibly receive a simple defrayal of costs? (Please indicate NA if no figures are available).

Please provide comments to explain the answer under question 52:

| | Yes | Number |
|--------------------------------------|-----|--------|
| Do you have non-professional judges? | Yes | 298 |

Comment :

According to the official data of the High Judicial and Prosecutorial Council, there are 298 lay judges in courts of general jurisdiction.

They play a role in the BiH judicial system, due to application of the old civil and criminal procedural laws. However, most of the procedural laws changed in 2003 in a way that participation of lay judges is not required any longer, but due to a backlog of cases initiated before 2003, they still take part in the court proceedings.

53) Does your judicial system include trial by jury with the participation of citizens?

- Yes
 No

If yes, for which type of case(s)?

54) If possible, indicate the number of citizens who were involved in such juries for the year of reference?

NAP

55) Number of non-judge staff who are working in courts (in full time equivalent and for permanent posts). Please indicate NA if no figures are available.

Please provide comments to explain the answer under question 55:

Number . 2739

Comment :

56) If possible, could you distribute this staff according to the 4 following categories. If no data is available (NA) or if it does not apply to your system (NAP) please indicate it with the relevant abbreviation).

| | | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------|------|
| - non-judge staff (Rechtspfleger or similar bodies), with judicial or quasi-judicial tasks having autonomous competence and whose decisions could be subject to appeal | <input checked="" type="checkbox"/> Yes | 129 |
| - non-judge staff whose task is to assist the judges (case file preparation, assistance during the hearing, keeping the minutes of the meetings, helping to prepare the decisions) such as registrars | <input checked="" type="checkbox"/> Yes | 989 |
| - staff in charge of different administrative tasks as well as of the management of the courts (human resources management, material and equipment management, including computer systems, financial and budgetary management, training management) | <input checked="" type="checkbox"/> Yes | 1226 |
| - technical staff | <input checked="" type="checkbox"/> Yes | 395 |

Comment :

57) If there are Rechtspfleger (or similar bodies) in your judicial system, please describe briefly their status and functions:

The High Judicial and Prosecutorial Council appoints judicial associates to the first instance courts for a period of up to six years.

A judicial associate may proceed and decide non-contentious and enforcement matters, and small claims cases in accordance with law and as assigned by the Court President. Appeals against their decisions are decided by the second instance courts. As for the requirements in terms of qualifications set by the legislation regulating court system in Bosnia and Herzegovina, judicial associates must possess a law degree and have to pass the bar examination.

However, Republika Srpska Constitutional Court in December 2008 declared unconstitutional the relevant provisions of Republika Srpska legislation giving the judicial associates authority to decide cases themselves. The Constitutional Court found that those legal provisions were in contravention with the Republika Srpska Constitution, which prescribes that only judges can perform judicial function.

The judicial associates in the courts of first instance in the Federation of Bosnia and Herzegovina courts of first instance have not been relieved of their power to decide cases on their own.

3. 1. 3. Prosecutors

58) Number of public prosecutors (in full time equivalent and for permanent posts). If there is no data available please indicate it (NA).

| | | |
|--------|---------------------------------------|-----|
| Number | <input checked="" type="checkbox"/> . | 304 |
|--------|---------------------------------------|-----|

Comment :

According to the official data of the High Judicial and Prosecutorial Council, there are 304 prosecutors in Bosnia and Herzegovina who are given tenure until retirement.

The mandatory retirement age for prosecutors is age seventy (70).

59) Do any other persons have similar duties as public prosecutors? Yes No

If yes, please specify:

60) Number of staff (non prosecutors) attached to the public prosecution service (in full time equivalent and for permanent posts). If there is no data available please indicate it (NA).**Please provide comments to explain the answer under question 60:**Number . 465

Comment :

3. 1. 4. Court budget and new technologies**61) Who is entrusted with the individual court budget?**

| | Preparation of the budget | Arbitration and allocation | Day to day management of the budget | Evaluation and control of the use of the budget |
|--------------------------------|---------------------------|----------------------------|-------------------------------------|-------------------------------------------------|
| Management Board | No | No | No | No |
| Court President | Yes | Yes | Yes | Yes |
| Court administrative director | No | No | No | No |
| Head of the court clerk office | No | No | No | No |
| Other | Yes | No | Yes | No |

62) You can indicate below:

- any useful comments for interpreting the data mentioned above
- if available an organisation scheme with a description of the competencies of the different authorities responsible for the budget process in the court

The Court President is responsible for all matters regarding the preparation and management of the Court budget.

Chief Accountant also prepares Court financial plans, as well as the day to day management of the budget.

Court secretary is included in defining the Court budget request.

63) For direct assistance to the judge/court clerk, what are the computer facilities used within the courts?

| | 100% of courts | +50% of courts | -50% of courts | -10% of courts |
|---------------------------------------|----------------|----------------|----------------|----------------|
| Word processing | Yes | No | No | No |
| Electronic data base of jurisprudence | Yes | No | No | No |
| Electronic files | No | Yes | No | No |
| E-mail | Yes | No | No | No |
| Internet connection | Yes | No | No | No |

64) For administration and management, what are the computer facilities used within the courts?

| | 100% of courts | +50% of courts | -50% of courts | -10% of courts |
|-------------------------------------|----------------|----------------|----------------|----------------|
| Case registration system | No | Yes | No | No |
| Court management information system | No | Yes | No | No |
| Financial information system | No | No | No | Yes |

65) For the communication between the court and the parties, what are the computer facilities used within the courts?

| | 100% of courts | +50% of courts | -50% of courts | -10% of courts |
|-------------------------------------------|----------------|----------------|----------------|----------------|
| Electronic web forms | No | No | No | Yes |
| Special Website | No | No | Yes | No |
| Other electronic communication facilities | No | No | No | Yes |

66) Is there a centralised institution which is responsible for collecting statistical data regarding the functioning of the courts and judiciary?

- Yes
 No

If yes, please specify the name and the address of this institution:

The High Judicial and Prosecutorial Council of Bosnia and Herzegovina.

Kraljice Jelene 88, Sarajevo, Bosnia and Herzegovina.

You can indicate below:

- any useful comments for interpreting the data mentioned in this chapter
- the characteristics of your judicial system and the main reforms that has been implemented over the last two years

Information and Communication Technology (ICT) implementation in the BiH judiciary has been ongoing for a number of years and covers all aspects of massive and systematic introduction of ICT in courts and prosecutor offices.

The most important results achieved in the area of E-justice in past two years are the implementation of the Case management system (CMS) in BiH courts connected into single wide area network (WAN) as well as development and implementation of the Registry of Fines and Content Management System for the centralized Judicial Portal.

All of the said ICT activities, which were successfully carried out, have fundamentally changed the way courts and prosecutor's offices in BH conduct business, have streamlined burdensome procedures within the courts and increased transparency of their work. However, these achievements can be considered as a first phase of development of judicial information system. In the next phase it will be necessary to respond to the needs of BH citizens, business sector and legal professional community by offering them a different kind of services such as access to: legal information, registers, databases and other services.

3. 2. Monitoring and evaluation

3. 2. 1. Monitoring and evaluation

67) Are the courts required to prepare an annual activity report?

- Yes
 No

68) Do you have a regular monitoring system of court activities concerning the

- number of incoming cases?
 number of decisions?
 number of postponed cases?
 length of proceedings (timeframes)?
 other?

Please specify:

69) Do you have a regular system to evaluate the performance of each court?

- Yes
 No

Please specify:

In its annual report, the HJPC publishes performance related information and evaluation of courts' performance.

70) Concerning court activities, have you defined performance indicators (if no, go to question 72)?

- Yes
 No

71) Please select the 4 main performance and quality indicators that is used for a proper functioning of courts:

- incoming cases
 length of proceedings (timeframes)
 closed cases
 pending cases and backlogs
 productivity of judges and court staff
 percentage of cases that are treated by a single sitting judge
 enforcement of penal decisions
 satisfaction of employees of the courts
 satisfaction of clients (regarding the services delivered by the courts)
 judicial quality and organisational quality of the courts

costs of the judicial procedures

other:

Please specify:

72) Are there performance targets defined for individual judges (if no go to question 74) ?

Yes

No

73) Please specify who is responsible for setting the targets:

executive power (for example the ministry of Justice)?

legislative power

judicial power (for example a High Judicial Council or a Higher Court

other

If other, please specify:

74) Are there performance targets defined at the level of the courts (if no go to question 77)?

Yes

No

75) Please specify who is responsible for setting the targets:

executive power (for example the ministry of Justice)?

legislative power

judicial power (for example a High Judicial Council or a Higher Court)

other

If other, please specify:

76) Please specify the main targets applied

The performance target is defined as weighted average of disposed cases. The weight of each case type is defined by the HJPC.

77) Which authority is responsible for the evaluation of the performances of the courts:

High Council of judiciary

Ministry of justice

- inspection authority
- Supreme Court
- external audit body
- other

If other, Please specify:

The HJPC evaluates performance of courts. Also, presidents of higher instance courts evaluate performance of lower instance courts.

78) Are there quality standards (organisational quality and/or judicial quality policy) formulated for the courts (existence of a quality system for the judiciary)?

- Yes
- No

If yes, please specify:

79) Do you have specialised court staff which is entrusted with quality policy and/or quality systems for the judiciary?

- Yes
- No

80) Is there a system which measures the backlogs and which detects the cases not processed within a reasonable timeframe for:

- civil cases?
- criminal cases?
- administrative cases?

81) Do you have a way of analysing waiting time during court procedures?

- Yes
- No

If yes, please specify:

Courts are required to annually report time structure of pending cases, i.e. when each case was initiated and if there is an appeal, when the appeal was received by higher instance court. Also, recently deployed information system allows monitoring of length of each phase in the court procedure.

82) Is there a system to evaluate the functioning of courts on the basis of an evaluation plan (timetable for visits) agreed a priori?

- Yes
- No

Please specify (including an indication of the frequency of the evaluation):

83) Is there a system for monitoring and evaluating the functioning of the prosecution services?

- Yes
 No

If yes, please specify:

Prosecutor Offices annually report on their work flow to the HJPC (criminal charges, investigations, indictments and court decisions). Also, chief entity prosecutors evaluate performance of prosecutor offices.

You can indicate below:

- any useful comments for interpreting the data mentioned in this chapter**
 the characteristics of your court monitoring and evaluation system

4. Fair trial

4. 1. Principles

4. 1. 1. General principles

84) What is the percentage of judgements in first instance criminal cases in which the suspect is not attending in person or not represented by a legal professional (i.e. lawyer) during a court session (in absentia judgements)? If no data is available (NA) or if it does not apply to your system (NAP) please indicate it with the relevant abbreviation).

NAP

85) Is there a procedure to effectively challenge a judge if a party considers that the judge is not impartial?

Yes

No

If possible, number of successful challenges (in a year):

52

86) Please give the following data concerning the number of cases regarding Article 6 of the European Convention of Human Rights (on duration and non-execution), for the year of reference. If there is no data available, please indicate it (NA).

| | Cases declared inadmissible by the Court | Friendly settlements | Judgements establishing a violation | Judgements establishing a non violation |
|-------------------------------------------------|------------------------------------------|----------------------|-------------------------------------|-----------------------------------------|
| Civil proceedings - Article 6§1 (duration) | | | | |
| Civil proceedings - Article 6§1 (non-execution) | 2 | | 1 | |
| Criminal proceedings - Article 6§1 (duration) | | | | |

4. 2. Timeframes of proceedings

4. 2. 1. General information

87) Are there specific procedures for urgent matters as regards:

civil cases?

criminal cases?

administrative cases?

Please specify:

Codes on civil procedure prescribe that courts are obliged to process with urgency the following types of cases: labor disputes, all family law cases involving interests of juveniles, trespassing, disputes over real estates etc.

Codes on criminal procedure prescribe that courts are obliged to process with urgency the following types of cases: detention cases, cases against juveniles etc.

88) Are there simplified procedures for:

- civil cases (small claims)?
- criminal cases (petty offences)?
- administrative cases?

Please specify (for example if you have introduced a new law on simplified procedures):

Codes on civil procedure foresee for certain types of cases (small claims, labor disputes, trespassing etc.) shorter time limits for filing an appeal against the first instance court decision (15 days instead of 30 days).

For criminal offenses for which the law prescribes a prison sentence up to five (5) years or a fine as the main sentence, for which the prosecutor has gathered enough evidence to provide grounds for the prosecutor's allegation that the suspect has committed the criminal offense, the prosecutor may request, in the indictment, from the court to issue a warrant for pronouncement of the sentence in which a certain sentence or measure shall be pronounced against the accused without holding the main hearing.

Also, plea bargaining, if successful, concludes a criminal case without the full scale trial.

89) Do courts and lawyers have the possibility to conclude agreements on the modalities for processing cases (presentation of files, decisions on timeframes for lawyers to submit their conclusions and on dates of hearings)?

- Yes
- No

If yes, please specify:

4. 2. 2. Penal, civil and administrative law cases

90) Total number of cases in the first instance courts (litigious and non-litigious): please complete the table. If the data are not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations.

| | Pending cases on 1 Jan. '08 | Incoming cases | Resolved cases | Pending cases on 31 Dec. '08 |
|----------------------------------------------------------------------------------------|-----------------------------|----------------|----------------|------------------------------|
| Total of civil, commercial and administrative law cases (litigious and non litigious)* | 1602366 | 1043238 | 744475 | 1901129 |
| 1 Civil (and commercial) litigious cases* | 281333 | 147807 | 136664 | 292476 |
| 2 Civil (and commercial) non-litigious cases* | 50838 | 54039 | 56478 | 48399 |
| 3 Enforcement cases | 1198970 | 501056 | 204582 | 1495444 |
| 4 Land registry cases** | 68088 | 312168 | 318459 | 61797 |
| 5 Business register cases** | 2847 | 26041 | 26201 | 2687 |
| 6 Administrative law cases | 115 | 8414 | 8275 | 199 |
| 7 Other | 175 | 1980 | 2028 | 127 |
| Total criminal cases (8+9) | 275464 | 242057 | 321898 | 195623 |
| 8 Criminal cases (severe criminal offences) | 24816 | 83962 | 82475 | 26303 |

| | | | | |
|----------------------------------------------|--------|--------|--------|--------|
| 9 Misdemeanour and / or minor offences cases | 250648 | 158095 | 239423 | 169320 |
|----------------------------------------------|--------|--------|--------|--------|

91) Comments (including an indication of the cases that are included in the total figures of civil, commercial and administrative law case and types of criminal law cases - definition of misdemeanour cases, minor offences and severe criminal cases):

Civil cases encompass all civil disputes, apart from commercial cases, involving: contracts, real estates, domestic (family) relations, accidents, negligence, unpaid debt, small claims etc. Additionally, the first instance courts decide on non-contentious court matters (e.g. inheritance proceedings, non-contentious proceedings for settling relationships between co-owners including dissolution of co-ownership, settlement of boundary lines, voluntary sales, establishing that a person does not have legal competence etc.). Finally, the first instance courts conduct enforcement proceedings.

Commercial cases include: disputes related to the rights and obligations arising from legal transactions involving goods, services, securities, ownership or other property rights in real estate, or the rights and obligations arising from securities, in which both parties in the proceedings are either a legal entity or a physical person who, in the capacity of an independent entrepreneur or in another capacity, performs business or other registered activity as his main or additional profession; disputes related to copyrights, related rights and other rights relating to intellectual property; disputes arising from acts alleged to constitute unfair competition or monopolistic agreements; bankruptcy and liquidation proceedings, as prescribed by law, and all disputes arising during and related to bankruptcy and liquidation proceedings.

Criminal cases include:

first instance jurisdiction over:

- adjudicating criminal offences for which the law prescribes as main punishment a fine or sentence of imprisonment up to 10 years, unless the jurisdiction of another court is prescribed by a separate law;
- adjudicating criminal offences for which the jurisdiction of the first instance court is prescribed by a separate law;
- adjudicating all criminal proceedings against juveniles;

conducting proceedings during the investigation and after the bringing of the indictment in accordance with law;

adopting decisions on extraordinary legal remedies when provided by law; and

deciding on proceedings upon requests for pardon in accordance with law.

A criminal offense is an act which is illicit, which is proclaimed by law as a criminal offense, the characteristics of which are described by law, and for which a criminal sanction is prescribed by law.

Some of the punishments that may be pronounced against of perpetrators of criminal offenses are: imprisonment, long term imprisonment, fine, suspended sentences, security measures etc.

Minor offences are violations of public order or of regulations on economic and financial operations defined as such by laws or other regulations, whose characteristics are described and for which sanctions are prescribed. They include small traffic offences.

Minor offence sanctions are: fines, suspended sentences, reprimands, and protective measures.

Comments on the data presented in the above table:

Majority of enforcement cases are uncontested claims for unpaid utility bills (i.e. heating, water, state television subscription etc.). There were 1.464.464 of these cases or 98% of total number

of unresolved enforcement cases on 31 December 2008.

On 31 December 2008 there were 100.819 cases of enforcement of minor offence sanctions (mostly fines) or 60% of the total "misdemeanour and / or minor offences cases" category.

92) Total number of cases in the second instance (appeal) courts (litigious and non-litigious): please complete the table. If the data are not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations).

*** Please indicate (in the comments below) which types of cases are included in the total figures of civil, commercial and administrative law cases.**

**** if applicable**

Please check the consistency of data as mentioned under question 91.

Comments (including an indication of the cases that are included in the total figures of civil, commercial and administrative law case and types of criminal law cases and possibly the existence of appeal rates for some case categories):

| | Pending cases on 1 Jan. '08 | Incoming cases | Resolved cases | Pending cases on 31 Dec. '08 |
|----------------------------------------------------------------------------------------|-----------------------------|----------------|----------------|------------------------------|
| Total of civil, commercial and administrative law cases (litigious and non-litigious)* | 25756 | 40723 | 37246 | 29233 |
| 1 Civil (and commercial) litigious cases* | 19666 | 32309 | 28971 | 23004 |
| 2 Civil (and commercial) non-litigious cases* | | | | |
| 3 Enforcement cases | | | | |
| 4 Land registry cases** | | | | |
| 5 Business register cases** | | | | |
| 6 Administrative law cases | 6090 | 8414 | 8275 | 6229 |
| 7 Other | | | | |
| Total criminal cases (8+9) | 3325 | 13774 | 14844 | 2255 |
| 8 Criminal cases (Severe criminal offences) | 1215 | 8154 | 8133 | 1236 |
| 9 Misdemeanour and/or minor offences cases | 2110 | 5620 | 6711 | 1019 |

Comment :

The second instance courts have combined jurisdiction, namely they act as both first instance and second instance courts.

First instance jurisdiction includes:

adjudicating administrative cases (i.e. judicial overseeing of final decisions of administrative bodies) and

adjudicating criminal cases for which more than 10 years of imprisonment or a long-term imprisonment (more than 20 years of imprisonment) is prescribed, unless the competence of another court is prescribed by law proceedings during the investigation and after the bringing of the indictment in accordance with law.

Second instance jurisdiction includes deciding on appeals against decisions (criminal and civil) of first instance courts, in addition these courts have jurisdiction over deciding on other ordinary and extraordinary legal remedies, if so stipulated by law.

93) Total number of cases in the highest instance courts (litigious and non-litigious): please complete the table. If the data is not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations.

*** Please indicate (in the comments below) which types of cases are included in the total figures of civil, commercial and administrative law cases.**

**** if applicable**

Please check the consistency of data as mentioned under question 88.

Comments (including an indication of the cases that are included in the total figures of civil, commercial and administrative law case and on possible limitations to the appeal to the highest instance court):

| | Pending cases on 1 Jan. '08 | Incoming cases | Resolved cases | Pending cases on 31 Dec. '08 |
|----------------------------------------------------------------------------------------|-----------------------------|----------------|----------------|------------------------------|
| Total of civil, commercial and administrative law cases* (litigious and non-litigious) | 11134 | 8741 | 10307 | 9568 |
| 1 Civil (and commercial) litigious cases* | 3581 | 4304 | 4133 | 3752 |
| 2 Civil (and commercial) non-litigious cases* | | | | |
| 3 Enforcement cases | | | | |
| 4 Land registry cases** | | | | |
| 5 Business register cases** | | | | |
| 6 Administrative law cases | 7553 | 4437 | 6174 | 5816 |
| 7 Other | | | | |
| Total criminal cases (8+9) | 478 | 2320 | 2399 | 399 |
| 8 Criminal cases (severe criminal offences) | 478 | 2320 | 2399 | 399 |
| 9 Misdemeanour cases (minor offences) | | | | |

Comment :

The highest instance courts have jurisdiction over the following matters:

- deciding on appeals against the decisions (mostly in criminal cases) of the second instance courts, and
- deciding on extraordinary legal remedies submitted against final rulings (in criminal, administrative, and civil cases) of lower courts.

94) Number of litigious divorce cases, employment dismissal cases, robbery cases and intentional homicide cases received and treated by first instance courts: please complete the table. If the data are not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations.

| | Pending cases on 1 Jan. '08 | Incoming cases | Resolved cases | Pending cases on 31 Jan. '08 |
|-----------------------------|-----------------------------|----------------|----------------|------------------------------|
| Litigious divorce cases* | 2591 | 4234 | 3904 | 2921 |
| Employment dismissal cases* | 7365 | 5804 | 5700 | 7469 |
| Robbery cases | 180 | 212 | 193 | 199 |
| Intentional homicide | 161 | 147 | 158 | 150 |

95) Average length of proceeding (from the date of lodging of court proceedings) in days, number of pending cases more than 3 years and percentage of cases subject to appeal: please complete the tale. If the data is not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations.

Please provide comments to explain the answers to question 92:

| | % of decisions subject to appeal | % pending cases more than 3 years | 1st instance (average length) | 2d instance (average length) | Total procedure (average total length) |
|-----------------------------|----------------------------------|-----------------------------------|-------------------------------|------------------------------|----------------------------------------|
| Litigious divorce cases* | 4,30 | 5,99 | 329 | 98 | 214 |
| Employment dismissal cases* | 11,58 | 6,36 | 313 | 144 | 229 |
| Robbery cases | 36,79 | 14,07 | | | |
| Intentional homicide | 58.23 | 22,00 | | | |

Comment :

96) Where appropriate, please specify the specific procedure as regards (litigious and non-litigious) divorce:

Laws regulating family relations govern how courts conduct the divorce proceedings, i.e. first instance courts adjudicate divorce cases.

Divorce proceedings are started in one of the following manners:

- 1) Spouse files a law suit requesting divorce; or
- 2) Spouses file joint request for the marriage to be divorced.

Prior to taking one of the above legal actions, the couple with underage children must try to reconcile through the legally prescribed procedure which is handled by the municipal social workers.

Court decision by which a marriage is divorced, in principle, may be appealed only on the ground of grave procedural mistakes.

There is no mandatory timeframe for the divorce case to be decided on.

However, relevant laws prescribe that courts are obliged to process with urgency all family law cases, including divorce cases, involving interests of underage persons.

The substantive issues in divorce cases are division of property, child custody and support, alimony (spousal support) etc.

97) How is the length of proceedings calculated for the four case categories? Please give a description of the calculation method.

The length of proceedings for litigious divorce and employment dismissal cases is reported by courts as the simple average of time needed to resolve a case for cases resolved during the year. More than two thirds (69%) of courts reported while remaining 31% did not provide that figure. The average length at the national level is calculated as the weighted average with number of resolved cases at the court level as weights.

Data on length of proceedings, at this point, is not available for robbery and intentional homicide cases. However, the data for such cases will be available for the next evaluation cycle.

98) Please describe the role and powers of the prosecutor in the criminal procedure (multiple options are possible):

- to conduct or supervise police investigation

- to conduct investigation
- when necessary, to demand investigation measures from the judge
- to charge
- to present the case in the court
- to propose a sentence to the judge
- to appeal
- to supervise enforcement procedure
- to end the case by dropping it without the need for a judicial decision
- to end the case by imposing or negotiating a penalty without a judicial decision
- other significant powers

Please specify:

A prosecutor may withdraw the indictment without prior approval before its confirmation, and after the confirmation and before the commencement of the main trial, only with the approval of the preliminary hearing judge who confirmed the indictment.

In the case, the proceeding shall be ceased by the decision, and the suspect or the accused, the defense attorney and injured party shall be promptly notified of such decision.

The suspect or the accused and the defense attorney, may negotiate with the Prosecutor on the conditions of admitting guilt for the criminal offense with which the accused is charged. An agreement on the admission of guilt shall be made in writing. The preliminary hearing judge, judge or the Panel may sustain or reject the plea bargaining in question.

Educational recommendations may be applied to a juvenile for criminal offences for which a fine or a punishment of imprisonment for a term not exceeding three years is prescribed.

The educational recommendations may be applied to a juvenile by a competent prosecutor or judge for juvenile perpetrators.

The conditions for application of educational recommendations are: the juvenile's admission that he has perpetrated the criminal offence, and his expressed willingness to make amends with the injured party.

99) Does the prosecutor also have a role in civil and/or administrative cases?

- Yes
- No

Please specify:

A prosecutor has the right to file a request for protection of legality if the prosecutor deems that the ruling violates the law, against the valid ruling issued in the area where an administrative lawsuit can not be conducted, and the judicial protection is not provided outside the administrative lawsuit.

The request for protection of legality under the provision may be filed within 30 days from the day when the ruling was submitted to the prosecutor, and if it was not submitted, then within the period of three months from the day of submission to the party.

100) Functions of the public prosecutor in relation to criminal cases – please complete this table. If the data is not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations.

Please provide comments to explain the answers to question 100 and indicate in particular if the data given include traffic offences:

| | Received by the public prosecutor | Discontinued by the public prosecutor because the offender could not be identified | Discontinued by the public prosecutor due to the lack of an established offence or a specific legal situation | Discontinued by the public prosecutor for reason of opportunity | Concluded by a penalty, imposed or negotiated by the public prosecutor | Charged by the public prosecutor before the courts |
|---------------------------------------------|-----------------------------------|------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------|------------------------------------------------------------------------|----------------------------------------------------|
| Total number of 1st instance criminal cases | 73055 | | | | 13406 | 17371 |

Comment :

There were 8789 cases discontinued by the public prosecutors in 2008. However, the data on prosecutors' decisions discontinuing cases does not differentiate between legal grounds for such decisions.

The data on 1st instance criminal cases does not include small traffic offences, but includes serious traffic offences (e.g. traffic accidents causing personal injury, death or severe material damages).

You can indicate below:

- any useful comments for interpreting the data mentioned in this chapter**
- the characteristics of your system concerning timeframes of proceedings and the main reforms that have been implemented over the last two years**

In 2008 the High Judicial and Prosecutorial Council has started to collect extensively data on the age of pending cases. The data is used as a tool for the analysis of the courts' performance regarding the reduction of backlogs. In addition to that, the newly introduced case management system is designed so that courts and the High Judicial and Prosecutorial Council can obtain a considerable amount of information regarding the timeframes of court proceedings.

Please indicate the sources for answering the questions 90 to 95 and 100:

The official judicial statistics for 2008 gathered by the High Judicial and Prosecutorial Council.

5. Career of judges and prosecutors

5. 1. Appointment and training

5. 1. 1. Recruitment, nomination and promotion

101) How are judges recruited?

- Through a competitive exam (for instance after a law degree)?
- A specific recruitment procedure for legal professionals with long working experience in the legal field (for example lawyers)?
- A combination of both
- Other

Other, please specify:

102) Are judges initially/at the beginning of their carrier recruited and nominated by:

- An authority composed of judges only?
- An authority composed of non-judges only?
- An authority composed of judges and non-judges?

103) Is the same authority competent for the promotion of judges?

- Yes
- No

If no, please specify which authority is competent for the promotion of judges:

104) Which procedures and criteria are used for promoting judges? Please specify.

Procedure: The automatic promotion for judges is not prescribed by law. To be promoted, judges need to apply for publicly announced vacant positions within the judicial system and they can advance in terms of career only trough the competitive selection procedure.

Criteria used in the selection procedure: Professional knowledge, work experience and performance; Capacity through academic written works and other professional activities; Professional ability based on previous career results, including participation in organized forms of training; Work capability and capacity for analyzing legal problems; Ability to perform impartially, conscientiously, diligently, decisively, and responsibly the duties of the office for which he or she is being considered; Communication abilities and relations with colleagues, conduct out of office, integrity and reputation.

105) How are prosecutors recruited?

- Through a competitive exam? (for example after a law degree)
- A specific recruitment procedure for legal professionals with long working experience in the legal field (for example lawyers)?
- A combination of both

Other

Other, please specify:

106) Are prosecutors initially/at the beginning of their carrier recruited and nominated by:

- An authority composed of prosecutors only?
- An authority composed of non-prosecutors only?
- An authority composed of prosecutors and non-prosecutors?

107) Is the same authority formally responsible for the promotion of prosecutors?

- Yes
- No

If no, please specify which authority is competent for promoting prosecutors:

108) Which procedures and criteria are used for promoting prosecutors? Please specify:

Procedure: The automatic promotion for prosecutors is not prescribed by law. To be promoted, prosecutors need to apply for publicly announced vacant positions in the judicial system and only through the competitive selection procedure they can advance in terms of career.

Criteria used in the selection procedure: Professional knowledge, work experience and performance; Capacity through academic written works and other professional activities; Professional ability based on previous career results, including participation in organized forms of training; Work capability and capacity for analyzing legal problems; Ability to perform impartially, conscientiously, diligently, decisively, and responsibly the duties of the office for which he or she is being considered; Communication abilities and relations with colleagues, conduct out of office, integrity and reputation.

109) Is the mandate given for an undetermined period for judges?

- Yes
- No

Are there exceptions? Please specify:

Reserve judges may be appointed in courts of general jurisdiction on a temporary basis (up to 2 years).

Their role is to assist courts in reducing case backlogs, or to replace temporarily judges who are absent for the prolonged period of time. They are appointed by the High Judicial and Prosecutorial Council upon application by the president of a court

110) Is there a probation period for judges? If yes, how long is this period?

| | Yes | Duration of the probation period (in years) |
|-----------------------------|-----|---------------------------------------------|
| Probation period for judges | | |

111) Is the mandate given for an undetermined period for prosecutors? Yes No

Are there exceptions? Please specify:

There are no exceptions when it comes to prosecutors.

112) Is there a probation period for prosecutors? If yes, how long is this period?

| | Yes | Duration of the probation period (in years) |
|----------------------------------|-----|---------------------------------------------|
| Probation period for prosecutors | | |

113) If the mandate for judges/prosecutors is not for an undetermined period, what is the length of the mandate? Is it renewable?**Please specify the length**for judges? Yesfor prosecutors? Yes**You can indicate below:**

- any useful comments for interpreting the data mentioned in this chapter**
- the characteristics of the selection and nomination procedure of judges and prosecutors and the main reforms that have been implemented over the last two years**

Selection and nomination of judges and prosecutors is conducted by the High Judicial and Prosecutorial Council of Bosnia and Herzegovina, which is an independent and autonomous institution of Bosnia and Herzegovina tasked to ensure maintenance of an independent, impartial and professional judiciary. It is consisted of fifteen (15) members out of which 5 are judges of different levels, 6 are prosecutors of different levels, 2 are lawyers and 2 are representatives of legislative and executive branch of the government.

Criteria for selection and nomination of judges and prosecutors are objective to a large extent, and only individuals possessing integrity, high moral standing, and demonstrated professional ability with the appropriate training and qualifications could be appointed to a position of a judge or prosecutor. Selection and appointment procedure is initiated by a public announcement of vacant positions, conducted by the HJPC, and is published throughout Bosnia and Herzegovina. A competitive examination of applicants could be consisted of a written test, while no person is eligible for appointment to judicial or prosecutorial office without having been interviewed.

Each applicant has a right to review his or her application materials provided to the HJPC in regard to his or her applications, to request and receive information, subject to confidentiality, regarding the application and appointment procedure, to review and comment upon any opinion regarding the applicant submitted to the HJPC, and to address comments to the HJPC about a matter affecting the applicant's application.

In making decisions on appointment, the HJPC shall take into account, amongst others, the following criteria: (i) professional knowledge, work experience and performance; (ii) work capability and capacity for analysing legal problems; (iii) ability to perform impartially, conscientiously, diligently, decisively, and responsibly the duties of the office for which he or she is being considered; (iv) communication abilities; (v) relations with colleagues, conduct out of office, integrity and reputation; (vi) Managerial experience and qualifications, in relation to the positions of court president, chief prosecutor and deputy chief prosecutor.

5. 1. 2. Training

114) Nature of the training of judges. Is it compulsory?

- Initial training
- General in-service training
- In-service training for specialised judicial functions (e.g. judge for economic or administrative issues)
- In-service training for management functions of the court (e.g. court president)
- In-service training for the use of computer facilities in the court

115) Frequency of the training of judges

| | Annual | Regular | Occasional |
|-----------------------------------------------------------------------------------------------------------|--------|---------|------------|
| Initial training | Yes | No | Yes |
| General in-service training | Yes | No | Yes |
| In-service training for specialised judicial functions (e.g. judge for economic or administrative issues) | No | No | No |
| In-service training for management functions of the court (e.g. court president) | No | No | Yes |
| In-service training for the use of computer facilities in the court | No | No | Yes |

116) Nature of the training of prosecutors. Is it compulsory?

- Initial training
- General in-service training
- Specialised in-service training (specialised public prosecutor)
- In-service training for management functions of the prosecution services (e.g. head prosecutor and/or managers)
- In-service training for the use of computer facilities in the public prosecution service)

117) Frequency of the training of prosecutors

| | Annual | Regular | Occasional |
|-----------------------------------------------------------------------------------------------------------------|--------|---------|------------|
| Initial training | Yes | No | Yes |
| General in-service training | Yes | No | Yes |
| Specialised in-service training (specialised public prosecutor) | No | No | Yes |
| In-service training for management functions of the prosecution services (e.g. head prosecutor and/or managers) | No | No | Yes |
| In-service training for the use of computer facilities in the public prosecution service) | No | No | Yes |

You can indicate below:

- any useful comments for interpreting the data mentioned in this chapter
- comments regarding the attention given in the curricula to the European Convention on Human Rights and the case law of the Court
- the characteristics of your training system for judges and prosecutors and the main reforms that has been implemented over the last two years

The system of training of judges and prosecutors in BiH is created in the way that all judges and prosecutors must undergo minimum four days of training per year.

However, the judges and prosecutors are free to choose which training they would like to attend choosing topics and timing of seminars from the Annual programs of Centers for Judicial and Prosecutorial Training, usually in relevance with their field of work. The Annual programs formally include a variety of seminars from various legal fields including the European Convention on Human Rights and the case law of the Court, training for management functions of the court and prosecutor's offices and other specialized areas.

The task of the Centers is to ensure, under the supervision of the High Judicial and Prosecutorial Council of Bosnia and Herzegovina, that training programs for judges and prosecutors are designed and implemented in light of the main requirements established for the exercise of judicial and prosecutorial duties. The main duties of these centers are:

- Provision, under the direction and supervision of the HJPC, of induction training courses to those persons considering a career as either a judge or a prosecutor;
- Provision, under the supervision of the Council, of advanced professional training for judges and prosecutors; and,
- Provision of certificates of graduation on the successful completion of induction training and, where appropriate, annual certificates on the completion of any minimum advanced professional training requirements as established under Law.

5. 2. Practice of the profession

5. 2. 1. Salaries

118) Salaries of judges and prosecutors: please complete the table. If the data is not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations.

Please provide comments to explain the answers to question 118:

| | Gross annual salary (€) | Net annual salary (€) |
|--------------------------------------------------------------------------|-------------------------|-----------------------|
| First instance professional judge at the beginning of his/her career | 24015 | 14946 |
| Judge of the Supreme Court or the Highest Appellate Court | 41481 | 25646 |
| Public prosecutor at the beginning of his/her career | 24015 | 14946 |
| Public prosecutor of the Supreme Court or the Highest Appellate Instance | 41481 | 25646 |

Comment :

In this calculation following assumptions were used:

First instance professional judge at the beginning of his/her career – 3 years of work experience

Judge of the Supreme Court or the Highest Appellate Court – 20 years of work experience

Public prosecutor at the beginning of his/her career – 3 years of work experience

Public prosecutor of the Supreme Court or the Highest Appellate Instance – 20 years of work experience.

119) Do judges and public prosecutors have additional benefits?

| | Judges | Public prosecutors |
|-------------------------|--------|--------------------|
| Reduced taxation | No | No |
| Special pension | No | No |
| Housing | No | No |
| Other financial benefit | No | No |

120) If other financial benefit, please specify:**121) Can judges combine their work with any of the following other functions ?**

| | Yes with remuneration | Yes without remuneration | No |
|--------------------------|-----------------------|--------------------------|-----|
| Teaching | Yes | No | No |
| Research and publication | Yes | No | No |
| Arbitrator | No | No | Yes |
| Consultant | No | No | Yes |
| Cultural function | Yes | No | No |
| Other function | No | No | No |

122) If other function, please specify:**123) Can prosecutors combine their work with any of the following other functions ?**

| | Yes with remuneration | Yes without remuneration | No |
|--------------------------|-----------------------|--------------------------|-----|
| Teaching | Yes | No | No |
| Research and publication | Yes | No | No |
| Arbitrator | No | No | Yes |
| Consultant | No | No | Yes |
| Cultural function | Yes | No | No |
| Other function | No | No | No |

124) If other function, please specify:**125) Do judges receive bonus based on the fulfilment of quantitative objectives relating to the delivering of judgments?**

- Yes
 No

If yes, please specify:

Please indicate the source for answering the question 118

The calculation is made using criteria set in the legislation regulating salaries of judges and prosecutors.

5. 2. 2. Disciplinary procedures

126) Which authority is authorized to initiate disciplinary proceedings against judges and/or prosecutors? Please specify:

The Office of the Disciplinary Counsel of the High Judicial and Prosecutorial Council of Bosnia and Herzegovina.

The Office of the Disciplinary Counsel, an office within the Council, performs prosecutorial functions concerning allegations of misconduct against judges and prosecutors. The Office of the Disciplinary Counsel acts upon a complaint or upon its own initiative and is responsible for evaluating complaints for legal sufficiency, investigating allegations of misconduct against judges and prosecutors, and initiating and presenting cases of disciplinary violations before the disciplinary panels of the Council.

127) Which authority has the disciplinary power on judges and prosecutors? Please specify:

The High Judicial and Prosecutorial Council of Bosnia and Herzegovina.

The Council exercises its disciplinary powers through its disciplinary bodies, or namely the First and Second Instance Disciplinary Panels and may impose one or more of the disciplinary measures ranging from a written warning which shall not be made public to a removal from office. The President of the Council appoints the members of the First and Second Instance Disciplinary Panels. In disciplinary proceedings against judges, a majority of members of the Panel, at both First and Second Instance, are judges. In disciplinary proceedings against prosecutors, a majority of members of the Panel, at both First and Second Instance, are prosecutors

128) Number of disciplinary proceedings initiated against judges and prosecutors: please complete the table. If the data is not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations.

Please provide comments to explain the answers to question 128:

| | Judges | Prosecutors |
|----------------------------------|--------|-------------|
| Total number (1+2+3+4) | 7 | 1 |
| 1. Breach of professional ethics | 7 | 1 |
| 2. Professional inadequacy | | |
| 3. Criminal offence | | |
| 4. Other | | |

Comment :

Disciplinary offences are listed in the Law on the High Judicial and Prosecutorial Council of Bosnia and Herzegovina and judges/prosecutors can be sanctioned only for the offences. There is the Code of Ethics for Judges and the Code of Ethics for Prosecutors; however those two codes are not mandatory. A valid and final conviction for a criminal offence is a basis for initiating disciplinary proceedings.

129) Number of sanctions pronounced against judges and prosecutors: please complete

the table. If the data is not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations.

Please provide comments to explain the answers to question 129

| | Judges | Prosecutors |
|------------------------------------------------------|--------|-------------|
| Total number (total 1 to 9) | 12 | 1 |
| 1. Reprimand | 3 | |
| 2. Suspension | 1 | |
| 3. Withdrawal of cases | NAP | NAP |
| 4. Fine | NAP | NAP |
| 5. Temporary reduction of salary | 4 | |
| 6. Degradation of post | | |
| 7. Transfer to another geographical (court) location | | |
| 8. Dismissal | 1 | 1 |
| 9. Other | 3 | |

Comment :

In the category "Other" number 3 represents 3 private warnings.

You can indicate below:

- any useful comments for interpreting the data mentioned in this chapter**
- the characteristics of your system concerning disciplinary procedures for judges and prosecutors and the main reforms that have been implemented over the last two years**

6. Lawyers

6. 1. Statute of the profession

6. 1. 1. Profession

130) Total number of lawyers practising in your country. If there is no data available, please indicate it (NA).

1242

131) Does this figure include legal advisors (solicitors or in-house counsellor) who cannot represent their clients in court? If no go to question 133.

- Yes
- No
- Not applicable

132) Number of legal advisors. If there is no data available, please indicate it (NA)

133) Do lawyers have a monopoly of representation in (multiple options are possible):

- Civil cases*?
- Criminal cases - Defendant*?
- Criminal cases - Victim*?
- Administrative cases*?

* If appropriate, please specify if it concerns first instance and appeal. And in case there is no monopoly, please specify the organisations or persons which may represent a client before a court (for example a NGO, family member, trade union, etc) and for which types of cases:

Lawyers do not have a monopoly of representation.

According to the legislation on criminal proceedings a defense attorney of the defendant may be a lawyer who is a member of the Bar Association or a legal representative who is an employee of governmental institutions (legal aid offices) who has passed a bar exam and has practised law for at least three years after the exam.

According to the legislation on civil proceedings procedure a party's representative may be an attorney, a law firm or an employee of the organization providing free legal aid, as well as - for legal entities - an employee of that legal entity, or - for natural persons - party's spouse, life partner or relative by blood or by marriage.

According to the legislation on administrative proceedings, relevant provisions of the Civil Procedure Law apply to administrative disputes, including those about representation of the parties.

134) Is the lawyer profession organised through?

- a national bar?
- a regional bar?
- a local bar?

Please specify:

There are two entity bar associations in Bosnia, one in the Federation of BiH and other in the Republic of Srpska, while there is no a unified national bar as such.

The Federation of BiH Bar Association consists of five local bar associations, while the RS Bar Association is not divided into local associations.

Please indicate the source for answering the questions 130 and 132:

The data was provided by the two bar associations.

6. 1. 2. Training

135) Is there a specific initial training and/or examination to enter the profession of lawyer?

Yes

No

136) Is there a mandatory general system for lawyers requiring continuing professional training?

Yes

No

137) Is the specialisation in some legal fields tied with a specific level of training/ qualification/ specific diploma or specific authorisations?

Yes

No

If yes, please specify:

Comment to question 136:

Both bar associations in Bosnia and Herzegovina are obliged to provide and organize professional training for the lawyers. It is the lawyer's duty to continuously renew and expand their general and legal knowledge.

However, although the bar associations organize certain number of trainings every year, there is no mandatory number of trainings the lawyers need to take during the calendar year.

6. 1. 3. Fees

138) Can users establish easily what the lawyers' fees will be?

Yes

No

Please provide comments to explain the answer under question 138

The legislation on lawyers' profession prescribes that the tariffs on fees for lawyers' services are determined by the Ministry of Justice, upon the proposal of the Bar Association. The tariffs, including all amendments, must be made public in the official gazette.

139) Are lawyers fees

- regulated by law?
- regulated by Bar association?
- freely negotiated?

Please provide comments to explain the answer under question 139:

The legislation on lawyers' profession prescribes that the tariffs on fees for lawyers' services are determined by the Ministry of Justice, upon the proposal of the Bar Association. The tariffs must be published in the official gazette.

Lawyers charge for their services based on the tariffs. However, lawyers may conclude a written contract with their clients that would allow them to charge fees different from those defined in the tariffs.

6. 2. Evaluation

6. 2. 1. Complaints and sanctions

140) Have quality standards been formulated for lawyers?

- Yes
- No

141) If yes, who is responsible for formulating these quality standards:

- the bar association?
- the legislature?
- other?

Please specify (including a description of the quality criteria used):

142) Is it possible to complain about

- the performance of lawyers?
- the amount of fees?

Please specify:

Any person may file a complaint against a lawyer.

There are four aggravated offences of lawyer, one of which is a violation of professional secrecy and the other one is asking for a fee higher than given in the Tariff or in a contract between the lawyer and his client. In addition to this, complainants may complain about any other behaviour or performance of a lawyer, and these violations are considered as less serious offences, but they are not enumerated in advance.

Requesting a fee that exceeds the one prescribed by tariff or agreed to by contract constitutes a serious disciplinary offence.

143) Which authority is responsible for disciplinary procedures

- the judge?
 the Ministry of justice?
 a professional authority or other?

Please specify:

Disciplinary procedure is initiated by a Disciplinary Prosecutor, who is a member of the Bar Association, and the decision about a disciplinary offence of a lawyer is rendered by a disciplinary court. Only lawyers can act as members of the disciplinary court.

144) Disciplinary proceedings initiated against lawyers: please complete the table. If the data is not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations.

Please provide comments to explain the answers to question 141:

| | Breach of professional ethics | Professional inadequacy | Criminal offence | Other |
|---------------|-------------------------------|-------------------------|------------------|-------|
| Annual number | | | | |

Comment :

The Bar Associations provided the following data:

- In 2008 disciplinary proceedings were started against 11 lawyers, four of them were cleared of charges.

- Bar associations did not specify what types of alleged disciplinary offences were examined in the said proceedings.

145) Sanctions pronounced against lawyers : please complete the table. If the data is not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations.

Please provide comments to explain the answers to question 145:

| | Reprimand | Suspension | Removal | Fine | Other |
|---------------|-----------|------------|---------|------|-------|
| Annual number | 1 | 0 | 0 | 6 | 0 |

Comment :

The Bar Associations did not provide detailed data on the sanctions pronounced against lawyers.

You can indicate below:

- any useful comments for interpreting the data mentioned in this chapter**
- the characteristics of your system concerning the organisation of the Bar and the main reforms that have been implemented over the last two years**

Q136: Bar associations in Bosnia and Herzegovina are obliged to provide and organize professional training for the lawyers. It is the lawyer's duty to continuously renew and expand their general and legal knowledge. However, although the bar associations organize certain number of trainings every year, there is no mandatory number of trainings the lawyer need to take during the calendar year.

7. Alternative Dispute Resolution

7. 1. Mediation and other forms of ADR

7. 1. 1. Mediation

146) Does the legal system provide for mediation procedures? If no go to question 151

Yes

No

147) If applicable, please specify, by type of cases, the organisation of mediation

| | Possibility for private mediation proposed by the judge or court annexed mediation | Private mediator | Public authority (other than the court) | Judge | Prosecutor |
|--------------------------------|------------------------------------------------------------------------------------|------------------|-----------------------------------------|-------|------------|
| Civil and commercial cases | Yes | Yes | No | No | No |
| Family law cases (ex. Divorce) | Yes | Yes | No | No | No |
| Administrative cases | No | No | No | No | No |
| Employment dismissals | Yes | Yes | No | No | No |
| Criminal cases | No | No | No | No | No |

148) Is there a possibility to receive legal aid for mediation procedures?

Yes

No

If yes, please specify:

149) Number of accredited mediators. If there is no data available, please indicate it (NA)

53

150) Please Indicate the total number of judicial mediation procedures per case category. If the data is not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations.

| | | |
|------------------------|-----------------------------------------|-----|
| civil cases? | <input checked="" type="checkbox"/> Yes | 75 |
| family cases? | <input checked="" type="checkbox"/> Yes | 0 |
| administrative cases? | | NAP |
| employment dismissals? | <input checked="" type="checkbox"/> Yes | 7 |
| criminal cases? | | NAP |

Please indicate the source for answering the question 150:

Association of Mediators BiH.

7. 1. 2. Other forms of alternative dispute resolution

151) Can you give information concerning other forms of alternative dispute resolution (e.g. arbitration, conciliation)? Please specify:

In civil cases, parties may agree to entrust the resolution of the disputes on to the arbitration. An arbitration agreement may be concluded with an existing dispute or on future possible disputes that could stem from certain legal relation. An arbitration agreement is considered legitimately concluded also when the provision on jurisdiction of the arbitration board is embodied in the general requirements for the conclusion of legal business. If the parties have agreed to entrust the resolution of the certain dispute to the arbitration, the court which received the complaint concerning the same dispute among the same parties proclaims itself incompetent upon the defendant's objection, revoke actions commenced in the proceedings and dismiss the complaint.

Unless the possibility of contesting the arbitration award before a higher instance arbitration board has been envisaged by the arbitration agreement, the arbitration award is considered final for the parties. An arbitration award may be annulled upon the party's complaint requesting the annulment of the arbitration award filed with the competent court in certain cases provided in the law.

You can indicate below:

- any useful comments for interpreting the data mentioned in this chapter**
- the characteristics of your system concerning ADR and the main reforms that have been implemented over the last two years**

Institutions:

AoMBiH is an association of citizens – nongovernmental organisation. Administrative work related to mediations is performed by the AoMBiH, while mediations are provided by private mediators, registered by the AoMBiH.

Legislation:

The Laws on Civil Procedure provide the following:

At the preparatory hearing at the latest, the court may, if it finds it appropriate with regard to the nature of the dispute and the circumstances, propose to the parties the resolution of the dispute through mediation proceedings, as prescribed by a separate law.

The parties may jointly put forward such proposal until the conclusion of the main hearing.

The legislation of Bosnia and Herzegovina on mediation empowers the AoMBiH to train and accredit mediators and it also prescribes principles how a mediation procedure is conducted.

Further information on mediation in BiH is available on the website of the AoM BiH.
www.umbih.co.ba

8. Enforcement of court decisions

8. 1. Execution of decisions in civil matters

8. 1. 1. Functioning

152) Do you have in your system enforcement agents (judicial officers)? If no go to question 154

- Yes
 No

153) Number of enforcement agents. If there is no data available, please indicate it (NA).

124

154) Are enforcement agents (multiple options are possible):

- judges?
 bailiff practising as private profession ruled by public authorities?
 bailiff working in a public institution?
 other enforcement agents?

Please specify their status and powers:

Enforcement agents are court employees.

Enforcement laws regulate the bailiff's powers.

The bailiff acts upon the court's enforceable decisions.

The bailiff is empowered to enter and search a debtor's property.

155) Is there a specific initial training or examination to enter the profession of enforcement agent?

- Yes
 No
 Not applicable

156) Is the profession of enforcement agent organised by?

- a national body?
 a regional body?
 a local body?
 not applicable

157) Can users establish easily what the fees of the enforcement agents will be?

- Yes

- No
 Not applicable

158) Are enforcement fees:

- regulated by law?
 freely negotiated?
 not applicable

Please indicate the source for answering the question 153:

The High Judicial and Prosecutorial Council.

8. 1. 2. Supervision

159) Is there a body entrusted with the supervision and the control of the enforcement agents?

- Yes
 No
 Not applicable

160) Which authority is responsible for the supervision and the control of enforcement agents:

- a professional body?
 the judge?
 the Ministry of justice?
 the prosecutor?
 other?

Please specify:

A party or participant may file a submission requesting removal of irregularities conducted by the enforcement agent in the course of executing the enforcement.

The court may issue a conclusion revoking illicit and improper activity performed by the enforcement agents.

A court president and secretary have a duty to supervise and control the enforcement agents.

161) Have quality standards been formulated for enforcement agents?

- Yes
 No
 Not applicable

If yes, who is responsible for formulating these quality standards and what are the quality criteria used?

162) Is there a specific mechanism for executing court decisions rendered against public authorities, including the follow up to this execution?

- Yes
 No

if yes, please specify

Serious limitations are in place: enforcement of monetary claims is not allowed on publicly owned property and the enforcement on accounts of public institutions is possible only insofar as it does not hinder their work or funds are earmarked in the relevant budget to this purpose.

163) Is there a system for monitoring the execution?

- Yes
 No

If yes, please specify

8. 1. 3. Complaints and sanctions

164) What are the main complaints of users concerning the enforcement procedure? Please indicate a maximum of 3.

- no execution at all?
 non execution of court decisions against public authorities?
 lack of information?
 excessive length?
 unlawful practices?
 insufficient supervision?
 excessive cost?
 other?

Please specify:

Due to the excessive backlogs in first instance courts, court users often file complaints stating that there is no execution at all or that enforcement proceedings take too long.

As for the non execution of court decisions against public authorities please see our reply to question 162.

165) Has your country prepared or has established concrete measures to change the situation concerning the enforcement of court decisions – in particular as regards decisions against public authorities?

- Yes
 No

If yes, please specify:

The HJPC BiH has established a Backlog Reduction Project mainly focused on improving enforcement procedure and, according to the country Strategy for the Reform of the Justice Sector, expert working groups have been appointed to propose necessary legislative amendments.

166) Is there a system measuring the timeframes of the enforcement of decisions :

- for civil cases?
 for administrative cases?

167) As regards a decision on debts collection, can you estimate the average timeframe to notify the decision to the parties which live in the city where the court sits:

- between 1 and 5 days
 between 6 and 10 days
 between 11 and 30 days
 more

If more, please specify

168) Number of disciplinary proceedings initiated against enforcement agents. If the data is not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations.

| | |
|------------------------------------------|----|
| Total number of disciplinary proceedings | NA |
| for breach of professional ethics | NA |
| for professional inadequacy | NA |
| for criminal offence | NA |
| Other | NA |

169) Number of sanctions pronounced against enforcement agents. If the data are not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations.

| | |
|---------------------------|----|
| Total number of sanctions | NA |
| Reprimand | NA |
| Suspension | NA |
| Dismissal | NA |
| Fine | NA |
| Other | NA |

You can indicate below:

- any useful comments for interpreting the data mentioned in this chapter
 the characteristics of your enforcement system of decisions in civil matters and the main reforms that has been implemented over the last two years

Please indicate the source for answering the questions 167, 168 and 169:

Question 167: An estimate of the High Judicial and Prosecutorial Council based on the available

data.

8. 2. Execution of decisions in criminal matters

8. 2. 1. Functioning

170) Is there a judge who is in charge of the enforcement of judgments?

Yes

No

If yes, please specify his/her functions and activities (e.g. Initiative or control functions). If no, please specify which authority is entrusted with the enforcement of judgements (e.g. prosecutor):

Court presidents of first instance courts oversee the enforcement of court decisions in criminal matters.

171) As regards fines decided by a criminal court, are there studies to evaluate the effective recovery rate?

Yes

No

If yes, please specify:

You can indicate below:

- any useful comments for interpreting the data mentioned in this chapter
- the characteristics of your enforcement system of decisions in criminal matters and the main reforms that have been implemented over the last two years

9. Notaries

9. 1. Statute

9. 1. 1. Functioning

172) Do you have notaries in your country? If no go to question 177

- Yes
 No

173) Is the status of notaries (if the data are not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations):

| | | |
|-------------------------------------------------------------|--------------------------------------------|-----|
| a private one (without control from public authorities)? | | NAP |
| a status of private worker ruled by the public authorities? | <input checked="" type="checkbox"/> number | 159 |
| a public one? | | NAP |
| other? | | NAP |

Comment :

The notary service is a public service that is performed by the notaries, who are self standing and independent providers of that service. A notary performs the service as a profession during the time for which he has been appointed. A notary may perform his service until he is 70 years of age, except where reasons for early termination of service exist.

Notaries are appointed by the relevant Ministry of Justice following the competitive procedure based on public announcement of vacant notaries' posts.

Number of notaries depends on population, meaning that one notary should cover app. 20.000 inhabitants.

174) Do notaries have duties:

- within the framework of civil procedure?
 in the field of legal advice?
 to authenticate legal deeds?
 other?

Please specify:

A notary is responsible for undertaking notary processing of a document, issuing confirmations, and certifying signatures, handsigns and copies.

Notary documents are: the documents made by notary processing, notary confirmation or notary certificates.

Notary documents have the weight of a public document, and are valid with all authorities, legal persons and other institutions, regardless of which particular notary had issued them.

Notary processed documents, which were made by the notary under the scope of his official responsibilities and in a prescribed form, have the full evidentiary weight of a public document on the statements issued before the notary.

Notary confirmation and certificate have the evidentiary weight of a public document on the facts that are testified in them.

Please indicate the source for answering the question 173

The sources for this question are Notary Laws adopted in 2002 (The Federation of Bosnia and Herzegovina) and in 2004 (Republika Srpska).

9. 1. 2. Supervision

175) Is there an authority entrusted with the supervision and the control of the notaries?

- Yes
 No

176) Which authority is responsible for the supervision and the control of the notaries:

- a professional body?
 the judge?
 the Ministry of justice?
 the prosecutor?
 other?
 not applicable

Please specify:

Work of the notaries is supervised by the relevant Ministry of Justice.

The Notary Chamber is responsible for conducting the disciplinary procedure against notaries for violations of official duty . The Notary Chamber has a power to impose disciplinary measures on a notary except removal, while the relevant Ministry of Justice removes a notary when conditions provided in the law are met.

You can indicate below:

- any useful comments for interpreting the data mentioned in this chapter
 the characteristics of your system of notaries and the main reforms that have been implemented over the last two years

10. Court interpreters

10. 1. function

10. 1. 1. Statute

177) Is the title of court interpreter protected?

- Yes
 No

178) Is the function of court interpreter regulated?

- Yes
 No

179) Number of certified court interpreters. If the data is not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations

576

180) Are there binding provisions regarding the quality of court interpreting in judicial proceedings?

- Yes
 No

If yes, please specify:

There are binding provisions in Bosnia and Herzegovina regulating the quality of court interpreting in judicial proceedings. Namely, the interpreters are required to pass an exam, organized by the entity Ministries of Justice, in order to determine their skills. This guarantees that only sufficiently skilled interpreters can be appointed as court interpreters.

181) Are the courts responsible for the selection of court interpreters?

- Yes
 No

Please provide comments to explain the answers to question 178 (in particular, if no, which authority selects court interpreters?) :

Court interpreters are appointed by the entity Ministries of Justice upon the proposal of the respective entity expert commissions.

Additional comment: Following the additional analysis of the relevant legal provisions, in the judicial system of Bosnia and Herzegovina Courts, not the Ministries of Justice, select court interpreters in a proceeding.

They are selected from the list of certified court interpreters who are placed by the entity Ministry of Justice on an official list.

In addition to that, courts are empowered to recruit a court interpreter in those cases in which no interpreters are available for a particular language.

11. Functioning of justice

11. 1. Foreseen reforms

11. 1. 1. Reforms

182) Can you provide information on the current debate in your country regarding the functioning of justice? Are there foreseen reforms? For example changes in legislation, changes in the structure of the judiciary, innovation programmes, etc. Please specify:

The Bosnia and Herzegovina Justice Sector Reform Strategy (2008-2012) was adopted in June 2008.

Its overall objective is to create a joint framework of reform for justice sector institutions in BiH that sets out agreed priorities for the future development of the sector as a whole, as well as realistic actions for reform.

It is an instrument which will ensure preconditions for further strengthening and maintaining independence, accountability, efficiency, professionalism and harmonization of the judicial system which ensures the rule of law in BiH.

The planned reforms are comprehensive. They concern, among other, the following issues: legislation regulating court proceedings (mostly civil and enforcement.), reduction of court backlogs, free legal aid issues (introduction of new legislation), accountability of judicial system (setting up a system of foreseeable timeframes in processing cases in courts), improving performance measurement system for judges and prosecutors etc.

Courts and judges

Structural modifications

Specialized commercial courts established on May 1, 2010 in one of the entities of Bosnia and Herzegovina, i.e. Republika Srpska, following the adoption of relevant legislation in 2008.

Information technologies

Case Management System has been introduced in all courts and prosecutors offices in BiH.

The Judicial Web Portal, including module for "Online Access to Court Case Information" has been implemented. It represents a major advancement in opening courts' affairs to citizens by making information on court cases simply accessible to the parties in those proceedings.

Register of Fines has been introduced in all courts, police stations, inspections and tax administrations institutions. This system contains information on all fines and costs imposed by a final and enforceable Minor Offence Order or Decision