Why Reinvent the Wheel?  
A Successful Model for Legal Reform in Croatia

www.judges-web.org

ABSTRACT

To build and strengthen democratic government institutions, there must be an effective transparent approach to the dissemination of information focusing on the legal system, the backbone of any stable democracy. The manner in which the information is delivered and how it is categorized, influences the usability of such information. The Judge’s web program, presented as an example of a best practices in Croatia, has positively affected the delivery mechanisms, which were weak and/or lacking altogether.

The lack of information flow, has lead to a decrease in citizen confidence in the judiciary and diversely affected access to justice. Hence, this has opened the way for, coercion, bribes, and other non-democratic methods for resolution of disputes. This has begun to foster an environment that is not conducive for foreign investment and development of the private sector. In the long run, this will affect economic growth and ultimately the development of a stable democratic society.

INTRODUCTION

The October 2003 parliamentary election brought to power a new government under the leadership of Prime Minister, Dr. Ivo Sanader. The new head of government moved quickly to reassure Croats, foreign governments and members of the International community of his full commitment to continuing the political and economic reforms begun by his predecessors. The 3,000 political questions posed by the European Commission to Croatia’s Government last year, accurately reflect the deep complexity of the national transformation required before the country becomes a functioning pluralistic democracy founded on the rule of law, with free market competition and a proactive respect for and protection of individual human rights. For those working on the legal reform agenda, it was gratifying to learn from Minister Vesna Skare-Ozbolt, of the Administrations and her personal desire, to accelerate the pace of change. Of particular interest, was the Ministers concurrence in the transfer of the Judge’s web to the Ministry of Justice.

The judicial system in Croatia remains problematic, particularly at the county and municipal levels, where judges, prosecutors, lawyers and litigants lack accurate, current and common information. Scholarly papers interpreting laws and regulations are hard to find and are usually out of date. Materials that are available are not catalogued or cross referenced making legal research a time-consuming, frustrating and unpredictable process for all who attempt it.

Democratically delivered justice, requires a number of attributes, i.e. an independent judiciary, concern for the rights of the accused, understanding and adoption of standards of procedural fairness, timely hearings and judicial determinations applied consistently across the country. Lack of timeliness and consistency continue to afflict the judicial system and have resulted in a backlog of more than a one million cases. Moreover a
tendency prevalent during the Communist period, to buy or otherwise affect a speedy and positive outcome, “creative work-arounds,” has persisted into modern day Croatia and brought with it the tradition of bribes, political interference or plain coercion. It goes without saying, that all such activities are easier carried on outside major urban centers, particularly the capital, Zagreb.

One of the numerous unintended consequences is frequently the relative worthlessness of contractual obligations. Companies and individuals enter into agreements knowing they can not satisfy their terms, calculating that the glacial judicial process and its openness to outside influence will enable legal and financial consequences to be avoided. This current reality has and will continue to depress foreign direct investment.

The only durable, long term approach to lowering the backlog and improving the standard of justice is to introduce on an urgent basis advanced systems technology and knowledge networks for the judicial and prosecutorial staff. The Judge’s web, is an example of what can be done given the will and adequate resources. For instance, its databases of legal decisions fosters:

- quicker & more informative drafting of legal holdings and verdicts;
- higher quality and more instructive, verdicts;
- greater consistency of verdicts (can easily consult other decisions on same fact patterns)
- shorter court time;
- greater predictability of verdicts; and
- greater use of arbitration and other alternative dispute resolution modalities.

The Judge’s Web has also encouraged judges to consult each other by identifying counterparts who have dealt with similar fact patterns which raised similar legal issues. Newly elected judges have reported that the web site helped them significantly to climb a steep learning curve faster and a constantly available reference library.

The first step toward creating accountability and transparency in any system is to publish court decisions and emphasizing, those issues of highest community interest. The second and more difficult step is to convince judges of the desirability and legal necessity of acting transparently, which may run counter to the modus operandi of older, sitting judges.

The third step is to publish on the Internet practical information on court operations (telephone numbers, opening times, list of relevant offices in the court, officials names etc. as well as references to other sources). The Judge’s web has developed and implemented an Internet based application which offers all parties an opportunity to learn the key information required to interact with the courts. For example see, http://www.sudacka-mreza.hr/jurisdiction.aspx?lang=eng

Courts can be identified by village, city, municipality and county, via the Judge’s web jurisdictional search engine. With more information, questions can be asked and answers demanded, the first political step towards forcing greater transparency anywhere. Making
the justice system open is a prerequisite of the Copenhagen Criteria and the commitment made by the Croatian government in the Stabilization and Association Agreement.

The usefulness of electronic accessibility to this type of information was confirmed during the fall, 2003 elections. The IT program administrator noted regular logins from members of the OSCE/ODIHR election monitoring team. A more specific example may illustrate this point better. By reference to the Judge’s web, it was possible to match the street address on voters identity cards to the appropriate county an municipality thus ensuring voters were registered accurately and quickly.

Most residents of Southeast Europe are not aware of their legal rights and if violated, how to exercise the remedies offered. For example, respect for fundamental rights is a prerequisite for EU membership. These rights are enshrined in the Council of Europe’s Convention for the Protection of Human Rights and Fundamental Freedoms and in its Protocol which allows individuals to appeal to the European Court of Human Rights. The Judge’s web NGO has publicized, through information campaigns, the presence of this type of information on the Internet. The site will in plain, non legal language, explains both available rights and remedies.

Similarly, we plan to publicize the presence on the web site of the rulings of the European Court of Human Rights in Strasbourg, France and the EC Court of Justice in Luxembourg. For Croatians’, the critical point will be the linkage between relevant rulings in Croatia to decisions by these two International courts. For example, if a case arose in a Croatian court of law and after exhausting, the domestic appeals process was finally appealed to the court in Strasbourg, all the relevant lower court rulings from Croatia, leading up to and including the court ruling from Strasbourg would be available.

A functioning and reasonably efficient Croatian judicial system will be required for Croatia to fulfill the obligations the Government has undertaken in agreements signed with Western European countries. Moreover, such a legal system based on democratic norms of transparency and due process will be essential for Croatia to take its place among the members of the European Union. There are a number of challenges which are being addressed; these include a huge case backlog, inadequate staffing and relative inexperience with the norms of a democratic, responsive, transparent legal system.

The Judge’s web program is not a panacea. It offers a solution to only a part of the tasks Croatia faces in bringing about substantial legal reform in the sphere of court administration. But, its transfer to the Ministry of Justice is an important step, one that has lead to the Government’s acquisition of a functioning, tested mechanism that makes the operation of courts and legal reference material transparent to the people who will make the system work better, more efficiently and in accordance with International standards of a democratically based system of justice. The Judge’s web program and its achieved success has been welcomed by the MOJ (Ministry of Justice) and many other beneficiaries in Croatia. It is now being presented as a best practice model for potential implementation in the Mediterranean region.
Bellow are answers to the principle guiding questions for this meeting, as listed in the Aide-memoire, page 6, “Meeting on Sharing of Best Practices and Innovation in Governance and Public Administration in the Mediterranean Region.”

1. **What are the main characteristics of the best practice?**

In collaboration with Croatian judges, law professors, lawyers and law students, the Judge’s web project has created an Internet based legal information infrastructure, to help contribute to the reform of the judiciary, improve the administration of justice and restore public confidence in the courts. The content offered in the Judge’s web (JW) databases is available via the internet to all, free of charge. It provides services and information not otherwise available in Croatian and English, in Croatia. The services and information offered are:

- On-line searches for any location, which then match the appropriate county, Municipality and offer web pages for all the legal institutions covering the location, Commercial court, appellate court, first instance court, misdemeanor court, Public prosecutors office, and the county prosecutors office;
- All relevant contact information, hours of operation, internal organization structure and short CV’s for the above categories of legal institutions are presented via web pages;
- Published legal decisions, archived by theme, subject matter, court, judge, key word, which serves to open up judicial practice and reasoning essential for modern practitioners, the citizens and ultimately investors;
- Names, categories, background and contact information for all court appointed interpreters and expert witnesses; and

The Project has been institutionalized within the Ministry in order to preserve and expand the transparency and broadly accessible information it has already introduced. Minister of Justice, Mrs. Vesna Skare-Osbolt has incorporated this project within the overall national judicial reform strategy she is leading. The project has been completed by an NGO and freely without cost transferred to the Ministry of Justice. Moreover, the Ministry has reserved funds to continue this project once International donor support comes to a close.

It must be noted, that the Norwegian Embassy’s financial assistance along with the combined financial support of the following Governments and International Organizations has made this project a reality in Croatia:

i. The American Bar Association/CEELI
ii. The Canadian Government, CIDA
iii. The Embassy of the United States of America
iv. The National Endowment for Democracy
v. I.R.Z. (The German International legal Research Foundation)
vi. The Embassy of the Netherlands
vii. The O.S.C.E., Croatia
viii. International Alliances, NGO

The donor’s generous support, coupled with the willingness of the Croatian Government to accept the Judge’s web, confirms the significant achievements of this initiative.

The following list contains the key characteristics of this “best practices” project
1. It is accessible to all;
2. Provides key information not available elsewhere;
3. Dual language, Croatian and English;
4. Is interactive, not static, meeting the changing needs of users;
5. The specific presentation and categorization of information is unique;
6. The technological infrastructure in place to better resolve the needs of the citizens.

2. **When and why were the best practices introduced and what makes them “best practices”?**
   a. The best practices were introduced in the fall of 2001.
   b. The best practices were introduced at the request of legal practitioners and members of the legal community. The best practices were later expanded to include the requests from citizens and other interested parties to improve access and transparency of information crucial to court administration. They address the following needs:
   
   1. **Viability of information and exchange of ideas**
      1. Create an infrastructure that fosters transparency and greater consistency in rulings and the adjudication process;
      2. The facilitation of interaction amongst judges and members of the legal profession to communicate on targeted topics has contributed added quality to verdicts by motivating judges to take into account established judicial practice before reaching their decisions;
      3. Rebuilding the confidence of citizens in the courts.
   
   2. **Amend the current practice and approach to adjudication**
      1. Modify the deliberation methodology in use by judges and offer an alternative approach to the current process of adjudication;
         a. Reduce the level of isolated thinking in the adjudication process;
         b. Increase the efficiency of judicial proceedings;
      2. Stimulate continued involvement of the law faculty and its students in the Judge’s Web. Law students, are the future legal professionals of Croatia. If we can help them modify their approach in the early stages, chances are greater that they will continue into the future as judges and lawyers, hence institutionalizing the reforms initiated.
   
   c. Nothing similar exists for adequate comparison, in order to determine if this is in fact a best practice in the filed of legal administration. The characteristics
enumerated below set this best practice project apart from others:

i. **(Origin)** The program is a result of 16-months of intensive field research, sponsored by the US Fulbright program, focusing on the operations of courts nation-wide;

ii. **(Program Funding)** This best practices program has been funded exclusively by foreign donors, the state budget of the beneficiary has not been burdened, yet they have received 100% of the project results and are the sole owners of the completed project;

iii. **(Development)** The best practices program has been formed by key practitioners, those who understand where the need for practical solutions lies and what is required to affect the most efficient solutions;

iv. **(Implementation)** The driving force in the implementation of this best practices project is law students, who play a significant role in the daily implementation of the project. This has enabled us to affect change on the future generations of lawyers, judges and legal practitioners, teaching them the importance of information sharing and the use of ICT technology in the transfer of information.

3. **What are the tangible results of the best practices and which groups have they benefited the most?**

   The following list enumerates the results achieved for the target community:

   a. **Results:**
      - Direct access to information regarding the operation of courts, database of legal decisions interpreting various relevant codes of law;
      - Restored confidence in the legal system;
      - Awaken the awareness of citizens regarding the need for transparency, the role of civil society and their contribution;
      - Equitable justice for minorities in remote areas;
      - Lower the opportunities for short-term gains, arbitrary court decisions and private interests to prevail (which inevitably leads to corruption and manipulation with the system);
      - Enabled the comparison of all appellate courts decisions. In the future, this will lead to increased consistency in the legal practice of courts nationwide;
      - Enabled legislative and scholarly bodies to quickly recognize legal questions for which articles of the law do not provide adequate and precise interpretation;
      - Easy access for all individuals to organized sources of information concerning how to interact with the legal system;
      - Helping shorten the length of judicial deliberations, by offering judges the ability to easily target legal reasoning nation-wide, which can offer insight into their particular proceedings;
      - A database of easily searchable court decisions will help decrease the uncertainty inherent in litigation and execution of court decisions. The
database could help discourage individuals or corporations from commencing unnecessary litigation, by offering information needed to better determine the probability of success;

- Promote increased transparency in the adjudication process of courts. This enables litigants to better foresee the consequences of given legal actions; to make realistic estimates of the risk to reward ratio in certain business ventures: To better estimate the probability of enforcing the terms of a contract.
- Offer foreign corporations and investors the ability to view the judicial practice of Croatian courts. This will better inform them of the level of security the legal system can offer.

b. Direct Beneficiaries:
- Members Of The Legal Community: (Judges, Lawyers, Legal Scholars, Public Notaries)
- Participants In Legal Proceedings (Plaintiffs And Defendants)
- NGO’s operating in the Western Balkans
- IDP’s and Refugees
- Minority groups
- All Actors of Civil Society
- Commercial sector, Banks and business

c. Indirect Beneficiaries
- The European Union Integration process
- Regional stability
- The process of court administration

d. Explanation of selected Beneficiaries

**Members Of The Legal Community: (Judges, Lawyers, Legal Scholars, Public Notaries)**
- Judges, are vital to helping achieve judicial transparency. Without the active involvement of judges and their transmittal of decisions judicial transparency and accountability is no more than words on paper. Although countries of the Western Balkans have a civil law system, without common law and binding legal precedents, it has been shown that giving judges the ability to access each other’s rulings and compare decisions increases the transparency and accountability of the country’s legal system and increase the efficiency of the adjudication process.

**Participants In Legal Proceedings (Plaintiffs And Defendants)**
- These individuals will receive the most benefit from a more accountable legal system. They are also the members who will be most prone to increased participation in the democratic dialogue to advance their case. They could form the critical mass required to begin affecting larger change. Increased transparency in the adjudication
process of courts, enables litigants to better foresee the consequences of given legal actions.

NGO’s
- The legal community and others can benefit from this database of legal decisions by tracking patterns and trends in the application of law throughout the courts. This will facilitate the work of various NGO’s who offer legal assistance. This is already being utilized by several groups offering legal aid. By conducting an analysis of the types of verdicts being most often appealed or overturned by the higher courts, targeted training seminars can be implemented in areas of law that show the most need. Furthermore, specific courts and judges can also be targeted for training.

IDP’s and Refugees
- There can be no realization of the rule of law until those that were forced to abandon their homes can safely return. The return needs to be facilitated by the courts, which are the institution entrusted with protecting property rights and implementing the return process. The people returning to their homes and attempting to regain lost property are in need of a transparent and open legal system. The added benefit of our project is that it creates transparency through the Internet, which enables these refugees and IDP’s to be informed about the courts and their adjudication from any location. This helps them better plan their return and offers them a source of information that they can access from any place they happen to be located.

All Actors of Civil Society
- Civil society, is the area of development that is still lacking in the Western Balkan countries. There is not an adequate level of civil society activity present to affect democratic dialogue at the level required to sustain a stable democracy. The Judge’s web application offers individuals an opportunity to be informed about the workings of the courts: Promotes the rule of law, by way of creating judicial transparency and attainability of legal decisions. The beneficiaries of this are all members of civil society.

Commercial sector, Banks and Businesses
- By having access to the work of the courts, the commercial sector in Croatia will be able to better estimates the level of protection offered by the justice system. This will allow businesses to notice what types of contracts have greater chance of enforcement when they are taken to court and to view the approximate amount of time required for the case to be adjudicated. In addition, they can compare the application of the same law code throughout Croatia and determine the best suited court for the enforcement of their contract terms.

A stable democracy demands an equitable system of justice. An equitable system must be transparent to the legal profession and to the public it protects. The Judge’s web project activities and goals outlined and discussed are aimed at
strengthening this vital aspect of the legal system and making its workings more available to the public, through better administration of justice.

Civil society is an empty phrase without the active participation of citizens in monitoring, “complaining,” lobbying, and pushing for improvements in their government in all its manifestations. The Judge’s web Internet application provides the basis for intelligent citizen participation in the reform process of their judicial system. It is for this reason, that the public awareness campaigns are such an integral part of our project activities. If the people don’t know the information is available and how they can get it, the Judge’s web is of limited assistance in this regard.

4. What challenges were encountered in designing and implementing the best practices?

a. Lack of cooperation and understanding from state officials during the development, implementation (after 5 years the ministry has recognized the significance of the project, under the minister Vesna Skare-Ozbolt);

b. Lack of support for the obtainment of information needed to fill the database;

c. Judges and other members of the judiciary not willing to have their work made public;

The activities of this project have targeted fundamental issues crucial to judicial reform and the establishment of a democratic spirit of governance based on the separation of powers. The Judge’s web is promoting judicial transparency, with a practical approach, by way of public service delivery. We are delivering the judicial practice of courts as well as information regarding their operations and jurisdiction. In addition, all relevant information regarding court interpreters and expert witnesses is also available via the internet, through over 2,000 published web pages. This is intended to assist the citizens in their interaction with the judiciary and offer improved transparency and accountability.

The implementation of the Judge’s web on a national level is now testing the willingness and preparedness of members of the Croatian judiciary to accept judicial transparency. We have witnessed fear and the reluctance from a majority of judges to submit their legal decisions. Hence, judges seem to accept the concept of transparency in theory but are not willing to take steps to realize and implement this concept. Two divisions have been identified within this problem:

Those who are not willing to submit their decisions. These are usually the incompetent or corrupt judges who do not want judicial transparency for fear their colleagues and other members of the legal profession might see their corruption or incompetence.
Those who are **willing to submit their decisions.** These judges fear some reprisal or possible indirect sanctions from their court president or others above them in the judicial hierarchy. They require encouragement from the MOJ or Supreme court which directs and authorizes them to submit decisions.

The Changes and amendments regulating the functioning of Courts, published in the **Croatian National Gazette Number: 129,** (22 December 2000), define the authorization a judge has in publishing his/her decisions.

Article 32 reads as follows:

Judges are required to continuously better themselves professionally and by way of taking part in educational programs and seminars. **A judge is authorized to publish professional and scholarly texts along with the publication of the content of delivered judicial decisions;** actively participate in professional and scholarly gatherings and committees and take part in the drafting of laws.

Original Croatian text (Članak 32)

U članku 62. dodaje se novi stavak 1. koji glasi:

“Sudac je dužan stalno se stručno usavršavati i sudjelovati u programima obrazovanja i usavršavanja.”

Dosadašnji stavak 1. koji postaje stavak 2. mijenja se i glasi:

“Sudac je ovlašten pisati stručne i znanstvene radove, objavljivati sadržaje otpravljenih sudskih odluka, sudjelovati u radu stručnih ili znanstvenih skupova i komisija i u pripremanju nacrta propisa.”

This law is proof that the legislative branch of government has opened the way for judges to easily publish their decisions and hence facilitate transparency of the judiciary. Yet the paradox remains, judge are reluctant to publish their decisions.

Interestingly, large organizations have invested millions into the modernization of Croatian courts but have not paid adequate attention to the actors who will be the beneficiaries of this investment. A majority of courts refuse to cooperate due to the fact that they do not understand what it is that they will gain and what is expected of them. Helping members of the judiciary understand the benefits of court modernization, and introducing the best practices of the Judge’s web program, has been the focus of our project.

The Croatian judiciary is in a state of transition, it is not only the laws that are changing but rather the individual members of the judiciary. There is a strong apprehension toward acting in a transparent manner amongst the older judges who are generally court presidents. This fact influences the younger judges, who do not wish to contradict their superiors. This is what ultimately leads to problems that this project has encountered and successfully resolved. The Judge’s web
program supports individualism and enables those judges that feel they have something to add to judicial practice to do so. There is a great influence still present and left over from the communist/socialist period. These remnants affect the interaction amongst individuals and the role of self-initiative in Croatian society.

5. **How can these best practices be implemented in other countries and what are the pre-conditions for an effective implementation?**

The Judge’s web has taken the role of facilitator and in cooperation with both International donors and the principle beneficiary of the project, obtained and managed the funding which has made this project possible. The necessary preconditions to implement this project in other areas of the Mediterranean region can be easily meet. The Judge’s web is ready and prepared to discuss with individual government representatives of the region, and provide precise answers regarding the implementation of this project per case basis. However, the basic elements can be defined as follows:

- Access to internet service providers;
- Cooperation from the courts and judges and minimal involvement of select members within the judiciary;
- Willingness of the relevant government institution to take local ownership of project results;
- Support from the donor community;
- Logistical support from the government institution.

If we accept the notion that there is a will to modify the current approach to adjudication, the question that remains is how and at what cost. “How,” can be answered with the use of modern technology. The costs can be kept relatively low if we utilize the internet to access and disseminate information amongst courts and the legal profession. This is precisely what this best practices innovation has achieved.

6. **Are these best practices isolated reform efforts or can they create a positive environment for reforms in other areas leading to the attainment of national long term development goals?**

In Croatia, the Norwegian Ministry of Foreign Affairs, along with an impressive pool of international donors, (The Embassy of the Netherlands, Embassy of Canada, US Embassy, OSCE-Zagreb, National Endowment for Democracy, The American Bar Association, Deutsche Stiftung Fur Internationale Rechtliche Zusammenarbeit e.V., and International Alliances) has funded this major legal reform project aimed at introducing transparency and greater efficiency in the judiciary. This program has already produced very positive results, sufficient to attract on-going funding for the five years since initial seed money was invested. Furthermore, the recent commitment
of the Croatian Ministry of Justice to incorporate the Judge’s web project into its overall national legal reform strategy, additionally demonstrates the success achieved and guarantees long term sustainability of results.

Tapping into the experience of the Judge’s web and its past success, in Croatia, could prove invaluable in jump-starting this legal reform initiative in other countries of the Mediterranean region. This would enable the legal reform process to avoid several generations of experimentation and lessons-learned. It makes more sense to use the return on investments on projects already completed, in Croatia, rather than spending multiple amounts of funding chasing the same solutions to similar problems. It certainly does in countries of the Mediterranean region, especially since this project has been nominated as an example of the best practices.

In conclusion the Judge’s web is a flexible, adaptable infrastructure, promoting the “public-administration” of justice, suitable for implementation in a variety of legal systems around the Mediterranean region.