

**International Commission of Jurists  
(Canadian Section)**

*International Project*

**Final report  
1998 - 2005**

*By the Honourable Michèle Rivet*

**Project to support the  
Independence and Impartiality of the Judiciary  
in the Southeast Adriatic countries**

**Croatia  
Serbia and Montenegro**

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## **Introduction**

Between December 1998 and March 2005, ICJ-Canada implemented three projects on Judicial Independence and Impartiality in the Southeast Adriatic countries, more specifically in Croatia and in Serbia and Montenegro. The general objectives of these projects have been to promote greater professionalism in local judges as individuals, and to build stronger, independent and more efficient judicial institutions. These objectives were of the utmost importance considering that these countries have been through many phases of reform during the past years. These countries recently became members of the Council of Europe and they are now working to fulfill the basic entry requirements to the countries that aspire to join the European Union. As such, they have to fulfil their obligation to build an efficient court system respecting and promoting European and International Human Rights standards.

During the implementation of all projects since 1999, more than 100 Canadian judges from every level of jurisdiction were asked to participate to the development and the success of the project, under the leadership and supervision of Judge Michèle Rivet, Director of the International Project of ICJ-Canada. A total of 427 judges from the former Yugoslavia have participated in one or the other of the 24 seminars and conferences organized by ICJ-Canada abroad, or in Canada.

The last active project, who had started in April 2002, officially ended March 31, 2005, when all reports were satisfactorily submitted to CIDA's officials. The project concluded the implementation of its 2004 activities with two regional conferences, respectively in Serbia, in the field of Court Efficiency, and in Croatia, in the field of Human Rights. CIDA's « Program Performance Report » concluded that the project was very positive and that the unique judge-to-judge approach developed by the project was in itself successful. This project, of 33 months, benefited from a financial support of 1 350 000 \$. However, it should be mentioned that the contribution in time spent by the Canadian judges and jurists adds 800 000\$ to the project.

Concerning the new project proposal submitted in June 2004, we were informed, on May 3, 2005, that CIDA is not going to fund ICJ Canada's 2005-2009 project. Although ICJ-Canada appealed the decision, CIDA responded negatively; budgetary constraint being the main reason put forward by CIDA's representative. Therefore, it seems that ICJ-Canada will not be involved, in the short term, in the reform of the justice sector in the region.

## **1. Summary of all projects**

### ***1.1 Projects for the years 1998-2002***

In 1998, the Canadian section of the International Commission of Jurists (ICJ-Canada) implemented a project aimed at strengthening the independence and impartiality of judges in the Federal Republic of Yugoslavia. Judge Michèle Rivet, President of the Quebec Human Rights Tribunal, supervised this project, funded by the Canadian International Development Agency (CIDA).

At this time, the country was run by President Slobodan Milosevic, and was recovering from years of war with Croatia and Bosnia Herzegovina. However, the project was suspended following the NATO bombing of March 24<sup>th</sup> 1999, concerning the Kosovo war.

Realizing the needs of judicial education in the region, ICJ-Canada developed a similar project for judges of the Republic of Croatia. Considering that reforms of the judiciary usually do not succeed unless judges are involved, ICJ-Canada decided to favour a *judge-to-judge* approach where more than 200 Croatian judges and 50 Canadian judges worked together to the development and the implementation of judicial reform programs.

The project, started in January 2000 for a two year period, allowed many exchanges between Canadian and Croatian judges. With the collaboration of two non-governmental organizations; the Zagreb-based *Croatian Helsinki Committee* (CHC) and the *Croatian*

*Law Center (CLC)*, many Canadian delegations went to Croatia. Phases of project were carry out through this methodology:

- © Interactive discussion and exchanges on both Canadian and Croatian judicial system, initiated during seminars in Croatia;
- © Identification of four main major problems with Croatian partners: Permanent judicial education; Media; Ethics and Discipline and; Court efficiency;
- © Intensive seminars in Canada in which leading Croatian judges had the opportunity to witness how concepts explained in the background documentation operate in Canada. The impact of these seminars were very important, not only on the acquisition of knowledge on substantive issues but because Croatian judges became the key players in all following activities and participated very actively in the reform of their country;
- © National conference in which specific recommendations were made by Croatian judges on the legislative and administrative measures that should be taken to enhance better independence and impartiality. These recommendations were publicized in a booklet and formally presented to the authorities and have been later on in the plan of action of the Croatian Ministry of Justice;
- © Series of recommendations were incorporated later on in legislative amendments of the Croatian Civil Procedure Code.

During this project, in November 2000, a group of 15 Croatian judges came to Canada for a two-week seminar, in order to become acquainted with the concepts of independence and impartiality as interpreted and applied in Canada. This core group has become solid partners in the development and implementation of future activities. Their experience in Canada has allowed them to better understand not only the theoretical consequences, but also the practical aspects, of the independence of the judiciary and the separation of powers.

With their close collaboration, the project focused on four main subjects, within a context of close relation with the independence and impartiality of the judiciary:

- (1) Efficiency of the courts;
- (2) Ethics and judicial discipline;
- (3) Permanent judicial education and;
- (4) Media and the courts.

In the spring of 2001, three seminars were organized in Croatia to allow more local judges to discuss on the identified priorities. More than 120 Croatian judges participated to these three seminars and reached a consensus on the necessary reforms to strengthen their position in this new democratic society.

In October 2001, a large conference was organized where 100 judges, journalists, professors, deputy minister, and lawyers discussed the specific goals of legal and judicial reform in order to support the efforts of the judiciary. Many recommendations were reached during this conference. The project published a booklet and distributed it to the entire judiciary, as well as to representatives of the Government. In November 2002, these recommendations were integrated in the “Strategic Plan of Reform” of the Minister of Justice.

### ***1.2 Project for the years 2002-2005***

At the conclusion of this successful project in Croatia (2000-2002), ICJ-Canada and its funding agency (CIDA) were convinced of the necessity to reach out to other countries of the Southeast Adriatic. Building on this successful work in Croatia and based on the acquired experience, ICJ-Canada, with the support of CIDA, decided to extend its work to Serbia and Montenegro. In 2002, after consultation with local organisation and Association of judges both in Serbia and in Croatia, ICJ-Canada and local partners concluded that better understanding of Human Rights issues in the judiciary would contribute to the achievement of democratic reforms and to the establishment of legal security and the Rule of law. In January 2002, CIDA agreed to finance a second phase of

the Project to pursue the work already achieved in Croatia and to establish similar projects in Serbia and Montenegro.

### ***1) Human Rights program***

Because countries in transition are faced with challenges resulting from the dissolution of the former socialist State, the scars of war, acute tension and socio-economic problems, the objectives of sustainability and comprehensive reform could be achieved only by increasing better adherence to the International and European standards of Human Rights.

ICJ-Canada's past project began its Human Rights initiative in close collaboration with the JTCs and local partners, where 50 judges from Croatia and Serbia and Montenegro participated in a "*training the trainers*" program devoted to better incorporation of Human Rights standards in the judicial system.

Two core groups of Croatian and Serbian and Montenegrin judges were followed and monitored during that two years program through seminars where Canadian judges gave the key note speeches while the majority of the discussion was led by local partners. It was developed in close collaboration with the Council of Europe, with the participation of experts from the Belgrade Centre for Human Rights, involving the trainees judges who, over the two years, became also trainers within their specific court, and lecturers for their own core group of trainees. A regional conference, with Slovenian, Croatian, Bosnian, Macedonian, Serbian and Montenegrin judges permitted judges to enhance their knowledge, establish strong contacts within themselves and develop plans for future actions.

Through this two years program, ICJ-Canada has undoubtedly contributed to the development of a better understanding of a Human Rights culture, although results have shown that there is a real need for further education within a larger scale.

## ***2) Court efficiency and Alternative Dispute Resolution: the pilot Courts project***

As for results to many consultations and the urgent need to work on better efficiency of the courts to solve the difficulties that all the judiciaries in the Southeast European countries are facing, including longstanding backlogs of cases, ICJ-Canada initiate a two year program in four pilot Courts of Serbia and Croatia with the same *judge-to-judge* and inclusive methodology that has been achieved successfully in Croatia. Due to Canada's widely recognised expertise in efficiency of court and mediation, ICJ-Canada's project has been a first-rate actor in this field.

The pilot Courts project was implemented in the Municipal Court II in Belgrade, in the District and Municipal Courts of Zrenjanin and in the County Courts of Pula and Varazdin in Croatia. It was created to provide exchanges between Canadian, Serbian and Croatian judges in order to tackle the particular problems hampering the efficiency of their courts and to implement different mechanisms to enhance efficiency and expediency.

The main objectives laid down by the Presidents of Courts were to increase judges' leadership in changing daily practices and to promote institutional improvement of Court Efficiency, namely by implementation of mediation in the judicial process. With the involvement of their Presidents, the pilot Courts project organised for each court two main training sessions addressing mediation within the court, caseload management, court administration, pre-trial conferences and skills development. During this time, a strategy for monitoring progress was put in place with the participating judges of each court and Canadian judges. Moreover, acknowledging the great impact of the previous seminar organised in Canada, ICJ-Canada organised a intensive week on mediation to introduce Serbian judges to Canadian models of mediation and ADR in order to enable them to adapt those model to their specific courts situation.

A final regional conference ensured dissemination of results and achievement. This forum also contributed to convince other courts to take this approach as model or to start

similar project in their courts. Moreover, the booklet published by ICJ-Canada in collaboration with pilot courts and local partners has greatly contributed to the growing interest of many other courts in Serbia and Montenegro and in Bosnia- Herzegovina.

The sustainability of ICJ-Canada's efforts in the field of efficiency of the courts has been also assured, in Serbia, by the latest amendments to the CPC and by the yet to come *Law on mediation*. In this regards, ICJ-Canada has contribute in its way to the legislative activities considering that many judges involved in the pilot Courts project were very committed to the Working Group that has contributed to the amendments or to the first drafts of *Law on mediation*.

## **2. Final Report for the project 2002-2005**

This project, which has been supervised from the beginning by Judge Michèle Rivet, President of the Quebec Human Rights Tribunal and Commissioner of ICJ-Geneva, aimed to help Croatian and Serbian & Montenegrin judiciaries to strengthen their independence and impartiality; to focus on increasing awareness of international human rights standards and; to introduce modern court administration techniques, case management and new methods of alternative dispute resolution. This project has been conducted in a unique judge-to-judge approach that has successfully facilitated our educational objectives through direct exchanges between Canadian and Southeast Adriatic judges.

Me Caroline Meilleur has been the project Director since the beginning of the project. Me Manon Montpetit, has been Deputy Director of the project since August 2003. There was two local partners in Croatia for this project: the Croatian Helsinki Committee (CHC) as well as the Croatian Law Centre (CLC). The main local partner in Serbia & Montenegro was the Centre for Democracy Foundation (CDF). ICJ-Canada also worked in close collaboration with all JTCs of each country, Associations of judges and with the Belgrade Centre for Human Rights in Belgrade.

The two past years, 2003-2004, represent the implementation phase of most activities of the project in Croatia as well as in Serbia & Montenegro. Throughout its training activities, the project has provided knowledge, expertise and support to local judges in order to transfer the ownership of the project and contribute to the overall judicial reform.

The pattern used by ICJ-Canada, once the work plan is in place, is the following:

1. Preparation of issue-oriented seminars in discussion with local partners;
2. Implementing the knowledge in pilot courts and helping the beneficiaries to integrate their skills in their daily function;
3. Debriefing with the beneficiaries: discussions concerning the project difficulties and success encountered during the implementation phase;
4. Identifying the proper strategy for the future. With their experience, beneficiaries identify the proper way to ensure sustainability. More in dept seminars or conferences; pilot courts implementation in other courts; recommendation of legislative amendments or participation on national working group;
5. Publication, permanent legacy of learning resources and trainers.

## ***2.1 Intensive two-week seminar in Canada in June 2002***

### ***2.1.1 Objectives***

The main objective was to take 16 Serbian and Montenegrin judges out of their usual environment and to give them an opportunity to witness how the concepts of independence and impartiality are applied and operate in reality. Another important objective was to give these judges motivation to participate to the reform and to become, in Serbia & Montenegro, the key judges in designing specific activities for the future.

### ***2.1.2 Activities***

Although this seminar was designed to enhance the knowledge of concepts and components of the independence and impartiality of the judiciary, other important issues

were developed in this two-week seminar. Among them: general concepts of independence and impartiality, ethics and discipline; Human Rights protection system, concept of equality and discrimination; Court efficiency and ADR; continuing education.

General presentations, role-plays, case studies, audio-visual presentations, small group discussion, general discussions were part of this seminar. A visit at the Supreme Court of Canada was organized, where they had the opportunity to meet with Supreme Court's judges. They also received extensive written material that contains laws, jurisprudence and doctrine in order to complete and deepen their learning experience. More than 25 Canadian judges and jurists were involved in the seminar<sup>1</sup>.

### **2.1.3 Results**

The local judges were able to gain a more concrete understanding of how the Canadian judiciary operates in practice and to see the Canadian system in action. It allowed Serbian and Montenegrin judges to gain knowledge on the objective conditions of judicial independence, the organisation of the work of Canadian judges and the standards governing the conduct of judges.

Their discussion with their Canadian counterparts allowed them to identify weaknesses in their system, which highlighted the need for judicial reform. According to their assessment, the seminar gave them motivation to participate to the reform. It raised their awareness of all the prerequisites of an independent and impartial judiciary. It gave them

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<sup>1</sup> Judge Michèle Rivet, President of the Quebec Human Rights Tribunal; Chief Justice Michel Robert, Quebec Court of appeal; Judge Ginette Piché, Superior Court of Quebec; Chief Justice Lawrence A. Poitras, Superior Court of Quebec; Professor Jean Leclair, Faculty of Law, University of Montreal; Judge Yves-Marie Morissette, Quebec Court of appeal; Me Harvey Yarosky; Me Raynold Langlois; Professor Lucie Lamarche, Faculty of sciences juridiques, UQAM; Me Pascale Legault, prosecutor; Professor Marco Sassoli, Faculty of sciences juridiques, UQAM; Professor François Crépeau, Faculty of Law, University of Montreal; Judge William Kelly, Supreme Court of Nova Scotia; Professor Colleen Sheppard, Faculty of Law, University McGill; Judge Alice Desjardins, Federal Court of appeal; Judge René Dussault, Quebec Court of appeal; Judge Pierre Blais, Court Martial of Appeal; Professor France Houle, Faculty of Law, University of Montreal; Professor Ysolde Gendreau, Faculty of Law, University of Montreal; Judge Odette Perron, Court of Quebec; Judge Gilles Hébert, Superior Court, Quebec; Honourable Alan B. Gold, Former Chief Justice of the Superior Court, Quebec; Judge Mel Rothman, Quebec Court of appeal; Judge André Deslongchamps, Superior Court, Quebec; Judge Louise Otis, Quebec Court of appeal; Me Hélène de Kovachich, mediation lawyer.

ideas to develop strategies of implementation of small-scale initiative such as discussion group with their colleagues and working lunch meetings.

This group remained very active in all subsequent phase either in participating in the working groups, delivering speeches or participating in other activities. The impact of such seminar is undeniable mostly because it enables participants to draw from their Canadian experience, tools and ideas to be adopted and implemented in their own system.

## ***2.2 Human Rights seminars***

### ***2.2.1 Objectives***

The main objective was to train 25 selected judges in each country to become future trainers in the field of Human Rights. This project transferred professional skills and knowledge focused on Human Rights issues to local judges through practical activities during all three seminars. Its premise was simple: that the most effective and efficient way to learn human rights issues is to get the substantive knowledge and to study cases. The aim was to professionalise judges by training them to become the future trainers. Through out its seminars, the project deployed experienced Canadian and European judges as trainers on specific topics that developed their level of understanding of the core of the concepts.

With background documentation through all seminars in English, Serbian and Croatian, the project directly assisted local judges by offering an international platform and developed a long-term support network for local judges.

The State Union of Serbia and Montenegro joined the Council of Europe in April 2003, Croatia in November 1996. Both countries ratified the European Convention on Human Rights. The Convention is now a part of the country's domestic legal system, directly applicable before domestic courts and, at a later stage, in Strasbourg. It is now essential to provide all legal professionals, including judges, prosecutors and lawyers, with in-depth

training on the European Convention on Human Rights, its additional Protocols and the case law of the European Court of Human Rights.

### **2.2.2 Activities**

The first seminar in Croatia and in Serbia and Montenegro took place in September 2003, the second in December 2003, and the third in April-May 2004. This staggered schedule gave participants time to assimilate and integrate new elements into their day-to-day work. For each seminar, speakers included both local experts, from within and outside the judiciary and Canadian judges. A final regional conference was held in Bjelolasica, Croatia, which was attended by more than 110 participants from Croatia, Serbia and Montenegro, Bosnia-Herzegovina, Macedonia and Slovenia.

The participating judges took an increasing active leadership role in these seminars. They worked on their *homework*, gave speeches and lead the discussion with the smaller groups. As the seminar progressed, participating judges were asked to take a gradual ownership of the training. They were asked to reflect on their own experience in their daily work when facing cases where Human Rights were an issue.

Their contact with the Canadian judiciary had provided them with high motivation and commitment to participate actively in the series of seminars. It permitted them to deepen their reflection, adapt all the information gathered in the seminars and share their views with their colleagues in their own words with the specific reality of their judiciary.

The themes addressed were:

- © Equality rights and protection against discrimination;
- © National minorities protection;
- © Right to gender equality;
- © Freedoms of speech and of the press;
- © Right to privacy;
- © Workshops on Human Rights European Court's cases;

- © International mechanisms for the protection of Human Rights;
- © Enforcement problems and remedies available in cases of violations of protected rights and freedoms;
- © Human Rights protection within educational and social contexts.

At the end of the series of three seminars, the project organized a final regional Conference was held in October 2004, in Croatia, to present to a wider audience the results achieved by each court during the project. This audience was composed of more than 100 members of the judiciaries, lawyers, representatives of international and regional organisations as well as state institutions from Serbia and Montenegro, Croatia, Bosnia Herzegovina, Macedonia and Slovenia. Seven Canadian judges were involved in these seminars<sup>2</sup>.

### **2.2.3 Results**

After the series of three seminars, the judges have without a doubt increased their level of understanding on the scope of Human Rights norms. They are now able to harmonize the principles into their practice. Although the objective to train the participants to be trainers was not completely achieved, other parallel and complementary objectives were achieved during the process.

The results achieved after the three seminars have shown that both groups of judges in Serbia & Montenegro and in Croatia were very committed to the series of seminars and they fully accomplished their educational tasks. Not only have they shown their great interest during the seminars, but also they are now able to take increasing responsibility for their own education between the seminars. All participants possess now the necessary tools to research and to update their knowledge. They have gained the proper methodology of the decision-making when faced with human rights cases.

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<sup>2</sup> Judge Michèle Rivet, President of the Quebec Human Rights Tribunal; Judge René Dussault, Quebec Court of Appeal; Judge Kathryn Neilson, Supreme Court of British Columbia; Chief Justice Catherine Fraser, Alberta Court of Appeal; Judge Doug Campbell, Federal Court of Canada; Judge Jean-Louis Baudouin, Quebec Court of Appeal; Judge Robert Sharpe, Ontario Court of Appeal.

It is clear that apart from few judges, most of the judges who took part in the Human Rights program are not yet ready to take in charge the entire education of their colleagues. Nevertheless, the judges have increased their knowledge on substantive issues and, the most important thing, they have developed interest and eagerness to learn more and to exchange about their new skills: participating judges have learned to learn.

Through the first seminars, ICJ-Canada was able to verify that all the participants had a very low level of comprehension or even not at all any knowledge concerning Human Rights protection. Despite the relatively short time period during which the Human Rights project was implemented all the participants remarkably increased their own development capacity. It is without a doubt that those judges will be the pillar judges with whom a next phase of project in Human Rights could be launched.

As interpretation of ordinary statutes differs from Constitutional protection, work still has to be done regarding a complete understanding of the fundamental Rights and Freedoms protected under their Constitutional Charters. Namely, even more awareness concerning the role of ratified European or International Conventions into their domestic laws still need to be addressed and developed.

Taking in account that provisions protecting Human Rights have to be pleaded in front of the judiciary, involving different actors as prosecutors and lawyers and disseminating the information is now becoming an important criteria for the sustainability of applicability of Human Rights protection in the judicial system.

## ***2.3 Court efficiency***

### ***2.3.1 Objectives***

The objectives were to tackle exact problems of restraining the efficiency of the courts; to solve the long lasting backlog of cases and to introduce modern court management techniques, namely through mediation and ADR.

As already mentioned, Serbia and Montenegro and Croatia have recently joined the Council of Europe and they are now working to fulfill the basic entry requirements to the countries that aspire to join the European Union, namely the political, economic and institutional criterias established by the Copenhagen European Council. As such, their judiciaries are at the core of the complete integration of European and International standards and need to fulfill their obligation towards an efficient court system respecting and promoting the Rule of Law.

Canadian experience in the field of court settlement and mediation is well recognized. Judicial Dispute Resolution mechanisms were introduced into Canadian system some years ago, at first as experience or pilot project before leading the Government and the Legislative power to reform its legislation or its Code of Civil Procedure. This Canadian capacity of implementation achieved through the years is of the outmost relevance for the Judicial system of the Southeastern Adriatic countries.

### **2.3.2 Activities**

#### **2.3.2.1 Pilot Courts project**

The pilot Courts project was created to provide exchanges between Canadian, Serbian and Croatian judges in order to tackle the particular problems hampering the efficiency of their courts and to implement different mechanisms to enhance efficiency and expediency.

The project established a program of collaboration with 20 judges assigned to each of the civil division of the four pilot Courts. With the involvement of their Presidents, the pilot courts project organized for each court two main training sessions addressing mediation within the court, caseload management, case management, court administration, pre-trial conferences and skills development.

In Croatia the pilot courts selected were: the **Municipal Court of Varazdin** and the **Municipal Court of Pula**.

In Serbia, the pilot courts were : the **Second Municipal Court of Belgrade** and the **Municipal and the District Courts of Zrenjanin** in the Autonomous Province of Vojvodina.

Following the intensive discussion of the first seminar, judges from all pilot Courts worked for six months to implement their own recommendations reached and to put in place techniques and methods to solve the problems that had been identified. Nine Canadian judges and jurists were involved in this pilot courts project<sup>3</sup>.

The themes presented and discussed to all four pilots courts during the first seminar were:

- © Case management;
- © Case settlement;
- © Pre-trial conferences;
- © Alternative Dispute Resolution.

At the end of the pilot Courts project, a final regional conference was held in Serbia, from June 17 to 20, 2004, to present to a wider audience the results achieved by each court during the project. This audience was composed of more than 100 members of the judiciaries, lawyers, representatives of international and regional organisations as well as State institutions from Serbia and Montenegro, Croatia, Bosnia Herzegovina, Macedonia and Slovenia.

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<sup>3</sup> Judge Michèle Rivet, President of the Quebec Human Rights Tribunal; Chief Judge Michel Robert, Quebec Court of appeal; Judge Danièle Grenier, Superior Court of Québec; Judge Melvin Rothman, Quebec Court of appeal; Me Randall Richmond; Chief substitute, Attorney-general of Quebec; Judge Ginette Piché, Superior Court of Quebec; Judge William Kelly, Supreme Court of Nova Scotia; Judge Ted Scanlan, Supreme Court of Nova Scotia; Me Bernard Grenier, lawyer, retired judge from the Court of Québec.

The published results of the pilot Courts project and the legal publications on Court Efficiency were distributed to all the judiciary.

### **2.3.2.2 *One week seminar on mediation in Canada***

In the early stages of the Project, Serbian judges targeted mediation and Alternative Dispute Resolution (ADR) as the priorities to be addressed. Within this context, the project defined a specific framework to target ADR as a mean to improve Court efficiency in Serbia. Building on its pilot Courts project, ICJ-Canada invited a core group of 10 Serbian judges and lawyer to a one-week intensive seminar in Montreal, in October 2003, to introduce them to Canadian models of mediation and ADR. This seminar enabled Serbian judges and lawyers to enhance their knowledge of ADR models and to assess the possibility of using this process in Serbia. More than 20 judges and jurists were involved in this seminar in Montreal<sup>4</sup>.

The seminar was presented by Canadian experts, including members of the Canadian judiciary and lawyers specialising in mediation, who laid out the Canadian approach to mediation, explained its successful adaptation in Canadian judicial matters, and provided an introduction to the practical skills required of mediators. Both Presidents of the pilot Courts in Zrenjanin and Belgrade attended this seminar with other colleagues in order to improve their knowledge and identify the specific tools to be implemented in their own courts.

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<sup>4</sup> Judge Michèle Rivet, President, Quebec Human Rights Tribunal; Chief Justice Michel Robert, Quebec Court of Appeal; Judge André Deslongchamps, Associate Chief Justice, Superior Court of Quebec, Me Pierre Gagnon, former *bâtonnier* of the Quebec Bar; Professor Alain Prujiner, Laval University; Me Babak Barin, lawyer, Oslin, Hoskin & Harcourt; Judge Ginette Piché, Superior Court of Quebec; Mr. Daniel Camozzi, Social worker, family mediator; Mrs. Lorraine Fillion, Director, Family mediation service; Me Carole De Lagrave, lawyer and mediator; Judge Melvin Rothman, Quebec Court of Appeal; Me Serge Lavoie, lawyer and mediator; Me Dominique Bourcheix, arbitrator and mediator; Professor Nabil Antaki, Laval University; Judge Louise Otis, Quebec Court of Appeal; Mr. Louis Marquis, former Dean of University of Sherbrooke; Me Hélène de Kovachich, lawyer and mediator; Judge Gilles Hébert, Superior Court of Quebec; Judge Réjean Paul, Superior Court of Quebec; Judge William Kelly, Supreme Court of Nova Scotia; Me Jean-François Roberge, National Judicial Institute. Me Suzanne Nault, prosecutor, Quebec Attorney-general.

### **2.3.3 Results**

Although conclusions and methodology of each court differed from one to the other, all of them improved some aspects of their efficiency in their daily practice. It is clear now that judges involved in all pilot Courts have taken the leadership role and self-appropriated techniques to enhance their efficiency.

**More specifically in Croatia**, the Courts of Varazdin and Pula worked on changing the way cases are distributed; having the smallest number of hearings as possible and strengthening discipline of the parties. The period of 6 months between the two seminars did not give them enough time to implement ADR method.

In the **Municipal Court of Pula**, the number of cases closed increased; judges devoted more time to the preparation of each case; settlement between parties increased: before the project each judge had a ratio of 6 settlement cases, and now the ratio has increased to 10 cases/judge; the judge's are now self-conscious of the impact of such settlement and their role in promoting it and the fact that this court was chosen by the project had a motivating effect on each judge in order to improve the efficiency; training in the new amendments of the Civil Procedure allowed judges to apply the new law uniformly through out the court.

In the **Municipal Court of Varazdin**, results within 6 months implementation were : the time of intake before the first hearing and the date of submission was increased: "*fast start*"; 90 % of cases had their first hearing within 30 days; the number of cases closed increased: before the project, the court closed an average of 153 cases/month and during the project, it closed 179 cases/month, an increase of 17 %; judgments were delivered within 30 days of the last hearing; settlement between parties increased by 5% without any specific training to the judges.

Meetings were also organized with other Presidents of Courts to share with them the new methodology, views and results. Before the second seminar was organized both pilot

Court of Pula and Varazdin attended a one-day seminar on the new amendments of the Code of Civil Procedure. These seminars were part of the implementation phase of the conclusion reached during the first series of seminars in September 2003. It greatly contributed to improve the Court efficiency since no training on the amendments of the code had been organized and judges were left alone to understanding and enforcing it. Both courts decreased the delay for the first hearings and managed a strict timeline for all procedures. Moreover, since they benefited from seminars on the new Code of Civil Procedure, organized by the project, they were all able to apply and implement the new mechanisms included in the major amendments of the Code.

**More specifically in Serbia, in the Municipal and District Courts of Zrenjanin,** the judges who participated in the pilot Courts project worked essentially on the preliminary hearings or preliminary conferences. The discipline of the parties was increased and the gathering of evidence was easier although not all the judges did use the preliminary hearings. The main obstacle to achieve results in management of the cases is that there is no mandatory written of evidence. Although the judge can ask the parties to present a written defence, there is no sanction in case of default. As for results, a lot of judges do not even ask for written evidence. Nevertheless, results showed that judges from pilot Courts started to request a written reply within a period of 30 days. The pilot Courts judges also took advantage of the work of the court advisors.

In the **Municipal Court II of Belgrade,** the Court was able to put in practice two ways to solve both in short term and long term the problem of case backlog.

Firstly, the Court was able, at a small experimental scale, to achieve better management of the cases by adding an assistant to the judge. This assistant is in fact relieving the judges from certain non-judicial tasks and is acting as a clerk for the judge or in specific cases, the assistant is in charge to assist the judge in preparations for the preliminary hearing by finding and printing out regulations or possible, court judgments in such cases.

Secondly, the **Municipal Court II of Belgrade** established a special department and special register « M » (for Mediation), where such cases were presented to the mediation judges. There is currently nine mediation judges who schedule appearances and summons the parties and their legal representatives; attempt to find a common interest and work to resolve the case through settlement. Contrary to the Zrenjanin Courts, the judges from Belgrade are convinced that the legal framework for mediation is possible through provision already in the CPC. ( This problem does not exist anymore since a new *Law on Mediation* has been recently adopted in Serbia). In fact, they were able to achieve very good results: one third of the cases that have been presented in mediation were resolved through settlements. For the Municipal Court II of Belgrade, obstacles to mediation were at first related much more to practical problems than to legislation, since the Court is limited in space and conditions, mediation cases were scheduled after the regular hours. Fortunately, the Court has now a separate court room near the Court House specifically reserved for case settlement.

It has to be said that in Serbia where Mediation-ADR was introduced, the opinion was that mediation could not work because it was not regulated and lawyers and judges would not accept it. This theory went against the possibility that mediation could be effective and efficient in the absence of the Law ( as mentioned, the new *Law on mediation* is now in force in Serbia). However, the pilot project in the Second Municipal Court II has proven that mediation was possible and effective, even if the court lacked adequate premises at the time.

**In conclusion**, efficiency of the court as improved in all 4 pilot courts of the project. With more than 140 municipal courts in each country, it is clear that further support is needed before a national change can be perceptible. It is also clear that higher courts' education is also needed along with lawyers, prosecutors and law students. The proper methodology developed by the ICJ-Canada has insured an active role of the local judges in the reform process. ICJ-Canada has presented a wide selection of tools and mechanisms but never imposed its own views. This approach forced the participants to

discuss the pros and cons of such mechanisms and the inevitable adaptation or modification to better fit their own legal tradition.

Although a curriculum for judicial education in Court efficiency was not built *per se*, a proper methodology of implementation was successfully designed, distributed and shared as a result of the pilot project. Other Courts and Presidents have expressed their eagerness to benefit from this experience and are more than willing to benefit from the same project. With the publication available, the basic information can be widespread, but further support is still needed to allow the participating judges to refine their approach and benefit from advanced skills training.

### **3. General assessments**

#### ***3.1 Regional co-operation***

Although most activities were performed nationally, the project intended to bring both participants of Croatia and Serbia & Montenegro at the end of its implementation phase to share their own experience. With the trauma of the war, practices and outlooks still in place, citizens and furthermore judges need to learn to share their experience and learn from one and the other.

Nevertheless, resistance to be involved in regional activities was put forward by some Croatian participants. On the contrary, Serbian, Montenegrin, Bosnian, Slovenian and Macedonian judges were not reluctant at all to participate in regional events.

The Croatian expressed that the issue of improving the Court efficiency remains a national issue and there was little interest in sharing their experience with their neighbouring countries. However, some Croatian judges felt the contrary and did participate in the regional activities.

This situation was unexpected for the project, but in order to maintain a harmonious relationship and to pursue the national objective as a priority, ICJ-Canada continued its regional component with the limited number of Croatian judges involved in the Court efficiency component. On the other hand, Croatian judges were more willing to be integrated as leaders concerning the Human Rights regional conference. With that in mind, regional conferences of the project have contributed to create links between key figures of the judiciary in each country although better relationship still needs to be strengthening in the coming years. Common bridges will need to be identified as links between the two countries even if the pace of the reform is different.

Although difficult to measure many informal meetings between Association of judges and JTCs took place under the auspices of the project. The results of such meetings are of a great value since regional conferences are not yet well integrated in the mentally and are organised on sporadic occasions.

All countries of the former Yugoslavia are looking to join the European Union and this factor serves as a catalyst in the growing exchanges of legal information between the countries. Even if tensions are still present from few actors, a growing majority of jurists understand the advantages and the need of exchanging legal knowledge.

### ***3.2 Judicial Training Centres***

Working in close collaboration with the JTCs was of primary importance in order to facilitate the transfer of the curricula and to improve the capacity of the Centres. Many of the seminars or activities organised by ICJ-Canada were held at the JTC's premises in Belgrade, in Serbia, or in Podgorica, in Montenegro. This close collaboration has contributed to enhance all JTC's capacity training.

Nevertheless, as a relatively new institutions, the JTCs are facing considerable challenges in securing adequate funding and resources necessary to service more than 15,000 legal professionals in Serbia 2,500 of them are judges; more than 700 are prosecutors and

deputy prosecutors; almost 1,000 are interns, professional associates and advisers in courts and prosecutions; around 11,000 are judicial administrative staff.. In Montenegro, the JTC is responsible to service less than 250 judges. The JTC is also open to co-operation with other parties in the judicial system: prosecutors and lawyers, forensic and other expert witnesses. As it is the case in Serbia, JTC needs more funding resources.

A permanent curriculum of training has yet to be developed in both Serbia and Montenegro and Croatia. Future international initiatives need to continue a structural work with the Judicial Training Centres in general, and with the legal community in particular, in order to further reform of the Justice system.

### ***3.3 Political consideration and logistic difficulties***

During the course of the project in Serbia, the Government changed, the Minister of Justice position was vacant for a long period and two new Supreme Court Presidents were appointed. All these factors contributed to delaying any responses or actions for the implementation strategies at the policy level

The scheduling of the activities in the project had to be closely adapted to the situation as the project evolved. Its inherent iterative structure was essential to quickly respond to the result in progress. Some activities had to be rethought in order to meet our objectives. The initial scheduling was remodeled during the course of the project with the formal approval of CIDA.

The assassination of the Serbian Prime Minister Mr. Zoran Djindjic, March 18<sup>th</sup> 2003, and the State of emergency forced ICJ-Canada to postpone its one-week mediation seminar from April 2003 to October of the same year. Also, an organized crime Roundtable was added to the original activities to meet the urgent needs of training in this matter following the creation of the Organized Crime Court in Serbia.

Concerning logistics involved in all activities, we had to rely on our local partner to oversee technical aspects for activities in Croatia and Serbia. For most of the activities, tasks were accomplished without any major problems.

### **3.4 Budgetary aspects**

Between the original and actual disbursements, because the project had to modify some activities with the approval of CIDA, the initial project changed. However, all these changes were necessary to complete the project. This means that some activities originally planned did not take place and comparison is impossible. Considering the remodeled project and according budget, most activities respected the disbursement previously approved.

### **3.5 Lessons learned**

Through out its five years experience, ICJ-Canada learned few lessons that can be summarized as follow:

- © There are still a lot of **Human Rights training** to be completed. Specifically in the cross-influences of the International, European and National regulations;
- © Judges needs time to “digest” the flowing information and adapt it to their reality. The needed reflection cannot happen overnight. **Changing mentality** or habits may take some time even with the best devotion;
- © As an image worth a thousand words, intensive **seminars in Canada** have permitted judges from these countries to see their Canadian counterparts into action and to develop bilateral sustainable relationship. Exchanges between judiciaries at an international level have proven to contribute to judge’s sense of being part of a respectful and respected justice system.
- © As it is essential to ensure continuity and trust from the local community, ICJ-Canada will enhance **its presence in the field**. Even though committed local institutions will promote the project itself, ICJ-Canada’s presence in the field

energizes and strengthens the relationship between the communities and will ensure better links with local government representatives.

- © The process of reform often depends on its organisation itself. While ICJ-Canada can assist with diagnosis, analysis of issues, and sharing of knowledge and methods, **ownership of the transformation** process is crucial to its success and long-term sustainability;
- © Since this project targeted the promotion of democracy and good governance, the turmoil of new ideas emerging from in depth reflection must be maintain. The **momentum created**, lead judges to believe in the sustainability of the reform and results as small as they can be perceptible should continue at a regular paste;
- © Trust within the judiciary is also key to the success of such initiative. The credibility ICJ-Canada believed to have created with its **judges-to-judges approach** is unique and beneficial in the sustainable reform. Many personal relationships between Canadian judges and local judges have lead to ongoing discussion and allow sharing personal and professional experience in specific context. The affinity shared by judges, despite the differences in their legal tradition or legal background, lead to a network of sharing information and knowledge;
- © The **assessment of the results** remains problematic in the execution of such project. Good Governance and Democracy are concepts difficult to measure. Initiatives might develop series of indicators to base their final evaluation both qualitatively and quantitatively. Research methodology already have different tools that can be uses and consultation with experts in assessment of changes in democracy need to be developed;
- © Finally, **flexibility** remains a great consideration in carrying out the activities. The scheduling of the activities in this project had to be closely adapted to the situation as the project evolved. Its inherent iterative structure was essential to quickly respond to the results in progress;
- © Redesigning project's activities and correlative during its phase of implementation can be difficult and need to be done more rapidly.

### **3.6 Proposal submitted to CIDA for the years 2005-2009**

Concerning the new proposal project, CIDA informed ICJ-Canada, in May 2005, of its decision not to fund ICJ-C's 2005-2009 project. On May 9<sup>th</sup>, Judge Michèle Rivet met with CIDA's representatives to discuss furthermore certain aspects of the rationale of its decision.

Here are the procedures taken in the past year to meet all CIDA's requests:

- © June 2<sup>nd</sup> 2004: ICJ-Canada submitted its proposal project for 2005-2009;
- © Between September and December 2004: many positive discussions with CIDA's representatives in order to precise and to elaborate some aspects of the project;
- © December 9<sup>th</sup> 2004: approval of ICJ-C proposal project by the President of CIDA's Central and Eastern Branch Europe. At that point only the approval of the Minister of International Cooperation was needed to start the Contribution Agreement negotiation;
- © January 2005: CIDA's representatives informed us that they have decided to undertake a review of several projects involving the region;
- © February 2005: CIDA's representatives traveled to Serbia and Bosnia-Herzegovina to consult the national beneficiaries as well as other donors active in the Rule of Law sector in order to re-assess the situation;
- © May 3<sup>rd</sup> 2005: Decision from CIDA not to fund ICJ-C proposal project;
- © May 9<sup>th</sup> 2005: Meeting with CIDA's representatives in Montreal.
- © May 17<sup>th</sup> 2005: Meeting with the Vice-President of the Europe Branch of CIDA to appeal the negative decision.
- © May 24<sup>th</sup> 2005: Final negative decision from the Vice-President of CIDA

During the last meeting we had with CIDA's representatives, I strongly convey to them my profound disagreement with such a decision which will end up to be a great loss for all the judiciaries. Although I explained in details the rationality of our arguments and why I really think their decision is wrong, CIDA stood by its decision. Indeed, although ICJ-Canada decided to appeal the decision at the Vice-President's office, the final decision remained negative: budgetary constraint being the main reason put forward by CIDA's Vice-President<sup>5</sup>.

Moreover, it seems to us that CIDA is now leaning more toward awarding competitive project than unsolicited proposal, as it prefers to deal with expert management team that experts on the subject matters.

## **Conclusion**

After my six years of experience in the Balkan's region, combined with many discussions with my colleagues, I strongly believe that opening a dialogue with the key members of the judiciaries leads to a more sustainable reform process. It was a great learning experience for the judges in the Balkan countries, as it was for their Canadian colleagues. I feel privileged to have been part of initiating long-lasting dialogue with members of the different judiciaries and to have witnessed many changes.

I would like especially to thank the ICJ-Canada Executive Committee, who permitted the projects to evolve and who were always supportive, especially during the preparation phase of the proposals. The ICJ-Canada team was able to benefit from wise advice of the Executive Committee as well as the Consultative Committee members during this crucial

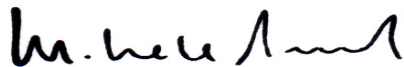
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<sup>5</sup> Extract from the decision sent by the Vice-Président Gilles Rivard to Judge Michèle Rivet on May 24<sup>th</sup> 2005: (original in French) “ [...] Il ne sera malheureusement pas possible Madame, de donner une suite positive à notre entretien à savoir la mise en oeuvre de ce projet. Après votre départ, j'ai rencontré les membres de l'équipe afin d'examiner toutes les options possibles qui s'offraient à nous. Même si les options à ma disposition étaient limitées, nous avons quand même tenter de trouver une solution. Toutes les avenues que nous explorions aboutissaient au même constat soit le très difficile problème de flexibilité budgétaire. La mise-en-oeuvre de l'Énoncé de politique internationale qui recommande notre retrait progressif de la Bosnie et la Serbie d'ici 5 ans, conjointement avec l'exercice de revue des dépenses qui a eu lieu l'automne dernier, ne nous laissent à peu près aucune marge de manoeuvre nous permettant de planifier de nouveaux projets dans ces deux pays [...]”

phase. I want also to thank the Canadian judges who took their own personal time to contribute their expertise to all activities in Canada or abroad, and also to thank the local judges whose continual willingness to share and learn is an inspiration.

Finally, I would like to thank the ICJ-Canada international project team. Me Caroline Meilleur and Me Manon Montpetit, who worked diligently to implement our past projects.

August 3, 2005

A handwritten signature in black ink, appearing to read 'M. Rivet', with a stylized flourish at the end.

The Honourable Michèle Rivet  
President of the Quebec Human Rights Tribunal  
Director, International Project of ICJ-Canada  
Commissioner of ICJ-Geneva

## ANNEX I

### SUMMARY OF ALL MISSIONS

<b>Dates</b>	<b>Location</b>	<b>Main Goal</b>
January 30 <sup>th</sup> - February 6 <sup>th</sup> 1999	Belgrade, SERBIA	Selection process
NATO BOMBING, PROJECT SUSPENDED		
April 5 <sup>th</sup> -16 <sup>th</sup> , 2000	Zagreb, CROATIA Ljubiana	Working mission
May, 20 <sup>th</sup> - 27 <sup>th</sup> 2000	Montreal, CANADA	Working mission 5 Croatian judges
October 2 <sup>nd</sup> - 8 <sup>th</sup> 2000	Zagreb, CROATIA	Working mission
November 1 - 18 <sup>th</sup> 2000	Montreal, CANADA	15 Croatian judges 2 weeks seminar
February 2001	Belgrade, SERBIA	Re-establish of project
May 1 <sup>st</sup> - 7 <sup>th</sup> 2001	Trakoscan, CROATIA	Seminar: media, ethics, permanent education and efficiency of the court
June 3 <sup>rd</sup> -10 <sup>th</sup> 2001	Tucepi, CROATIA	2 seminars: media, ethics, permanent education and efficiency of the court
May 27 <sup>th</sup> - June 13 <sup>th</sup> 2001	Zagreb, Belgrade, Skopje, Sofia, Sarajevo, Geneva	Inception mission New regional project
October 14 <sup>th</sup> - 21 <sup>st</sup> 2001	Crikvenica, Zagreb, Dubrovnik, CROATIA Rome	Final Conference
January 15 <sup>th</sup> - 25 <sup>th</sup> 2002	Banja Luka, Sarajevo, BiH Zagreb, CROATIA	Booklet launch Assessment BiH
February 23 <sup>rd</sup> - March 2 <sup>nd</sup> 2002	Montreal, CANADA	1 week seminar 10 Croatian judges
April 21 <sup>st</sup> - 28 <sup>th</sup> 2002	Belgrade, SERBIA Podgorica, MONTENEGRO	Selection process
June 2 <sup>nd</sup> - 16 <sup>th</sup> 2002	Montreal, CANADA	16 Serbian and Montenegrin judges 2 weeks seminar
June 22 <sup>nd</sup> - July 5 <sup>th</sup> 2002	Belgrade, Sarajevo, Banja Luka, Skopje	Re-Assessment
November 5 <sup>th</sup> - 16 <sup>th</sup> , 2002	Belgrade, SERBIA Zagreb, CROATIA	Working mission
January, 25 <sup>th</sup> - February 5 <sup>th</sup> 2003	Zagreb, CROATIA Belgrade, SERBIA	Working mission
April 5 <sup>th</sup> - 12 <sup>th</sup> 2003	Zagreb, CROATIA	Organisational mission

May, 3 <sup>rd</sup> - 10 <sup>th</sup> 2003	Pula, Varazdin, CROATIA	2 conferences: Court efficiency Pilot Courts project
September 13 - 20 <sup>th</sup> 2003	Pula, Varazdin, CROATIA	2 seminars: Pilot Courts project
September 20 <sup>th</sup> - 27 <sup>th</sup> , 2003	Motovun, CROATIA Belgrade, SERBIA	1 <sup>st</sup> seminar: Human Rights
October 25 <sup>th</sup> - November 1 <sup>st</sup> 2003	Montreal, CANADA	10 Serbian judges Mediation and ADR
November 29 <sup>th</sup> - December 6 <sup>th</sup> 2003	Plitvice, CROATIA Novi Sad, SERBIA	2 <sup>nd</sup> seminar : Human Rights
March 6 <sup>th</sup> - 13 <sup>th</sup> , 2004	Zrenjanin and Belgrade, SERBIA	2 seminars : Court efficiency Pilot Courts project
March 13 <sup>th</sup> - 20 <sup>th</sup> , 2004	Pula and Varazdin CROATIA	2 seminars : Court efficiency Pilot Courts project
April 24 <sup>th</sup> - May 2 <sup>nd</sup> , 2004	Brijuni, CROATIA, Podgorica, MONTENEGRO Strasbourg, Council of Europe Paris, <i>Institut national de la magistrature</i>	3 <sup>rd</sup> seminar : Human Rights
June 12 <sup>th</sup> - 19 <sup>th</sup> , 2004	Palic, SERBIA	Regional conference : Court Efficiency, 110 judges and participants from SERBIA and MONTENEGRO, CROATIA, BiH, MACEDONIA, SLOVENIA
October 2 <sup>nd</sup> - 9 <sup>th</sup> , 2004	Bjelolasica, CROATIA	Regional conference : Human Rights, 110 judges and participants from SERBIA and MONTENEGRO, CROATIA, BiH, MACEDONIA National Conference for the Croatian judges, Court Efficiency

## ANNEX II

### Executive Summary

Project title	Independence and Impartiality of Judges in the South East Adriatic Countries
Project description	The project is aimed at strengthening the independence and impartiality of the judiciary in Croatia, Serbia, Montenegro
Recipient organisation	The Croatian Helsinki Committee (CHC), the Croatian Law Centre (CLC), Centre for Democracy Foundation (CDF),
Recipient organisation type	NGOs
Sector	Democratisation and good governance
Duration	33 months
Funding	1 350 000 \$
Starting date	April 1, 2002
Ending date	December 31, 2004
Location	Canada, Croatia, Serbia, Montenegro, Bosnia Herzegovina,
CDN executing agency	International Commission of Jurists - Canadian Section
Executing agency type	NGO
Address	865 Carling Avenue, suite 500, Ottawa, K1S 5S8
Director of ICJ-Canada's International Project	Hon. Michèle Rivet Chair of International Project ICJ-Canada Commissioner of ICJ-international in Geneva Quebec Human Rights Tribunal Palais de Justice 1, Notre-Dame Street East - suite 7.50 Montreal (Quebec) H2Y 1B6 Telephone: (514) 393-6651 / Fax: (514) 873-7354
Project Director	Me Caroline Meilleur
Deputy Director	Me Manon Montpetit
Project officer at CIDA	Ms. Sandra Choufani
Project monitor	Dr. Phillip Rawkins