

Abstract

Automated Court Case Management systems present opportunities to develop processes and procedures that can battle corruption. This chapter provides information on the development of such a system for the nation of Bosnia and Herzegovina and looks toward future potential developments in this area.

Author's Biography

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The Potential of Computerized Court Case Management to Battle Judicial Corruption

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Introduction

Computerized Court Case Management Systems (CCMS) can be used to help the judiciary manage and complete their daily work. These systems can also be used to prevent data corruption and allow data “mining,” that identifies potential corruption activities. This chapter briefly discusses the issue of judicial corruption and describes automated system functions that can be used to eliminate and potentially indicate corrupt practices.

Background

Corruption in judicial systems is not a single country issue. While it is recognized as motivation for many international reform projects, corruption is an ancient worldwide issue without discrimination between developing and developed nations. The United Nations adopted the Convention against Corruption resolution 58/4 on October 31, 2003 that detailed both the concerns and actions for prevention, criminalization, international cooperation, and asset recovery that governments should enact¹. The United Nations also supports the Judicial Integrity Group that is “an association composed of Chief Justices and senior judges, in the development of standards and policies to strengthen judicial integrity and capacity.”² This organization created the Bangalore Principles³ in 2002 that detail “standards of ethical conduct of judges”

Presently, government corruption as an issue has risen to the level where an entire organization, Transparency International⁴, is devoted to combating it. The Hon. Huguette Labelle, Chair, Transparency International, stated on release of the Global Corruption Report 2007 at the London School of Economics on May 24, 2007⁵:

“Justice with a price tag is no justice at all. Real justice is priceless.”

“Corrupt courts deny victims and the accused the basic human right to a fair and impartial trial, sometimes even to a trial at all. Those who cannot or will not pay are locked out. Legal instruments such as contracts –the fabric of business and commerce

¹ United Nations Convention against Corruption can be accessed in multiple languages at the United Nations Office on Drugs and Crime website. Retrieved November 29, 2007, from

<http://www.unodc.org/unodc/en/corruption/index.html>

² United Nations Office on Drugs and Crime website. Retrieved November 29, 2007, from

<http://www.unodc.org/unodc/en/corruption/index.html>

³ The United Nations: Bangalore Principles (2002). Retrieved November 29, 2007, from

http://www.unodc.org/pdf/corruption/bangalore_e.pdf

⁴ Transparency International. Retrieved November 29, 2007, from <http://www.transparency.org/>

⁵ Hon. Huguette Labelle (2007, May). *Opening Statement on release of the Global Corruption Report 2007, May 24, 2007, London, UK.* Retrieved May 31, 2007, from:

<http://www.transparency.org/content/download/19480/269382>

– are meaningless. Criminals go unpunished, destroying effective governance and democratic participation. Trade, investment and economic growth are diminished.”

Four general areas identified for potential judicial corruption defined by the report⁶ are:

1. Judicial appointments. Failure to appoint judges on merit can lead to the selection of pliant, corruptible judges.
2. Terms and conditions. Poor salaries and insecure working conditions, including unfair processes for promotion and transfer, as well as a lack of continuous training for judges, lead to judges and other court personnel being vulnerable to bribery.
3. Accountability and discipline. Unfair or ineffective processes for the discipline and removal of corrupt judges can often lead to the removal of independent judges for reasons of political expediency.
4. Transparency. Opaque court processes that prevent the media and civil society from monitoring court activity and exposing judicial corruption.

This paper attempts to partially address the third and fourth causes, accountability and discipline as well as transparency, via the application of a computerized court case management system in the nation of Bosnia and Herzegovina (BiH).

The courts in BiH were fertile ground for developing and testing a new generation of court case management systems for several reasons. First, the 1992-1995 war resulted in destruction of the existing governmental institutions. As a result, completely new political boundaries and governmental organizations were created. In May 2004, the BiH Parliament passed a law creating the High Judicial and Prosecutorial Council⁷ (HJPC) as an independent body to oversee the judiciary and prosecution. The law also prescribed removal of all seated judges and prosecutors in the country and creation of a screening process and re-appointment of those officials who passed examination. The HJPC is also charged with additional administrative and oversight duties in operating the courts. It is in this environment of rapid change and innovation in the BiH judicial system that the design, development, and implementation of the CCMS was created (described in the rest of this chapter). It allowed the designers and implementers to explore methods used in the past by a corrupt system. With the support of the BiH judiciary and the HJPC, it provides a way to address some of the problems.

Random Judge Assignment and Recusal

The BiH CCMS provides random judge assignment based on judicial organizational assignment. That means that criminal and civil cases are randomly assigned to judges in the

⁶ Transparency International (2007). *Global Corruption Report 2007: Corruption in Judicial Systems*. New York, NY: Cambridge University Press (xxiv)

⁷ Bosnia and Herzegovina High Judicial and Prosecutorial Council. Retrieved November 29, 2007, from <http://www.hjpc.ba/Home.aspx>

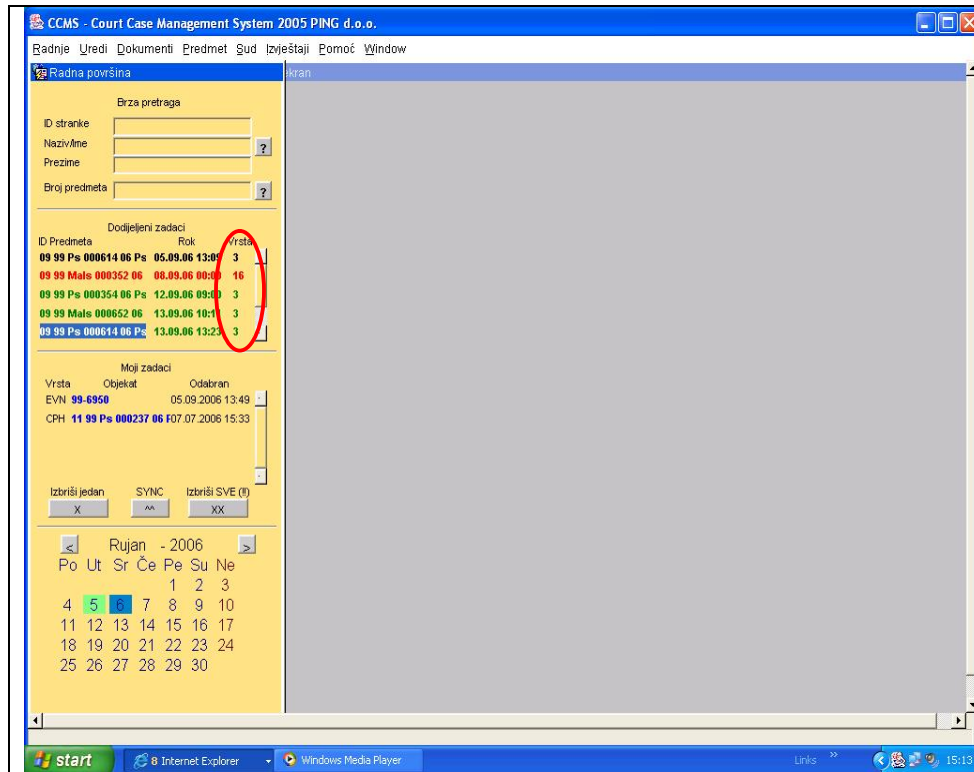
respective criminal and civil departments or respective case category assignments in smaller jurisdictions. This is a first line of defense against corruption. But what if a particular attorney is able to corrupt the system by bribing the presiding judge to have their case reassigned? The system will track that reassignment as well since all judge assignments; even the original one made by the computer system, are related to the case and are recorded and maintained in the historical record. While a single corrupt reassignment may not necessarily be caught, a pattern and practice of reassignment will certainly be recorded and provide valuable information for analysis that could potentially be flagged by the system.

The system also has the ability to automatically disqualify judges from assignment if particular attorneys or case parties are involved based upon identification numbers. Bosnia and Herzegovina have assigned national identification numbers for all citizens. These numbers can be entered into the system and associated with judges as conflicts due to family or business relationships. In the future this part of the system can be expanded to include deep business and family tree linkages as more information is entered as part of the natural expansion of the CCMS data.

Task Event Timelines

The BiH CCMS is one of the first systems where task events are automatically created and tracked as documents are received and produced. The reason these capabilities have not been implemented in systems before is because of recent advances in computer hardware speed and storage capacity, database capabilities, high-speed network implementation, and new integrated applications development environments. In other words, after many years wishing that software could work effectively together, it is now happening. In fact, these new technological realities are currently causing all of major commercial court case management vendors in the USA to update their systems.

Often judicial corruption manifests itself in the form of case delay. If one party pays the court official to do nothing, then justice is not served. Since the BiH CCMS is based on an event-task model, when an event such as a document filing occurs, an automatic task is sent to the appropriate person's list. That task then appears on the person's list as determined by court rule (please see the screen graphic in figure 1 below). If the task is not performed by that person, after a prescribed time period, a notification is sent to their supervisor. Eventually if it is not addressed, it is sent to the presiding judge and potentially to a national level. However, what if the clerk or judge "pretends" to do something on the system? The BiH CCMS already produces task event reports by system user to determine if work is being completed by the assigned person on schedule. This information can be automatically reported to the staff or judge's superiors.



Explanation:
 The system is driven by a control menu on the left side of the screen. The top section is devoted to search, the second section is assigned tasks, the third section is for self-created tasks, and the fourth section allows navigation of data by date.

The tasks assigned or created by the judge or court staffs are listed in the **Assigned Tasks** field on the left.

Every task consists of the case number, deadline, and codes (circled) that help users recognize what kind of task needs to be done.

Figure 1 – the BiH CCMS Basic Screen

Document Verification

Document falsification, duplication, non-production, and delay are some methods used by judicial (and other government) officials to manipulate paper-based systems in order to solicit and obtain bribes and other non-monetary benefits. Many current court records processes based on paper records attempt to address this by requiring multiple people to interact with the paper documents, perform entries in the various registry books, and affix differing rubber stamp seals to track and authenticate work. Unfortunately, computer, scanning, and color printing technology has made it very easy to create realistic fake documents, and the Internet has made it simple to order rubber stamps if needed. An even easier approach would be to scan an official seal mark from another document, copy it, then paste and print it on the new document using a color printer. Therefore, extensive efforts are currently being made around the world to add security “devices” to government produced official physical documents such as passports and identification cards. These security devices, such as the computer chips embedded in passports attempt to create a second electronic trail via an “electronic document” contained in the chip as well as via computer networks back to the government departments for authentication. Thus, if the picture returned across the network from an originator’s database matches the passport or ID card, then that document is verified. The new BiH CCMS has a similar “secondary path” for verification.

The BiH CCMS is the first national court automation system in the world where creation and storage of court produced documents is a mandatory part of its operation. This means that a court generated document is not considered official unless it is created and stored via the CCMS.

The BiH CCMS uses a combination of database entries and word processing software to generate notices, decisions, and other documents. The computer users enter the case that they wish to work on, and the system next automatically calls a word processing document template and inserts as much information as it can (see screen graphic below in figure 2). When the judge or clerk finishes and closes the document, the system automatically stores the electronic version of the document and lists it in the case registry. The mail room clerk is then sent a task to print out the requisite number of documents to be stamped and mailed to the recipients. The system further allows for additional copies to be printed on demand.

This approach automatically creates the secondary path for verification because the paper document version is simply an official copy of the original electronic document. As a result, any challenge to the authenticity of a court document can be checked via the computer network against the electronic original. It also potentially allows the document text information to be searched and categorized much like the Google's⁸ system that provides searching through the Internet. Overall the document system sets the stage for future full transparency of all court records, which can be governed by a country's privacy laws and exposes documents on the Internet.

⁸ Google. Retrieved November 29, 2007, from <http://www.google.com>

Explanation:

After selecting the case number, one can see what type of action is needed for the case, as well as its deadline.

Double-clicking the **Case Number** field on this screen will display all case details.. Further actions can be performed on the case through these options.

From this screen you can access the:

- Internal Memo Form / Court Correspondence (Create a document)
- Form for events/hearings scheduling
- Form for recording/ conducting a hearing
- Form for judge's orders

Deliberate Document Errors

There have been instances where corrupt officials have deliberately created documents that introduce errors and delay case disposition. Since all court generated documents are created through the CCMS and electronically stored in the system, it will be possible for supervising judges and corruption investigators to quickly and easily examine and compare official documents from a central office. Further, document templates are used to reduce unintended error and to ask why the standard process was not applied in a particular case. In the future it will be possible to develop software that can automatically scan and compare documents against a template standard. This comparison would identify intentional and unintentional errors before they are sent and report errors to supervising officials.

Cross Checking Results with Case Participants

Does one attorney never lose when their case comes before a particular judge? Does one party never lose in a particular court? Does a specific judge always rule a particular way when faced with a defendant of a particular ethnic background? Is a particular “expert” always used by a judge? If any of these questions are true, is there any correlation with the case outcome? Analysis of the CCMS data allows these questions to be asked in an ongoing and confidential manner. New business analytic software can potentially be applied to search systems and identify issues before they become embarrassing court problems. Business analytic software is

well established and used by retail businesses and manufacturing to spot anomalies as well as by government to spot health care reimbursement fraud.⁹ But to my knowledge, such software has not been applied to courts. With the proper foundational CCMS, this analysis is now possible.

Potential Future Processes and Technology to Battle Corruption

As with all systems, both manual and automated, they continue to evolve. The implementation of national computer networks either using internal or Internet resources will provide the ability to widely implement CCMS in court locations throughout a country. This provides the capability to do analysis from afar by auditors and analysts from independent agencies or, internal judicial conduct departments. This analysis is therefore unknown to the potentially corrupt judge or staff and potentially results in an “unseen hand” stopping the temptation to conduct corrupt activities. In addition, there are other automated processes as well as procedures that can be adopted in the future to prevent corruption. A few possible future enhancements are noted below.

Event Non-Entry

A problem that could potentially be addressed by enhancing the CCMS is non-entry of a document filing by registry staff. This “losing documents” method is used to extort money from litigants in order to proceed with the case so the document can be “found”. To combat this method, the CCMS would create a long and unique document tracking number, using random number assignment. This long number would be printed on a document filing receipt generated by the system and handwritten on the filing document in ink by the registry clerk. There would be a sign in the registry intake office notifying filers that this number must be written by registry staff on the filing or it will not be deemed filed. The document receipt would then be given to the filing party so that when they walk away from the courthouse, they could check their document number against the CCMS number. This approach allows judges and other officials to ensure that the document filing process has followed court rules. Eventually as scanning of paper documents is introduced and privacy laws are further refined, all documents can be made accessible to case participants by entering document numbers on the Internet, which would allow verification without court or government assistance. This function improves transparency of the court’s work and enhances trust in the court since litigants can “double check” that the document they filed and/or received are consistent with the official court record.

Cross Checking and Correlating Court Case Information

⁹ Note: Business intelligence software such as Oracle Business Intelligence, Microsoft Dynamics, SPSS Clementine, SAS Analytics, SAP Analytics are a few of the systems currently available in 2007.

Automated systems can only indicate potential areas of corruption. Cross checking CCMS information by supervisors and internal judicial system investigators is also required. In particular, investigators will need to randomly check and validate the identification of case participants, businesses, law enforcement officers, and agents to root out pseudonyms and other aliases. Further, investigators will need to have access to organized crime files and business registries, so that associations of persons, gang members, and legal businesses used to front illegal activity can be coded into the CCMS system. This allows additional data to refine analysis and determine potential or real corruption patterns.

Digital Recording of Court Proceedings

With vast increases in computer storage capabilities it is possible to securely store digital audio (and in the future video) recording of court proceedings. Audio records of judicial actions combined with the CCMS documentation has the potential of serving as a great deterrent to judicial corruption and misconduct because the record is open to internal investigators. In the future, that same record should be opened to the press and the public based upon privacy laws so the courts become an increasingly transparent public service.

Conclusion

As noted above, no automated system is effective without human monitoring, investigation, and action. Additional input in the form of individual complaints, personal interviews, reports, data analysis, and investigation are required to effectively use the case and document data created by the CCMS. It is only through this kind of analysis and prosecution that corruption can be determined and proper action taken. The nationwide implementation of the CCMS by the BiH Courts will provide an advanced information foundation for corruption analysis of court operations. This foundation is of critical importance for the courts ability to create and sustain a trustworthy and effective judicial system.