

United Nations Mission in Bosnia and Herzegovina

**Judicial System Assessment Programme
(JSAP)**

Bihac Team

FINAL REPORT

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UNITED NATIONS

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JSAP Final Reports

The attached Final Report is one of seven prepared by the staff of JSAP's regional offices and its special office in Livno. They are intended as "handover documents" to provide the Independent Judicial Commission and other agencies involved in judicial reform with a "snapshot" of the state of the judicial system throughout Bosnia and Herzegovina as of November 2000. There was no standard format for these reports. Each team was able to focus on the particular problems and concerns which it had dealt with in its area of responsibility. The reports do not purport to cover all of the work of JSAP during the period of its mandate (November 1998 – November 2000). Instead, they are intended to serve as a guide for international community and the legal community of Bosnia and Herzegovina in their attempts to reform the judicial system and establish the rule of law.

The views expressed in these reports are those of the regional teams, and may not reflect the opinions of JSAP's Main Headquarters, UNMIBH or the United Nations.

1 Introduction

On 16 July 1998, the Security Council adopted resolution 1184 establishing a programme to monitor and assess the judicial system in Bosnia and Herzegovina called the Judicial System Assessment Programme (JSAP). As in all 7 UNMBIH regions, a JSAP team¹ was deployed in late October 1998 in the Bihac Region, covering Una-Sana Canton, Canton 10, and an area in the Northern Republika Srpska (RS), including Novi Grad, Prijedor and Mrkonjic Grad.

During the reporting period the JSAP Bihac team wrote several thematic reports, and significant actions were undertaken during its two years' mandate in order to improve the efficiency of the judicial system. The JSAP team monitored many sensitive cases involving ethnic and/or political discrimination. Although much was accomplished, in some fields there is still a need for effort and willingness from the local authorities to set up an efficient and trustworthy judiciary. Without being exhaustive, the report will retrace the main activities conducted by our team and our numerous achievements.

2 JSAP Thematic Reports and Recommendations

In the first year of its two-year mandate, the JSAP Bihac team produced thematic reports on Family Law (November 1998) and Employment Law Cases (December 1998). At the end of this first year the JSAP Bihac team produced a Report on Inspection of the Prosecutor's Office in Livno (July – September 1999). In December 1999, JSAP decided to conduct an inspection of the Company Registry at the Cantonal Court in Bihac. Hasan Pjanic, the then President of the Court, was in charge of the Company Registry.

2.1 Family Law

One of the recommendations that JSAP team made in the Report on Family Law was that the issue of property division between spouses should be decided at the same time as the dissolution of the marriage, so that women and children's property rights would be protected. This recommendation was discussed at the federal level, in order to amend the Federal Law on Civil Procedure.

Enforcement of court decisions seemed to be a huge problem at the time when this report was written. However, the enforcement of this type of decisions improved. In some cases court enforcement officers managed to seize defendant's property (children's father property) after JSAP's intervention.²

It is still important to stress that in the cases concerning child custody, if a temporary measure is proposed by a plaintiff, the court should make an immediate decision on the measure, otherwise

¹ The Bihac team successively comprised one or two international judicial officers: Jane Rasmussen and Henrik Andersen; one national professional officer, Azra Ibrahimasic; one senior language assistant, Azira Sepic; and one administrative clerk, Suada Malkoc.

² For example, in case before Bihac Municipal Court, No I 754/99, plaintiff Ramiza Delic and defendant Ramiz Delic, a car was seized from the defendant.

it will not be possible to enforce a court decision on custody when the case reaches the enforcement stage.

Other issues touched in this report, related to undue delays and postponement in processing of these cases, could be understood as a general problem, but also as a commonly-used mechanism for political and ethnic discrimination. This problem should be solved by taking measures for amending the Law on Civil Procedure, so that the hearings would not be postponed for no reason, or due to any proposal for postponement submitted by a party.

2.2 Employment Law Cases

One of the findings in this report concerned calendaring and tracking mechanisms for prevention of undue delays in cases. According to these findings, there is no built-in mechanism in the registration system of deadlines or time periods for checking on progress of open cases in the courts throughout our region. The present system relies on individual initiative from the parties and individual access to the president of the court. To date nothing has been changed concerning this issue. Action should be taken in order to speed up adoption of Book of Rules which will arrange an overall system of checks and controls for all cases and stop systemic delays in deciding of cases.

One employment case that JSAP followed in Canton 1 was the case of collective dismissal of the local SDP leader from Cazin, Ibraga Topic, together with 17 of his supporters employed in the brick factory in Cazin.³ Due to JSAP, as well as Ombudsman's pressure, a meeting was convened with the Governor of the Canton, manager of the company and international community representatives. The court decision was enforced, in a way that dismissed employees were put on "standby," since there were no available working positions, but they received compensation.

2.3 Property and Housing Cases, Employment Cases, Including Examination of Institutional Issues and Budgetary Funds

Institutional issues in this report concern several courts that JSAP Bihac team visited. In Buzim Municipal Court only one judge (president of the court) was working at that time (second judge was appointed afterwards and one judge of the Cantonal Court was coming "on substitution" once in a week⁴

In Livno Municipal Court, due to the then president Katica Tadic's conduct there was bad communication between her and other judges. Although she resigned as of 1 January 1999, she was still keeping her position until autumn same year when she was replaced by Judge Mirko Bralo. JSAP pointed out this problem in many meetings held with the then Minister of Justice Stipo Babic, but hardly got any results.

³ Due to systemic obstruction by the manager of this company to reinstate these employees, a criminal report was submitted against the manager.

⁴ This was mentioned by President Hamzabegovic at the meeting of 25 May 2000.

In the Mrkonjic Grad Basic Court the post of court president was not officially filled from 1996 until 1 January 1999. Judge Petar Dukic continued holding the office of president, but due to political difficulties was never officially appointed president. Due to JSAP's strong pressure Judge Vera Stupar assumed this office as of 1 December 1999.

Concerning court equipment, some courts are not well furnished, do not have enough mechanical typewriters or working heating systems, so work can hardly be carried out during wintertime (e.g. Mrkonjic Grad Basic Court). Although providing of computers is ongoing, additional computers are still required, since the majority of courts have only one computer each, which are used only for typing.

According to the cantonal budgets, in both Canton 1 and Canton 10, financing of the courts is not adequate. Since the courts do not have influence on the amount allotted for their work not direct insight, they have to be satisfied with what they get. There were a lot of proposals that the courts should have their own funds and that the amounts collected from the court taxes should be directly included in the court funds. This issue should be discussed with the responsible governmental bodies.

The majority of employment cases in Canton 1 concerning reinstatement related to alleged DNZ supporters. JSAP helped in processing such cases. (A case involving 30 employees of the municipal administration in Velika Kladusa was slowly processed before the Cantonal Court, and it was speeded up due to JSAP's pressure). Another problem concerning employment cases is that company managers fail to enforce final court decisions on reinstatement.

Due to ethnic and/or political discrimination in processing of employment cases, the JSAP team had many meetings with judges dealing with such cases (with Judge Bozo Mihajlovic in the Livno Municipal Court, Judge Milan Kolak in the Tomislavgrad Municipal Court and Judge Fata Nadarevic in the Bihac Municipal Court). There were 340 open cases (involving mainly Bosniak plaintiffs) in Canton 10 and hearings in only 2 cases were scheduled.⁵ In Canton 1 there were cases which were processed slowly due to political discrimination against the plaintiffs, or because a defendant was public institution – the Ministry of Interior or other ministries. As a result of these meetings, Judge Mihajlovic scheduled hearings in these cases, but Judge Kolak was reluctant to do the same. JSAP also had several meetings with president of the Municipal Court in Bihac concerning the same issue, in order to speed up the procedure. A letter was sent to the president of Bihac Municipal Court describing each particular employment case where procedures were delayed due to political discrimination. As a result of JSAP's intervention procedures were speeded up.

A similar situation existed in processing of housing cases. The attention on this issue was drawn to the former president of the Cazin Municipal Court, the president of Bihac Municipal Court and the president of the Novigrad Basic Court, as well as the judges dealing with such cases in

⁵ On 17 November 2000, the Assistant to the Federal Ombudsman in Livno, Dita Maglica, informed JSAP that employment cases were still being processed very slowly, both in Livno and Tomislavgrad. In addition to this, due to amendments to the Labor Law concerning Article 143, all employment cases involving application of this article were stayed, since claims were supposed to be decided by cantonal commissions (these commissions are not formed yet in both cantons).

Tomislavgrad (Milan Kolak) and Livno (Mirko Bralo). Although certain success was made in processing of such cases in the first three mentioned courts, there has not been any progress in processing of such cases in the Tomislavgrad Municipal Court, and there have been difficulties concerning enforcement of housing cases before the Livno Municipal Court.

Comments: It is necessary to assess if Judge Kolak is suitable for performing of judicial service and dealing with sensitive employment and housing cases. He has not taken any action to process housing cases involving Bosniak plaintiffs since the time of their registration in the court nor has he decided upon proposals for imposing of temporary measures.⁶ JSAP should conduct thorough analysis of such cases in RS, since there are indications that housing cases involving Bosniak plaintiffs are slowly processed.

In Canton 10, occupancy rights and property cases filed with administrative bodies were completely obstructed. The head of the municipal property department was not appointed for a long period, nor was appellate authority established. Furthermore, evictions were not carried out (100 cases registered in Livno, 105 in Tomislavgrad and 221 in Kupres). Monitoring of administrative cases should be included in the mandate of JSAP's successor, since a number of obstructions and violations have been observed in administrative procedure.

2.4 Criminal Cases with Focus on Corruption, Including the Role of the Prosecutor and Public Access to Hearings, Inter-Entity Cooperation and Independence and Impartiality of Judiciary.

The JSAP team produced an analysis of the role of the prosecutor in the criminal procedure. The general conclusion was that, without serious reform of the prosecutor's office, serious crime would not be adequately processed in both the Federation and RS. JSAP found the worst situation in the Canton 10 – a total lack of will to enforce the rule of law.

Although the Federal Law on Criminal Procedure strengthened supervisory role of a prosecutor over the police, it is not implemented in the practice. Cooperation between prosecutor's offices and the police is very poor, especially in the pretrial phase. The JSAP team also found that neither prosecutors nor the police are adequately trained to investigate and prosecute serious crime, e.g. economic crime, organized crime and corruption. Also frequent undue delays in the procedure, in particular with regard to sensitive cases indicate that the level of political interference with the work of the prosecutor is continuously high. In this way it is impossible to achieve higher standards of quality of legal system. Prosecutors are not engaged enough during all phases of criminal procedure. Besides, the JSAP team found an unclear division of responsibilities between the office of prosecutor and the investigative authorities, which leads to undermining of the authority of the prosecutor's office. This is used to create additional delays in procedure by shifting prosecutor's responsibilities to another authorities. A trend towards minimizing the crimes committed in sensitive cases also applies to the work of prosecutors.

⁶ According to the Assistant to the Federal Ombudsman in Livno, Dita Maglica, the Ombudsman's office did not monitor housing cases before the Municipal Court in Livno and Tomislavgrad. However, she said these cases were mainly dealt by housing authorities in Tomislavgrad, which efficiently processed only those cases concerning private houses while cases involving socially owned apartments were neglected. Her colleague, Deputy Ombudsman Osmancausevic said that eviction cases were completed before the Livno Municipal Court.

The JSAP team recommended amendments to the Federal Law on Criminal Procedure with regard to deadlines stipulated for withdrawing from prosecution, informing a victim of withdrawal and right of an injured party to undertake prosecution himself (Article 56). The present situation is that if a prosecutor omits to inform an injured party within three months of his decision, the injured party appears to lose his right to pursue the matter himself.

The JSAP team's findings regarding inter-entity cooperation confirm that, while cooperation exists, it is generally limited to the direct exchange of information between court presidents on issue of common interest. Also, cooperation in locating addresses of parties currently living in the other entity may prevent further cementing of the atrocities of the war.

The JSAP Bihac team found that international standards regarding the independence and impartiality of judiciary are not clearly met in the Bihac Region. Political, as well as ethnic discrimination within the judiciary of all three ethnic groups generally takes the form of undue delays at all stages of procedure, minimizing of criminal or contentious acts committed by public authorities or influential personalities, lack of engagement of judicial and investigative authorities, shifting of responsibility from one authority to another, refusal to execute the decisions of the courts and the imposition of lenient sentences in criminal cases (a very high level of suspended sentences). The JSAP team found that questioning of expert witnesses by prosecutors, as well as the courts in the analyzed cases was without exception questionable. Training was recommended on this issue.

2.5 Delays in Handling Criminal Cases with Focus on the Una-Sana Canton

This thematic report was made on the basis of an inspection of criminal cases before the Bihac Municipal Court, chosen by random sample. The general conclusion was that old cases were processed very slowly and reluctantly. The president of this court proposed that a plan of action for deciding old cases, including possible compensation for judges processing these cases, should be made.

The JSAP Team found that there were four reasons for delays:

- Technical problems (some documents were missing from the files – proof of service, decision on custody, note of hand over the file etc, so it was hard to establish which judge was in charge of the case in a certain period, or when the file was received in the prosecutor's office from the court);
- Lack of knowledge and negligence of judge's duties Due to the war many experienced judges left the court and were replaced by inexperienced judges, with little or no prior court experience. Thus it happened that some investigating judges did not inform injured parties after the prosecutor withdrew from the prosecution. Also, in most of the reviewed cases police statements were not sealed in separate envelope;
- Delays as a consequence of wartime Due to the war it was difficult to summon the defendants and witnesses, or to send indictments to the defendants, etc. This situation continued after the war as well, but judges justified their inaction with the war (although in huge number of cases there were no justification for inaction). For instance, in none of the reviewed cases investigating judge informed the president of the court about the reasons for

investigation lasting longer than six months. Also, the deadlines for certain actions prescribed by the Law on Criminal Procedure were not respected (bringing of indictment after completion of the investigation, scheduling of hearing after receipt of indictment, etc). Besides, the JSAP team found that many cases fell under statute of limitations.

- Political influence This was obvious in cases where a defendant was politically powerful. The JSAP team found cases where a judge did not want to take any action against defendant and stayed the procedure for long period (one year). Other types of obstructions were done by expert witnesses and tolerated by judges (e.g. in one case the court was waiting for two years for a doctor – forensic to give her opinion. At the end there was no result owing to politically powerful defendant).
- Lack of cooperation between official authorities – cooperation between the court, the police and other government bodies has been improved recently.⁷

The following recommendations were made in this thematic report:

- a strategy for working down the backlog of cases should be worked out
- inter-entity, as well as inter-cantonal cooperation in locating parties to proceedings could be facilitated by international community
- JSAP and IPTF should work out a joint strategy for targeting the communication between the Ministries of Interior and the prosecutors' offices.

2.6 Inspection of the Company Registry in the Bihac Cantonal Court

The JSAP Bihac team found that although the law ensures public access to the information in the registry books, in practice such access is not given. Serious irregularities were found in 20 analyzed cases (49 cases were scrutinized in total). A discrepancy was found between the files and the registry books (according to the registry books, all cases were registered and decided the same day, which was contradicted by the information from the files). There were cases where the court had made its decision several months or even one year after the receipt of the application (cases where applications were refused).

The JSAP team found that in several reviewed cases applications and attachments were not signed by the applicants, which was obligatory according to the law. Six scrutinized cases, chosen by random sample related to companies registered in the name of notorious suspects. In these cases JSAP found that some applications were not signed by the applicants⁸. Furthermore some of the statements required for registration of company (statements concerning status of founders/managers that are made before the court/administrative body) were false or incomplete⁹. The JSAP team found a lack of commitment of the judge in charge of the company registry (the then President of the Bihac Cantonal Court, Hasan Pjanic) in verifying information submitted by the applicants.

⁷ After intervention of JSAP and other international community representatives, judiciary and police organize regular meetings together with the Ministry of Justice. Also, prosecutor's offices now have regular weekly meetings with the police.

⁸ This procedural error should lead to de-registration of the company.

⁹ The law stipulates criminal liability for these two types of irregularities.

For instance, three companies registered as “Comfort”, “Minasko” and “Raguz” turned out to be fictitious ones. Although the Cantonal Prosecutor informed Judge Pjanic about these companies and requested him to delete them “ex officio”, Pjanic made a decision refusing to do so, explaining that only a party with legal interest could have requested it. JSAP was of the opinion that the legal justification for such decision was questionable. In this way all responsibility was shifted to the aggrieved party Sead Basic, in whose name company was registered.

Particularly grave irregularities were found regarding re-registration of the three socially owned companies, merged with “Energoinvest”, prior to this re-registration. The JSAP team has found that two of these companies, “Bosnaplast” and “Bauxite Mines,” were not re-registered as companies with limited liability in 1995, prior to the merger with “Energoinvest.” Besides, in accordance with the Law on Enterprises, the highest managing bodies of the enterprises, or the founders should have made a decision on change of the status of the company, but no evidence was found in the files that this had been done. It was also found that companies dissolved as a result of the merger should have been deleted from the company registry, but two of the four remained registered.¹⁰ Although the then President of the Court, Hasan Pjanic, was warned about irregularities concerning these registrations, he stated that registration was done in accordance with the law.

General conclusions made in this report were as follows:

- having in mind seriousness of the shortcomings, the professional responsibility of the judge in charge of the registry must be evoked. The JSAP team recommended that the court registry must not be kept by Judge Pjanic, but should be transferred to another judge at the Cantonal Court;
- a follow-up inspection should be made to verify the re-registration of companies in accordance with the Law on Economic Enterprises;
- JSAP concurs with Council of Europe’s recommendation to reduce excessive workload of the courts and in that sense keeping of company registries should be considered as non-judicial tasks of which judges could be relieved;
- the court registry should be computerized;
- Article 2 of the Law on Registration of Legal Persons in the Court Registry Books should be amended in order to specifically prescribe public access to the company registry;
- a person requesting information from the court registry should not be required to identify himself;
- a complete audit of the registry should be carried out due to many basic errors found in the reviewed files;
- action should be taken in order to delete fictitious companies ex officio;
- irregularities concerning the registration of the merger to the Company “Energoinvest” should be corrected in the context of a more complete scrutiny of the court registry.

¹⁰ Behind this registration was a political decision on merging these companies to “Energoinvest” and later on registering them as sole trader companies.

3 Actions undertaken in order to improve the efficiency of the judiciary

Assessing the judiciary, the JSAP team established that there were serious problems with arbitrary and undue delays in processing of cases. Lack of communication within the judiciary, between the courts and the Minister of Justice, and between courts and the police affected the functioning of the judiciary. The behavior of politicized and corrupted judges was impeding any effort to improve the efficiency of the judiciary. Therefore it was established that it was necessary to undertake significant and durable actions to reform the judicial system in Una-Sana canton. The JSAP team did everything possible to implement the numerous recommendations made in JSAP's thematic reports

3.1 President of Cantonal Court in Bihac Hasan Pjanic's Resignation.

During JSAP assessment of the judicial institutions, the President of Cantonal Court, Hasan Pjanic, was less cooperative than other heads of judicial institutions. He has shown little willingness to discuss the most sensitive issues. There was no doubt that Hasan Pjanic was serving as extended arm of destructive political and economic powers in the region and that the judiciary would benefit from his departure.

- Bias in ex officio appointment of legal counsels. The Ombudsman's office unambiguously found evidence that, as the result of the practice established by Judge Pjanic, appointments and payment for the work of legal counsels had been seriously biased and arbitrary.
- Improper management of the company registry. The JSAP team carried out an inspection of the company registry which Judge Pjanic was responsible for. Serious irregularities were observed in the processing of registry cases and providing of public access to the files.
- Undue influence on the corruption investigation against the suspended mayor of Sanski Most. By monitoring the high-profile corruption case against Mehmed Alagic, the suspended Mayor of Sanski Most, the JSAP team has repeatedly received information related to inappropriate behavior of Judge Pjanic with regard to the investigation. Hasan Pjanic openly threatened Adil Draganovic, the President of the Sanski Most court, who was investigating judge in Mehmed Alagic's corruption case.
- Obstructing the Cantonal Ministry of Justice's efforts to increase the efficiency of the courts. The power struggle between Judge Hasan Pjanic and the Minister of Justice started when Asim Dzafic, the then Cantonal prosecutor, decided to fight against corruption. When Asim Dzafic, as Minister of Justice, requested data from the courts with respect to their work, the President of the Cantonal Court responded that the Ministry of Justice is not entitled to ask for such information. He considered such request as political interference.
- Application of the widest possible immunity from prosecution for members of political assemblies. In at least three serious cases, SDA municipal councilors were shielded from prosecution due to Hasan Pjanic's wide interpretation of the immunity provisions contained in the Canton 1 Constitution. The then President of the Cantonal Court, in the appeal procedure ruled as follows: "the immunity holders enjoy the immunity from proceedings in respect of opinion expressed in relation to their activities as member of the Council, as well as from any criminal prosecution". The Supreme Court overruled the Cantonal Court decision by stating: "According to Article 8 of the Constitution of Una-Sana Canton, Substantive Legal Immunity is granted to a member of the municipal council from being

prosecuted for the expressed opinion and his vote given in the municipal council. He does not enjoy a substantive legal immunity when he committed a crime outside of his duty of expressing his opinion and voting in the municipal council”.

- Undue support to Jadranka Lojic in her refusal to implement a lawful decision made by the Cantonal Government: “the Cazin Courthouse Saga” The Minister of Justice ordered the President of the Cazin Municipal Court, Jadranka Lojic, to implement the decision of the cantonal government that the Minor Offense Court should move back to the Municipal Courthouse. Hasan Pjanic strongly supported Jadranka Lojic, encouraging her not to comply with this order. The President of the Cantonal Court then sent a letter to the Government requesting the cancellation of that decision. The Government decision was never enforced.

Under JSAP’s strong pressure, Hasan Pjanic was forced to resign from his position as President of the Cantonal Court. Backed up by this decision, the new Governor M. Beganovic, Minister of Justice Dzafic and Minister of Interior Babic requested his removal from the judiciary. Following the release of JSAP Bihac Team Thematic Report on Company Registry, upon JSAP recommendations, Hasan Pjanic was later removed from the company registry office.

3.2 Cazin Illegal Car Registration, Cazin Municipal Court.

In late December 1999, Asim Dzafic, the Minister of Justice of Una-Sana Canton, advised JSAP that he had been informed of serious breaches of the Article 3 of the Law on Civil Proceeding committed by the Cazin Municipal Court while establishing ownership of vehicles upon plaintiffs’ requests. The audit, conducted by a team from the Bihac Cantonal Court, established that serious irregularities had been done by the judges processing these cases. Data or evidence relating to origin or ownership of vehicles was not found in any single case file, nor did the court establish this crucial fact. It was noted that in all the reviewed cases the judges were not applying provisions under Article 3, paragraph 2 of the Law on Civil Proceedings. Certain persons repeatedly appeared in capacity of plaintiff or defending party in many cases. The audit concluded that aim of such activities was apparently to get around the law.

Based on the findings of the audit, the President of the Cantonal Court informed Judges Jadranka Lojic, the then President of the Municipal Court, Indira Seric, Alagic Amela and Zuhdija Muminovic that he would initiate dismissal procedure against them. In order to avoid embarrassment, they chose to resign prior to holding of Cantonal Court’s session on dismissal procedure. The President of the Cantonal Court accepted their resignation and took decision on termination of their judicial service. The following day, upon advice of the Ombudsman, the four judges withdrew their resignation. They addressed a complaint to the Ombudsman, alleging that the President of the Cantonal Court forced them to resign. The Federal Ombudsman made a decision on violation of human rights of the four judges committed by the President of the Bihac Cantonal Court. He recommended that he accept the withdrawal of their resignations and allow them to continue performing their previous duties without delay. Later on, the Federal Ministry of Justice requested the Governor of Una-Sana Canton and the Cantonal Minister of Justice to implement the Federal Ombudsman’s recommendations without delay. Having assessed the case in detail, JSAP expressed its serious reservations with regard to the Federal Ombudsman recommendations. The Federal Minister of Justice was reminded by the SRSB that the issue was

not a matter for the Federation Ministry of Justice, but it was under the mandate of the Cantonal Ministry of Justice.

Despite the Federal Ombudsman's considerable efforts to reinstate the four former judges to their previous positions, JSAP kept its pressure throughout the 6-month tense struggle until the Federal Ombudsman withdrew his unusual support to the four judges and gave up the idea to get them back to the judiciary. Minister of Justice Dzafic and President of Cantonal Court Hodzic, supported by the international community, refused to implement the Federal Ombudsman's instructions. JSAP is currently monitoring the criminal investigation related to the four judges' illegal activity which is ongoing in the Sanski Most Municipal Court.

3.3 JSAP Tackled High-Profile Corruption Cases Processed Slowly by Judicial Institutions

The first move related to the fight against corruption was made in 1997, when the Cantonal Assembly requested that audits be carried out in all municipalities in Una-Sana Canton. Although, in 1997 and 1998, the Cantonal Prosecutor's Office in Bihac received records of the audit carried out by the financial police, only on 28 January 1999, the cantonal prosecutor Asim Dzafic (currently Minister of Justice) requested the police to send either criminal reports or reports on economic violations. He received the reports on economic violations on 17 February 1999. Due to the media attention to certain personalities, only Sanki Most, Bihac and Bosanska Krupa were singled out.

Due to a wide interpretation of the Law on Economic Violations the investigation was stand still until the acts investigated appeared to fall within the definition of the crime of abuse of office or official authority as laid down in Article 358 of the Federal Criminal Code.

Irritated by the slowness of the financial police investigation, the Cantonal Prosecutor brought up the issue of corruption investigations during the Cantonal Assembly session of 14 April 1999. Full support was given to the work of the Cantonal Prosecutor's Office. JSAP and UNMIBH Civil Affairs held regular meetings with the Cantonal Prosecutor in order to assess the progress made in investigating corruption cases. When Fikreta Dzanic was appointed Cantonal Prosecutor (Asim Dzafic was appointed Minister of Justice) JSAP and UNMIBH Civil Affairs promised the international community's full support and kept holding the regular meetings with the new Cantonal Prosecutor. The new Minister of Justice was encouraged to continue to tackle the investigating process as he was deeply involved in the fight against corruption.

The JSAP team's full support and constant pressure had positive impact since the Cantonal Prosecutor office showed more determination to see the corruption investigation go through. However, many officials (former President of the Cantonal Court, Financial Police officers) tried to obstruct the corruption investigation process. JSAP and UNMIBH Civil Affairs received assistance from OSCE and the OHR Anti-Fraud Unit.

Main corruption cases:

Mehemed Alagic After strong pressure from JSAP and OSCE throughout the investigative phase, on 11 October 2000 the Cantonal Prosecutor Office issued indictments against Mehmed Alagic and Omer Mustafic.

Adnan Alagic Upon JSAP's suggestion, the Cantonal Prosecutor promised to join both cases as soon as the second investigation is finished.

Suad Mesic For the time being, the case is still under investigation. The investigative judge requested additional evaluation from expert witnesses.

The Cantonal Prosecutor also complained about the lack of police cooperation regarding cases related to privatization procedure. Most of the privatization is affected with irregularities. Prosecutor's offices receive many complaints. Without special attention from the international community, these corruption cases would fall under the statute of limitations.

The voluntary inertia of the court and prosecutor's office in processing corruption cases and cases involving notorious suspects seriously affected the credibility of the judicial institutions and created a feeling of impunity throughout Una-Sana Canton.

It is very difficult to get a witness to testify in corruption cases involving bribery since offering a bribe itself is a criminal offense. There is a need to encourage witnesses to give evidence of bribery. A provision granting immunity from prosecution to a witness involved in giving a bribe should be adopted.

The Cantonal Prosecutor's office should establish a more aggressive policy for prosecution of corruption cases since the new Law on Judicial and Prosecutorial Service strengthens its independence *vis a vis* the political power.

Comments: Since JSAP is closing, OHR anti corruption intervention is strongly required if the international community wants to see the corruption process go all through.

3.4 Under JSAP Pressure the President of Municipal Court in Bihac, Safeta Alijagic, Improved the Work of the Municipal Court.

The work of the Bihac Municipal Court was under severe and continuous criticism because of huge caseload, criminal cases in standstill and bad performance (the oldest civil case was instituted 21 years ago).

In the wake of Hasan Pjanic's forced resignation, Safeta Alijagic, the President of the Bihac Municipal Court was given a fifteen-day deadline by JSAP to either undertake drastic measures to redress the situation in the Municipal Court or suffer the consequences of the bad performance of court, as her colleague, Judge Hasan Pjanic did.

She was also tasked to initiate a dismissal procedure against Judge Serif Hasanbegovic, who JSAP considers to be an unsuitable judge involved in many irregularities when performing his duties. In a few months JSAP observed a slight improvement of the work of the Municipal Court. Safeta Alijagic undertook numerous measures such as:

- holding weekly meetings with all judges of the court,
- deducting a certain amount from judges' salaries if they leave the court before the end of working hours,
- requesting judges to exceed their working norms and solve all old cases pending over five years. Analysis of results in processing of old cases is made at the end of each month,
- being personally involved in processing of unduly pending sensitive cases,
- initiating dismissal procedure against Judge Serif Hasanbegovic,
- scheduling immediate hearings in cases pending for many years,
- initiating amendments to the Decree on Establishing and Keeping of Registry Books of Contracts related to Purchase of Socially Owned Apartments (with existing tenancy rights).

Comments: It is amazing to notice how a Court President can be effective and capable when working under the scrutiny and pressure of the international community.

3.5 Under JSAP's Direct Instructions, the Bihac Municipal Court Recognized the Supremacy of an OHR Decision

On 29 November 1999, OHR removed Rasim Sahinovic from the office of Minister of Interior and banned him from being a candidate for the coming municipal elections or holding any executive office at any level unless authorized to do so. Despite OHR's ban, Rasim Sahinovic was appointed to public office by the new Governor as associate in charge of the Government Protocol. The OHR Special Envoy requested his immediate removal from the new position and consequently his relief from all benefits (including an apartment that was allocated to him) resulting from holding a public office. Following OHR instructions, Rasim Sahinovic's employment was terminated and the Ministry of Interior filed a lawsuit against him claiming cancellation of contract on use of apartment.

Under JSAP's strong pressure and directives, the Bihac Municipal Court, after assessing the legal power of the High Representative, recognized that "*OHR decisions have supremacy over the national law and have higher legal power than the laws and the Constitution*". The Municipal Court declared that "*neither complaint nor appeal is allowed against an OHR decision, there is no place for continuation of procedure...*".

There was a tendency for politicians removed from their positions by OHR to find a way to come back through the back door. A local judicial institution confirmed that OHR's decisions have supremacy over the constitution and national law.

3.6 Court Facilitation Program

One of the main reasons for excessive delays in criminal proceedings was the poor quality of criminal reports sent by the police to prosecutor's offices. Due to the lack of communication, prosecutors were not in position to exercise their advisory role over the police in pre-criminal procedure. Consequently, prosecutor's offices received police criminal reports of poor quality and could not properly process criminal cases. On many occasions they had to request additional

information about cases sent by the police, but the police often failed to respond. Both the Minister of Justice and the Minister of Interior blamed each other for the poor quality of work of either the judiciary or the police.

Asim Dzafic, the Minister of Justice, under JSAP pressure, organized for the first time a general meeting with the Ministry of Interior, the President of Cantonal Court, prosecutors, chiefs of police and the international community. All participants recognized that lack of cooperation among judges, prosecutors and police had harmful consequences on the work of the judiciary and the police. Conclusions of the meeting were as follows:

- To hold monthly meetings at the level of the Ministry of Justice, Ministry of Interior, Cantonal Court and Cantonal Prosecutor's Office, as well as at the level of municipalities in order to improve cooperation between the agencies involved in detection of crimes, the prosecution agencies and courts.
- That prosecutor's offices assume a more active role in directing and supervising activities of the police related to detection of crimes and perpetrators.
- To initiate a further reform of the criminal legislation in order to obtain better efficiency in the work of the agencies involved in detection of crimes, the prosecution agencies and courts, especially in preventing of organized crime and corruption.
- To insist on the establishment of the court police in the area of Una-Sana Canton as soon as possible in order to disencumber the internal affairs agencies (police) and increase their efficiency.
- To intensify activities related to implementation of the Law on Judicial and Prosecutorial Service in the Federation of BiH.
- To inform the public about criminality and other occurrences and problems of general importance noticed in work through the mass media.

Strengthening cooperation between prosecutor's offices and police would sweep away the idea that prosecutors are not bound by police criminal reports.

3.7 Under JSAP Pressure Monthly Meetings are Organized by the President of the Cantonal Court with the Minister of Justice and all Presidents of Municipal Courts in Una-Sana Canton.

JSAP suggested the President of the Cantonal Court hold monthly meetings in order to assess the work of Municipal Courts in the Canton. Fikret Hodzic accepted the suggestion and furthermore decided that these meetings would each time take place in different municipal court in the area of Una-Sana Canton as a contribution to the reform of the judicial system. The purpose of such meetings is to point out the subjective reasons affecting the efficiency of the judiciary and to propose concrete measures for improvement of work.

The President of the Cantonal Court pointed out that courts should not allow themselves to have cases pending for ten or more years nor that criminal cases fall under statute of limitations. Minister of Justice Asim Dzafic had the opportunity to openly express his dissatisfaction with the work of certain municipal courts. He stressed that there is no justification that some court proceedings last for 10 or 15 years (there is a case pending for 19 years).

These monthly meetings led the Ministry of Justice to present to the Cantonal Assembly a “train” of measures to be implemented within specific deadlines.

By organizing the monthly meetings throughout Una-Sana Canton, the Minister of Justice and the President of Cantonal Court encouraged all presidents of courts to talk about their performance. Presidents of courts can exchange their opinions and share experiences in solving of difficult cases. We notice a slight reduction of backlog of cases. A majority of presidents of the courts recognize that this kind of meetings help them to face political pressure. Former President of the Cantonal Court Hasan Pjanic never held such open and productive meeting involving all presidents of municipal courts and the Ministry of Justice.

3.8 Vetting Process Dragged Out by Cantonal Commissions for Appointment of Judges and Prosecutors.

On 17 May 2000, the Federal Law on Judicial and Prosecutorial Service was imposed by OHR due to intolerable delays in the legislative process. The time had come for de-politicization of the judiciary and establishment of an effective and independent court system.

For the first time judges and prosecutors were required to decide about the appointment and the removal of their colleagues. Despite the merit of the new law, it was difficult to sweep away decades of political interference. Judges and prosecutors, members of the judicial commissions, were overtaken by such power, issuing recommendations related to the appointment and dismissal of their own colleagues.

Since both commissions were unable to act promptly, the JSAP team decided to keep constant pressure in order to get them deeply involved in the vetting process. During the process of giving recommendations for the appointment of new judges and prosecutors, the inexperienced commissions were actively supported by the JSAP team. So far, all applications have been sent to the Federal Commissions, which together with the respective cantonal commissions decide on the appointment of suitable new judges and prosecutors.

With regard to the review of suitability of all judges, both cantonal commissions are reluctant to scrutinize their own colleagues. While they quickly reviewed all complaints against judges and prosecutors, they have not yet initiated any review of judges or prosecutor’s work. The Minister of Justice is not confident and expects few or no removal from the judiciary. The Minister of Justice and Minister of Interior are of the opinion that JSAP should be more involved in the vetting process.

However, the link between the judiciary and politicians is definitively over. Thus the Minister of Justice sought JSAP’s advice on whether the judicial commission should forward its decision to his Ministry. The Cantonal Governor sought OHR assistance to obtain the list of applicants sent to the Federal commission. JSAP was categorical that no information should be provided to the Government until the Federal Commission decides and forwards its recommendations to the Cantonal Assembly.

Comments: All parties concerned by the judicial appointment process consulted JSAP before taking any decision. Concerning the review of the work of sitting judges and prosecutors JSAP should provide the judicial commissions with all files related to the work of certain judges.

3.9 Ban on Committal of Persons Sentenced in Minor Offence Procedure

The JSAP team conducted a thorough assessment of the consequences of the ban on committal of persons sentenced to imprisonment in the minor offense procedure. Serious concerns were raised by the Minor Offense Courts (MOC), since none of them could enforce sentences pronounced in minor offense procedure.

JSAP was informed that the Warden of Bihac Penitentiary received instructions that no sentenced persons would be accepted to serve sentence until further notice. JSAP had an urgent meeting with Ismet Karabegovic, the Warden of the Penitentiary to clarify the situation. He told JSAP that the debt of the Una-Sana Government towards the Penitentiary amounted to 363,040 KM as of 31 March 2000.

On 18 April 2000 the matter was addressed by the Warden of the Penitentiary to the Federal Minister of Justice, after three years of fighting with the Una-Sana Government. On 20 April 2000, Barisa Colak, the Federal Minister of Justice, sent the following instructions to the Warden of the Penitentiary: "Be advised that you are not to admit persons sentenced to imprisonment in the minor offense procedure until further notice". This ban shall be applied and remain in force until the Government fulfills its financial obligations towards the Penitentiary.

On 22 June 2000, a contract was signed by the Penitentiary in Bihac and the Government of Una-Sana Canton, which stipulates that the Government shall pay immediately 67,540 KM and the Penitentiary shall not claim any outstanding debts from the past period. However, the Government of Una-Sana Canton did not fulfil its contractual obligations towards the Bihac Penitentiary.

On 1 August 2000, Ismet Karabegovic reminded Prime Minister Amir Avdic of the Una-Sana Government's obligations towards the Penitentiary. He stressed that failure of the Government forced him to consistently apply the ban on committal of persons sentenced to imprisonment in the minor offense procedure. The same day the JSAP team had a meeting with Asim Dzafic, the Minister of Justice, and requested him to take immediate actions in order to solve this issue. He said that the Prime Minister informed him that orders were given to the Minister of Finance to pay immediately 67,540 KM to the Penitentiary.

Four weeks later no decision had been taken. The JSAP team decided to meet with all presidents of Minor Offense Courts in Una-Sana Canton in order to assess the consequences of ban on their work.

All presidents of courts claimed that the citizens were aware of the ban imposed by the Federal Minister of Justice and, therefore, refused to pay fines pronounced in the minor offense procedure. They preferred to have fine converted to imprisonment in accordance with Article 34

on Law on Minor Offences¹¹, since they were sure that the prison would refuse to accept them. Presidents of Minor Offense Courts were not able to conduct and complete enforcement procedure pursuant to Article 34 of the Law on Minor Offences.

Most of the time minor offence courts impose fines upon offenders. In case they do not pay, fines are converted to imprisonment sentence. Usually, 95% of the fined persons pay at the time when they are summoned to serve the imprisonment sentence. Since they are aware of the Bihac Penitentiary's decision, nobody pays the fine and they ask for conversion of the fine to imprisonment sentence.

3.9.1 Consequences of the Failure of the Government to Fulfil its Obligation towards the Penitentiary

Such a situation undermines the work and the reputation of the minor offence courts. According to the President of the Minor Offense Court in Kljuc, a majority of the sentenced persons is recidivist. Recidivists destroy reputation of the minor offence courts in the way that they do not serve the sentence. Minor offence courts make decisions which have a significant effect on people's living. The ban decided by the Federal Ministry of Justice would affect people's safety. Caseload of enforcement cases is increasing seriously. Presidents of the minor offence courts expressed their concerns regarding the purpose of conducting of minor offense procedure if their decisions cannot be enforced. Many minor offence courts decided to suspend minor offense procedure until the ban on committal of sentenced persons is lifted. In addition, the Una-Sana Government does lose a huge amount of money. From January to April 2000, the Government of Una-Sana collected through the fines the amount of 103,000 KM whereas from May to September only 10,000 KM was collected.

At a meeting organized with the Governor, the Prime Minister, the Minister of Justice, the President of the Cantonal Minor Offense Court and UNMIBH Civil Affairs, JSAP recommended that:

- The Government of Una-Sana Canton is immediately requested to fulfil its obligations as stipulated in the contract signed by the Prime Minister and the Prison Warden
- The Prime Minister shall immediately undertake the appropriate action in order to pay 67,540 KM to the Penitentiary in Bihac.
- The Federal Minister of Justice shall be immediately informed and requested to lift the ban on committal of persons sentenced to imprisonment in minor offense procedure.
- The Cantonal Minister of Justice shall immediately inform all minor offence courts in the area of Una-Sana Canton as soon as the Federal Minister of Justice lifts the ban.

The Government tried to slip away from its financial obligations by proposing to pay the debt in three installments. The Governor requested JSAP to convince the Warden to lift the ban immediately after receiving the first installment of 25,000 KM. Strangely, the Minister of

¹¹ Article 34, paragraph 2 of the Law on Minor Offences with reference to Article 5 of the Law on Amendments to the Law on Minor Offences ("Official Gazette of Una-Sana Canton", no. 8/99, dated 19.11.1999) reads: "if a fine cannot be collected in enforcement procedure, it shall be converted into imprisonment sentence counting each 50 KM of fine a day of imprisonment in a way that the imprisonment sentence cannot exceed 60 days."

Justice agreed with that proposal. After JSAP informed the Warden of the above proposal, he angrily rejected it and threatened to extend the ban to all other sentenced persons. Consequently, JSAP ordered the Government to either immediately pay its debt or face the consequences. The Una-Sana Government immediately paid the entire amount of the debt (67,000 KM) to Bihac Penitentiary, as recommended by JSAP.

Comments: Although the Warden of the Penitentiary forgave a huge amount of the Government debt (reducing amount from 363,040 KM to 67,000 KM), the Government didn't fulfill its obligation. It was clear that the Government was trying to get the ban lifted with paying only 25,000 KM and in that way avoid payment of the balance. JSAP had to warn the Governor and Prime Minister that they would have to explain to the High Representative, the Head of OSCE and the Head of JSAP why the ban on committal of person sentenced to imprisonment in Canton I was imposed and continued to be in force for such long period of time. The ban was immediately lifted and minor offence courts started to enforce the court's decision.

4 Sensitive Cases under JSAP Monitoring

During the reporting period, the JSAP team monitored many sensitive cases involving ethnic or political discrimination. Under JSAP's pressure the court decided numerous cases.

Muharem Begic (victim), a criminal case initiated by Mr. Begic as an injured party. The case arose from two employment cases in which he appeared as plaintiff. Mr. Begic was a former police officer, allegedly a DNZ supporter. When the Municipal Court in Bihac made a decision on his reinstatement and compensation of lost salaries, not only did Besic refused to reinstate him, but also Judge Bahra Coralic, who was dealing with one of the employment cases, was beaten up. Begic submitted a criminal report against Edham Besic for his failure to enforce court decision on reinstatement. As a result of JSAP and Ombudsman's pressure, Begic was reinstated in 1999 to a position of a police officer in the Kljuc Police Station. JSAP also had several meetings with Municipal Prosecutor in Bihac urging him to make decision upon these criminal reports. The case was dismissed due to application of the Amnesty Law.

Fikret Besirevic, two criminal cases – one before the Cazin Municipal Court and one before the Bihac Cantonal Court. In the case instituted in 1998 before the Cazin Municipal Court, Besirevic, a member of the Municipal Council in Cazin, was charged with violent behavior committed in 1994 against approximately 100 inhabitants of village Coralici, Cazin Municipality. The then president of the Cazin Municipal Court, Jadranka Lojic, suspended the investigation because the Municipal Council refused to lift the immunity of the accused. Although the investigation lasted very long, since Besirevic was very powerful political figure who had good connections with the then president of the Bihac Cantonal Court, Hasan Pjanic, continuous international community pressure led to an appeal being filed by the Cantonal Prosecutor with the arguments that the incident had occurred before the accused was elected member of the Municipal Council and that the immunity does not cover criminal acts outside performance of municipal council's duties. Although the appeal was accepted and investigation re-opened, the procedure continued to be delayed and stayed due to obstructions in the Bihac Cantonal Court until the Federal Supreme Court made its decision in July 1999, giving interpretation of the immunity clause (exactly the same as JSAP expressed at the meetings with

the then president of the Cantonal Court, Judge Pjanic). However, the case was covered by Amnesty Law.

In a case against Besirevic before the Bihac Cantonal Court, for the crime of “abuse of office”, Besirevic again invoked his immunity. The president, as well as judges of the Cantonal Court made similar obstructions in this case, and in spite of JSAP’s open disagreement with President Pjanic’s explanation of the cantonal constitution provisions on immunity (in favor of the accused), his attitude was not changed until the decision of the Federal Supreme Court clarifying the immunity issue. Criminal procedure continued, but as in the previous case, it was dismissed due to the application of the Amnesty Law.

Bahra Coralic (victim). This criminal case against three defendants, Emir Besic, Hazim Kosovac and Abdulah Besic for inflicting grievous bodily injuries, is connected with two employment cases (for reinstatement and compensation for lost salaries) initiated by Muharem Begic. In June 1995, after Judge Bahra Coralic decided to enforce the court decision on compensation for loss of salary in favor of plaintiff Muharem Begic, she was kidnapped from her accommodation during the night, handcuffed, taken to the cemetery and severely beaten up. This crime was committed by the above-mentioned defendants upon order of the then Minister of Interior Edham Besic. The municipal prosecutor requested an investigation only against three executors.¹² For the reasons of impartiality, this case was transferred to the Cazin Municipal Court. The investigative judge, Jadranka Lojic, kept the file in her drawer for two years and then allotted it to an inexperienced judge, Mirsad Hairlahovic. At the time when Jadranka Lojic was in charge of the case, the procedure against defendant Abdulah Besic was dismissed due to his mental incapacity. The JSAP team started monitoring this case in December 1998. Five hearings were held and the verdict was pronounced in March 1999. The JSAP team had many long discussions with the presiding judge trying to convince him that establishing of the motive for committing this crime was the basic fact in this trial. However, Presiding Judge Hairlahovic was of the opinion that it would be better to complete the case, since much time had passed and the case was monitored by international community. Most probably due to JSAP’s influence, the panel passed the verdict finding two defendants guilty and pronouncing quite strong sentences – two years of imprisonment for Emir Besic and one year for Hazim Kosovac. The Cantonal Court completed appellate procedure on 13 July 1999, imposing even more severe sentences upon the defendants (3 years and 6 months for Besic, and 1 year and 10 months for Kosovac). Kosovac started serving the sentence, while Besic absconded. This case was covered by the Amnesty Law.

Comments: Without JSAP’s constant pressure, neither the municipal nor cantonal court would pronounce such adequate sentences upon defendants.

Fatima Galijasevic (two cases: as a plaintiff in employment case and injured party in criminal case) Due to her political involvement (SDP member), plaintiff was dismissed from her position of a teacher in the elementary school in Kulen Vakuf (Bihac Municipality) in 1995. The Bihac Municipal Court made two decisions on her reinstatement (Judge Fata Nadarevic). The director of the school was a powerful political figure and, most probably due to his influence, the case

¹² Later on, the investigation against Edham Besic was conducted before the Bihac Municipal Court after Bahra Coralic submitted a criminal report against him.

was delayed before the Bihac Cantonal Court. When the verdict was finally passed, Director Ismet Beciragic refused to reinstate Galijasevic. Beciragic invoked his immunity, but after JSAP's intervention, Judge Osman Alibabic accepted JSAP's position in respect of the immunity issue and continued the procedure. Fatima Galijasevic was reinstated at the end of 1999.

Mehemed Alagic Upon Bihac Cantonal Prosecutor's instructions, the municipal prosecutor in Sanki Most requested the Financial Police to conduct investigation against Mayor of Sanski Most. Based on the financial police criminal report, on 10 October 1999 he submitted a request for investigation against Mehmed Alagic and Omer Mustafic. After completion of the investigative phase, on 12 January 2000, the municipal prosecutor made a request for additional investigation. On 28 January 2000, upon disagreement of investigative judge with the request for additional investigation, the Municipal Court in Sanski Most declared itself non-competent for conducting criminal proceeding against Mehmed Alagic and Omer Mustafic. The case was sent to the Cantonal Court in Bihac. Hasan Pjanic, the then President of the Cantonal Court, tried to obstruct the procedure by sending the case to the Supreme Court and seeking opinion on which court has original jurisdiction over the case. The case was sent back to the Cantonal Prosecutor's Office. On 17 April 2000, Fikreta Dzanic, the Cantonal Prosecutor, addressed to the investigative judge a request for expanding the scope of investigation. Investigative Judge Petkovic came up with reasons to further investigate the case and delay the procedure after many months of investigation conducted by the Sanski Most Municipal Court.

After JSAP and OSCE's strong pressure throughout the investigative phase, on 11 October 2000, Cantonal Prosecutor Office brought indictment against Mehmed Alagic and Omer Mustafic. A hearing might be expected in late November 2000.

Adnan Alagic On 15 May 1998, Financial Police Head Office in Sarajevo reported illegal use of budgetary funds by the Mayor of Bihac, Adnan Alagic and his assistant Senad Omanovic. On 1 October 1999, the Financial Police submitted two criminal reports to the Cantonal Prosecutor's office, respectively against Adnan Alagic and Edin Kecalovic, and against Adnan Alagic, Senad Omanovic and Hasan Redzic due to reasonable grounds for suspicion that they committed criminal offences under Articles 358 and 366 of the Criminal Code of the Federation of BiH (abuse of office or authority, misfeasance in office). On 22 October 1999 and 5 November 1999, the Cantonal Prosecutor requested the criminal police to gather additional information in order to make decision upon both criminal reports submitted by the Financial Police. Then the Cantonal Prosecutor's Office submitted a request for investigation to Judges Adem Jakupovic and Nisveta Gluhalic. For the time being, investigation of one case is completed and has been forwarded to Cantonal Prosecutor's Office, while the second investigation procedure is still going on.

Upon JSAP's suggestion Cantonal Prosecutor promised to join both procedures as soon as the second investigation is finished.

Suad Mesic On 21 August 1998 and 2 December 2000, Adem Sertovic submitted two reports against the former Mayor of Bosanska Krupa to the Cantonal Prosecutor's Office charging him with giving a bribe (Article 363 of the Criminal Code), abuse of office or official authority (Article 358) and embezzlement (Article 359). On 1 October 1999, the Financial Police submitted a criminal report against Suad Mesic to the Cantonal Prosecutor's office due to the

reasonable grounds for suspicion that he committed crimes under Article 358 (abuse of office), Article 366 (malfeasance in office) and Article 369 (illegal collection of payments and disbursement). On 28 December 1999, the Cantonal Prosecutor filed a request for investigation against Suad Mesic due to the reasonable grounds for suspicion that he, while holding the office of Mayor, violated the Law on Financial Transactions, the Law on Accounting, the Law on Assignment of Investment Construction, and the Law on Urban Development. Three expert witnesses were requested to give their opinion about allegations against Mesic. For the time being, the case is still under investigation. The investigative judge requested additional evaluation from one of the three expert witnesses.

Sead Basic (related to registration of the fictitious company “Comfort”) “Comfort” was registered on 8 September 1997 in the name of Sead Basic (somebody misused his ID card for registration). Sead Basic found out that he was registered as an owner of the company when the police inspectors contacted him with reference to outstanding tax payments amounting to approximately 500,000 DM.¹³ Since the Cantonal Court refused to delete this company “ex officio”, Basic submitted a lawsuit to the Bihac Cantonal Court on 29 September 1998 requesting registration of this company to be declared null and void. The Cantonal Court referred the case to the Municipal Court on 9 December 1998 as a court with original jurisdiction. The Bihac Municipal Court (Judge Senad Tica) requested Basic to name a defending party. Basic named “Comfort”, but the lawsuit could not have been sent to the defending party, because it was a fictitious company and did not exist at the indicated address. After one year the Municipal Court made a decision (on 20 December 1999) considering the lawsuit withdrawn. Upon Basic’s appeal, the Cantonal Court issued a decision on 13 March 2000 canceling the decision of the Bihac Municipal Court and remanding the case to the first instance court. Due to JSAP’s influence, as well as the audit of the company registry done meanwhile, the Municipal Court made a new decision establishing nullity of registration of “Comfort” (on 8 June 2000). Upon this decision, the Cantonal Court deleted “Comfort” from the court registry (decision of 8 August 2000).

Husein Kudic (case before the Prijedor Basic Court). OHR Office Prijedor informed JSAP team about this case. Complainant Kudic is in permanent telephone contact with JSAP. Kudic (a Bosniak) submitted a lawsuit to the Prijedor Basic Court on 01 February 1999 for cancellation of the contract on exchange of real property. Under the contract, in 1994 he exchanged his own real property located in Prijedor for the real property located in Zenica and owned by the defendants – Radoslav Zekanovic, Draginja Zekanovic, Vito Zekanovic and Vesna Zekanovic (Serbs). On 18.09.1999, presiding judge Snjezana Stojanovic made a procedural decision, instructing plaintiff to correct the lawsuit, i.e. to exclude a part of the lawsuit relating to registration of the property in favor of Husein Kudic, since he was already registered in the land registry book as an owner. In the same decision Judge Stojanovic stated that if the plaintiff fails to correct the lawsuit, the court would correct the lawsuit. Since she did not take any action after bringing that decision, the case was sitting in her office. Neither she nor Kudic’s private lawyer Milan Mrdja (Serb) took any action. Although JSAP had four meetings with the President of the Prijedor Basic Court, Zivko Dragosavljevic, discussing this issue (JSAP expressed its concern about this situation considering inactivity of the court as obstruction of the return process), there

¹³ Basic submitted a criminal report against unknown perpetrator to the Municipal Prosecutor’s Office Bihac on 7 October 1999. This procedure is still ongoing.

was no progress made in processing of the case. On 20 June 2000, a private lawyer from Bihac corrected the lawsuit as requested by Judge Stojanovic. After many interventions by JSAP, the next hearing was scheduled for 31 July 2000 (during the strike of the PTT employees, so that the summons could have not been delivered). Since two of the defendants were residing in Australia, the court finally appointed temporary representative for them. Since Judge Stojanovic was still obstructing the case, Kudic requested her disqualification and the case was allotted to the judge Milimir Popovic. At the hearing of 16 October 2000, the presiding judge did not show up. At the next hearing (27 October 2000), defending party Vito Zekanovic did not appear before the court. The next hearing is scheduled for 20 November 2000.

5 Conclusion

The JSAP team entered the essence of problems in the judiciary and tried to tackle the main issues concerning work and efficiency of the judiciary. The president of the Bihac Municipal Court has stated, “if I compare the situation when JSAP started 2 years ago its work in monitoring and assessing the judicial system and now it is closing down, the difference is drastic. From almost breakdown at the beginning to currently there is better organization, efficiency and large progress. However I have to admit, the goal, which is total legality, efficiency and independence of the judiciary, is still not accomplished.”