

United Nations Mission in Bosnia and Herzegovina

**Judicial System Assessment Programme
(JSAP)**

Doboj 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

The Judicial System Assessment Programme (JSAP) was created by UN Security Council Resolution 1184 of July 1998. JSAP successfully completed the two-year mandate and now it is the time for us to write a final report, with the intention to give a precise understanding of JSAP activities in Dobož. Since this region also witnessed many transfers and replacements of international staff members, it is virtually impossible to provide a report covering the whole two-year mandate. The current Team Coordinator is the only staff member who completed a full year in this region. An earnest attempt was made to recollect the major activities of JSAP Dobož during the past one-year period.

1.1 Dobož Region

Originally, seven JSAP regional offices were established. The JSAP Brčko office was discontinued when the status of Brčko was determined by the international arbitration as a special district. The Dobož region was the second largest region, mandated to cover courts, minor offenses courts and prosecutors' offices in Canton 2¹ (Posavina), Canton 4² (Ze-Do Canton) and parts of Republika Srpska (RS)³.

1.2 General Overview

From the beginning of the implementation of the program, priority was given to thematic reports on the basis of assessment of various teams on a particular legal issue. At the beginning, JSAP worked as an independent assessor of the local judiciary rather than as an active interventionist. Since, the program had to start from the scratch to implement the mandate of evaluation; all teams were tasked to collect data on personnel and materials in the regular and minor offense courts and prosecutors' offices in the respective regions. This survey gave an opportunity to the international community to understand the material situation of judiciary in the country. In March 1999, JSAP organized a review meeting on the program implementation and there it was decided that JSAP should adopt an activist approach and accordingly the program took the present shape. JSAP not only assessed the judicial system of the country, but also played an interventionist role in appropriate situations, through their personal contacts and goodwill they were able to build with the local judiciary through out their work. In these final days of this program, we could say with full confidence that JSAP was able to establish and maintain exemplary relations with the local judiciary. With this professional confidence, JSAP was able to get into the uncharted domain of the functioning of the local judiciary hitherto unknown to the international community. Thematic reports on variety of legal issues on local judiciary were produced by JSAP. The reports put forward suggestions to make improvements to the system in the light of international standards laid down in international instruments on administration of justice, in particular the European Convention on Human Rights (ECHR) and its Protocols.

This report is broadly divided into three parts to make it convenient for the readers. The first part is a brief introduction of JSAP. The second part deals with activities, and that is

1. Municipal Courts in Odžak, Orasje, Cantonal Court in Odžak and respective prosecutors' offices

2. Municipal Courts in Zenica, Tesanj, Visoko, Vares, Olovo, Breza, Zepce, Maglaj, Zavidovici and Zenica Cantonal Court along with respective offices of prosecutors.

3. Basic Courts at Dobož, Teslic, Derventa, Modrica, Samac, Srpski Brod and Dobož District Court along with respective offices of prosecutor

subdivided into three sections: activities related to institutional issues, monitoring of cases, and work on thematic reports. The last part is devoted for providing a brief assessment of the problems confronted by the team and suggestions for the way ahead.

2 Activities

2.1 Institutional Issues

2.1.1 Building a solid professional relationship with the local judiciary

JSAP received a very warm welcome from the local judiciary in implementing the mandate. Until the establishment of JSAP, mainly courts have to deal with international agencies with little understanding of the legal system. Judges and prosecutors in the region were enthusiastic to share their experience with their counterparts in JSAP. They found JSAP to be an institution with which they could air their views on variety of problems confronting the courts in their work. Prosecutors and judges were confident to share information with JSAP on almost all issues JSAP was looking for, and they were more than willing to share court records and even confidential documents with JSAP. Whenever they felt that the judiciary was subject to interference from outside, judges sought assistance from JSAP. In many situations, JSAP was able to extend support to the court. JSAP Dobož intervened when the President of the Basic Court was kept under suspension pending an investigation for his dismissal. Intervention of JSAP with the Ministry of Justice of Republika Srpska resulted in dropping “disciplinary” proceedings against him. Similarly, in variety of situations, the President of Zavidovici court sought the support of JSAP to protect the courts from intervention by local “celebrities”. Interestingly, in a variety of situations, prosecutors, in particular the Cantonal Prosecutor in Zenica, sought the assistance of JSAP in the conduct of proceedings against local “celebrities”. JSAP on many occasions monitored trials and investigative proceedings in the courts. However, it has to be admitted that almost all proceedings are still continuing and the successor to JSAP may find interest in these cases. To that purpose, a short explanatory note on pending cases is annexed herewith

JSAP Dobož was able to work so closely with all judges, prosecutors and judges of minor offenses courts, in particular with the President of the Dobož District Court, Mr. Sava Lekovic, the President of the Zenica Cantonal Court, Mr. Redzib Begic, the President of the Posavina Cantonal Court, Mr. Ivo Lukac, the Presidents of the Municipal Courts, Mrs. Ana Petrisin (Odzak), Mr. Zeljko Mikic, (Orasje), Mr. Uzeir Kalabic, (Zavidovici), Mr. Redzo Delic, (Zepce), Mrs. Fatima Djukic-Bajramovic, (Zenica), the Presidents of Basic Courts, Mr. Zdravko Popovic, (Teslic), Mr. Vidan Radulovic, (Modrica), and Mr. Rajko Stokic, (Dobož); the Zenica Cantonal Prosecutor, Mr. Zahid Kovac, and the RS Basic Prosecutors, Mr. Nedjo Djuric, (Teslic), Mrs. Dragica Nenadic (Modrica), and Mrs. Slavka Stankovic, (Derventa). Their free and frank discussions and high-quality cooperation with JSAP contributed much for our success in the region.

2.1.2 Ministries of Justice

JSAP liaison with both Cantonal Ministries of Justice to solve problems, in particular, issues such as allocation of budgets for courts, implementation of the new salaries, and unacceptable insignia issues, under the competence of Ministries concerned. JSAP is grateful to the

Minister of Justice of Ze-Do Canton, Mrs. Danica Sain, and Ms. Kata Kopic, the Minister of Justice of Posavina Canton.

2.1.3 Collection of Data on Judicial Institutions

An initial period of about three months was utilized for the collection of data on courts in the region, including personnel and equipment. All the regional teams adopted an identical approach to accomplish this task. Now, JSAP has an updated database on personnel and materials in judicial institutions all over the country.

2.1.4 Material Assistance

JSAP found that many of the courts were not even equipped with basic legal documents or supplied with adequate number of copies. JSAP and OSCE, with the assistance of a Swedish legal publisher, supplied a compilation of laws to all regular and minor offense courts. With the assistance of JSAP the local judiciary was able to receive some used computers from UNMIBH. However, JSAP finds that it may be imperative for the international community as well as the local governments to attend more seriously to finding adequate resources for the courts in the country, in particular the courts in Republika Srpska.

2.1.5 Contribution of JSAP in Activating the Ethnically Divided Judicial Institutions in Zepce

After the Dayton Peace Agreement, parallel Bosniak and Croat institutions continued to exist in Zepce Municipality. While the Bosniak institutions were within the Cantonal structure, the Croat Municipality and other institutions worked outside the cantonal structure.

After the review of the program implementation, JSAP assumed responsibility as an arbitrator between Croats and Bosniaks to solve the fundamental problems of parallel minor offense courts, appointment of the president of the court, and appointment of the fifth judge and the deputy prosecutor. Since the society is so divided and local politics are purely based on ethnic representations, both communities waged a subtle war to maintain control over vital institutions in the municipality. Each side maintained its own administrative structures in the Municipality. This ethnic conflict was reflected in the functioning of the Zepce Municipal Court, which failed to elect a president and remained almost until the latter part of 1998. Similarly, Croats and Bosniaks maintained separate minor offense courts. Furthermore, the police force worked in the line of ethnicity. As a part of activities of the international community to stamp out these parallel institutions, in particular the parallel judicial institutions, Dobojski JSAP assumed the role of mediator between the local politicians. JSAP understood that the parallel judicial institutions in Zepce were the main stumbling block to the establishment of rule of law in Zepce. The Zepce Municipal and Minor Offenses Courts were almost dysfunctional until JSAP intervened and attempted to find an amicable solution acceptable for both Croats and Bosniaks. It may be noted that still judiciary has not been emancipated from the ethnic divides.

This ethnic divide was reflected among the judges in the election of the president of the court. Since they were unable to elect a candidate for the post of President the court legally remained administratively unrepresented for official transactions. At that time, the composition of the court was four judges: two Croats and two Bosniaks. Since a candidate for the post of President of the court should muster a majority of 2/3 of votes, the candidate

should have support of at least three judges. All attempts to elect a president failed. The Canton insisted that unless the President was in place, payments would not be made to the court. At this point, JSAP was tasked to find a solution. JSAP suggested that the Ministry of Justice amend the Law on Regular Courts to create a position of acting president in case the collegium of judges fails to elect the president. In this case, the President of the Cantonal Court could nominate an acting president for a maximum interim period of two years. Within the interim period, the collegium of judges would have the right to elect the president of the court. To this end, upon the suggestion of JSAP, the Law on Regular Courts of Ze-Do Canton was amended in July 1999 and by virtue of this amendment the President of the cantonal court nominated a Bosniak judge as the Acting President of the Court. Since then the court started working in accordance with the Law on Regular Courts of Ze-Do Canton and started receiving funding from the cantonal budget.

Similarly, to solve the problem of the appointment of the Deputy Prosecutor in Zepce, a Bosniak was appointed as the deputy prosecutor to work with the Croat municipal prosecutor. Another issue came up in dealing with the unification of judicial institutions in Zepce in the course of proceedings for the appointment of the fifth judge. Again JSAP mediated with Cantonal judiciary and on the basis of the agreement reached between JSAP and Cantonal Court, the fifth judge was appointed from the Croat side and in turn the collegium of judges supported the acting president to become the president of the court. This resolved the problem, and on the next day, with the appointment of a Croat judge as the fifth judge, the collegium of judges elected the acting president as the President of the court by a 4/5 majority.

JSAP intervened in the long-pending issue of registration or transfer of Croat companies from Vitez as per the previous agreement between the parties. After considerable persuasion from JSAP, the Zenica Cantonal Court liberalized the conditions for registration or transfer of Croat companies.

As mentioned previously, in Zepce two minor offenses courts were functioning on the basis of ethnic divide. Bosniak police referred cases to the Bosniak minor offenses court while Croat police sent cases to the Croat minor offenses court. After some time, the Bosniak minor offenses court became dysfunctional due to financial difficulties. Since then, Bosniak police stopped sending cases to court and thousands of cases piled up in the Zepce police station. Zepce became a safe haven for committing traffic and other minor offenses. In this situation, JSAP with the cooperation of UN Civil Affairs initiated a dialogue between the Bosniak and Croat municipal structures to find a way to unify the minor offence courts. Many meetings were organized jointly and separately with the mayor and deputy mayor of the municipality, and finally agreement was reached on the issue of unification of the courts. Accordingly, it was decided that there should be two judges, one Bosniak and one Croat, in supported by four administrative staff, two each from the Bosniak and Croat sides. Income from minor offenses proceedings and expenses of the court would be shared equally between the two administrative structures. The court started functioning according to the cantonal Law on Minor Offenses Courts for the first time since the signing of the Dayton Agreement.

2.1.6 JSAP's Role in Ensuring the Implementation of OHR's Decision on Insignia

JSAP Dobož played an important role in ensuring that the courts in its region strictly adhered to the directives of OHR on insignia. JSAP conducted inspections in almost all local courts in Canton 4 and Canton 2 in order to ensure that the OHR decision was respected. In this

regard JSAP did not find any major hurdles in Canton 4. There, the Ministry of Justice acted swiftly and necessary directions were issued to all courts in the canton to implement the OHR decision by the deadline. On the other hand, JSAP met with a considerable problem in Posavina Canton, where the Ministry of Justice dragged its feet in implementing the decision. Nevertheless, the decision was finally implemented in Posavina Canton.

2.2 Monitoring and Intervention in Judicial Proceedings

JSAP Dobož monitored select cases with ethnic or political elements. Most important of these was a case dealing with tax evasion and forgery at the Srpski Brod Oil Refinery. In this case, prosecution was launched against individuals holding responsible positions in the company. The crime caused the economy of the state losses of more than 15 million DM. According to available information, the offense is continuing with the support of the ruling parties in the RS. This process of tax evasion continuously affects the economy of the whole country. JSAP found a similar case in Ozdak involving tax evasion of 7 million DM, but the law enforcement agencies have so far failed to proceed against the people who are continuously inflicting such huge losses on the national economy

Similarly, in Dobož JSAP found many criminal cases pending against influential figures for an unduly long time without proper adjudication. On many occasions, JSAP made interventions without success. Some of the cases, including a murder committed in broad daylight in 1993, still bear the tag of "perpetrators unknown". In another murder case, the judge took more than seven months to forward the appeal of the prosecutor against the verdict of the district court. If JSAP had not followed this case, the appeal would never have reached the Supreme Court. In Zenica Cantonal Court as well JSAP looked into many cases where the cantonal prosecutor requested our intervention. JSAP monitored those cases and found that local "celebrities" were able to continue to receive preferential treatment in criminal proceedings.

In Zavidovici, the President of the Municipal Court sought the support of JSAP to protect the independence and integrity of the court from Dr. Ermin Cehic, the Assistant Cantonal Minister of Public Health and a member of the Cantonal Assembly. JSAP took great efforts to protect the court from the blatant attacks on its integrity in dealing with the cases against him. The court was for the first time able to initiate criminal proceedings against him in two cases and indictments were brought forward. It had been a discouraging experience for JSAP to monitor cases in the court. Almost all cases JSAP started to monitor are still pending without tangible progress. Generally speaking, JSAP got the impression that the courts are incapable of working independently without intervention and support from the international community.

JSAP monitored a few employment cases referred by ethnic minorities. This has resulted in a change of judicial attitude to this category of cases in Dobož region. Until JSAP became involved with labor cases, the courts maintained a totally indifferent attitude towards this kind of cases. JSAP found that the courts adopted delaying tactics in employment cases so that the parties either settle the dispute between themselves or after a long and expensive delay lose interest in the case. After JSAP intervention in a few cases, the parties received a final decision from the court. But these kinds of cases are going to be a nightmare for the days to come. JSAP found that the judgements on labor cases become impossible to execute due to lack of cooperation on the part of employers. In a few cases, monitoring and intervention paid dividends. But in majority of cases, due to procedural requirements or

deliberate delaying tactics, cases are ongoing and it may be a fertile ground for the Independent Judicial Commission to evaluate and follow the proceedings. The list of cases followed by Doboj JSAP, with the current status of those cases, is annexed with this report.

2.3 Thematic Reports

The thematic reports produced by JSAP were the result of extensive research carried out by the regional teams. JSAP Doboj contributed substantially to the preparation of the following thematic reports during the past year.

1. Political Influence
2. Defense Counsel
3. Court Experts
4. A Survey of Employment Cases in Select courts in the Region, and
5. Survey on Implementation of the Amnesty Law

The reports were published and circulated among the international agencies working in the field as well as to local judiciary. JSAP hope that the successor organization would have an opportunity to consult these reports, before to start working.

3 The Way Ahead

Since the Dayton Peace Agreement in 1995, the country has moved step by step towards the establishment of rule of law and democracy. Now the rulers and ruled have gradually started to think that unless rule of law is established, the country may not have any place in the family of nations. Time is running out for Bosnia and Herzegovina to rediscover its position in the region. To preserve and foster the good governance based on plural democratic values an independent judiciary is *sine quo non*. To achieve this end, JSAP was established to assess the judicial system of the country and to make appropriate recommendations. In the past two years, JSAP made a systematic study of the legal system in the light of international standards of administration of justice, as laid down in international treaties and conventions, in particular the ECHR and its protocols.

3.1 Tips for Future Work

It should be acknowledged that the laws of Bosnia-Herzegovina generally satisfy the standards laid down in international conventions and treaties. But these laws are not being implemented, because the judicial system blocks their proper implementation. Another major problem is the influence of politics and ethnic orientations in judicial institutions. Until the new Law on Judicial and Prosecutorial Service was adopted, security of tenure for judges and prosecutors were not provided. The job insecurity was a reason for dilution of the independence of the judiciary. This has been in some ways rectified by the new law. Another problem concerns the allocation of budgets to the courts. Court presidents who maintained close relations with Ministry of Justice received better funding than those who did not. This created a type of competition among the presidents to satisfy the Ministry of Justice, which leads to dependence. Similarly, JSAP found that Republika Srpska judiciary is poorly funded and irregularly paid compared with its peers in Federation. The new RS Law on Courts and Law on Prosecutors hopefully will change the situation.

The judicial system, and the people who work in it are by and large a product of the former socialist system of governance. Judges and prosecutors still suffer from the lessons of the past. Judges fear to assume the responsibility of dealing with cases involving powerful political figures. JSAP's experience is that not a single case dealing with influential personalities has ever reached finality. Judges and prosecutors feel that they are trapped between the devil and the deep sea; that they have to satisfy the conflicting expectations of both local politicians and international agencies in discharging their judicial responsibilities. In order to avoid complications with international community, they bargain time by abusing procedural laws. If members of the international community are not familiar with the local laws, the judges and prosecutors give them explanations and excuses which are usually absurd. If a member of the international community is endowed with a better understanding of the local laws, he has to prove it to them to get their acceptance. In certain situations, he must be prepared for an argument with the judges in a very professional manner to convince his case. If not, he will return without any tangible results and the judges or prosecutors concerned will think that they fooled him. They are convinced that since members of international community will come and go they have to continue with the same techniques. The case will remain there in the same status as it was.

Another challenge anyone will face when dealing with local judiciary is the problem of ethnic prejudices. No judge or prosecutor will admit that he is prejudiced. But in reality, the war contributed to a change of mentality among the judges in dealing with ethnically-charged litigation. The public in general, and in particular ethnic minorities, seemingly do not trust the system. JSAP has been receiving complaints against judges and prosecutors from ethnic minorities for the last two years and made sincere attempts to intervene. It will be a difficult task for the successor of JSAP to make the system more just and equitable to everyone, irrespective of their ethnic origins.

JSAP invariably found in all courts judges do not attach any sanctity to the time limits prescribed in the law. In some cases, it was observed that some judges took many months after pronouncing the judgement to reduce it to writing. This creates long delays for filing appeals. Another aspect anyone who deal with the courts will observe is that judges deliberately change the panel of judges frequently in order to delay the proceedings. In many situations, lay judges were replaced or trials were conducted in the absence of a full panel of judges, in order to pave the way for dismissal of the judgement by the second instance court on the ground of gross violation of procedural law. It is obvious that even a beginner in the profession will know that during the trial period the panel of lay judges should not be changed and the trial should not be conducted without the presence of all judges in the panel. Many appeals went to second instance solely on this ground. Naturally, the decisions were nullified and sent back for repetition of the proceedings. This sort of tactics could be seen in majority of sensitive cases involving powerful personalities. It must be regrettably noted that JSAP monitored many sensitive cases in various courts in the region, but even after spending full mandate of two years, we were not able to see the finality of litigation in even a single case. Beware of delaying tactics and abuse of procedural laws.

All courts and prosecutors invariably complained to JSAP that they need more men and materials. With regard to the former JSAP thinks that courts and prosecutors' offices are overstaffed and that this complaint is unjustified. However, the latter suggestion regarding the material situation is true and requires attention. JSAP found that many courts and prosecutors' offices receive less than a hundred cases a year. This may be true in Orasje, Ozdak, Tesanj, Derventa, Modrica, Zepce, Olovo, Visoko, Breza and Maglaj. Similarly, the

Doboj District Court and Prosecutors Office are significantly overstaffed, because of the enactment of the new RS Criminal Procedure Code and consequent change of competence. By virtue of this the district court become almost a second instance court and it is anticipated only less that hundred cases may reach the court every year, but the court is staffed with about 12 judges. JSAP found that judges and prosecutors work very leisurely, and in majority of cases they come late and leave early.

Minor offenses courts, even though not coming under the regular court system, also play a major role in the administration of justice. JSAP found that many minor offense courts do not have adequate workload. But still whenever visited they also complain about the workload and shortage of manpower. On a few occasions, JSAP went to these courts without prior notice and found that many of the presidents were on “leave”. This “leave” may be stage management by the secretary of the president.

The legal system is undergoing a sea change in the past few years. Each entity has adopted its own criminal laws. It seems that the general opinion prevailing among the legal experts is that the institution of investigation judge should be faced out, but the fundamental qualities of inquisitorial system should be kept intact. If the proposed changes are brought forward in the judiciary, judges and prosecutors should be required to be given in-service courses.

JSAP observed that cooperation among the courts, prosecutors and police is not always smooth. This may be due to the lack of proper understanding about the role of each institution under the new criminal procedure code. It may not be rare to see occasions where police will blame the court or prosecutors and *vice versa*. The shifting of blame quite often leads to paralysis of the system. JSAP suggests that some sort of entity-level joint training should be organized to explain their respective roles to foster better relation among all actors of law enforcement.

JSAP's experience is that the local judiciary as well as lawyers are not exposed to the ECHR and its protocols, in spite of the fact that ECHR is the law of the land. Every step should be taken to ensure that local judiciary, prosecutors and lawyers have the opportunity to get acquainted with the ECHR and jurisprudence of the European Court of Human Rights.

JSAP Doboj hopes that this brief report would be useful for its succeeding organizations and submits it with great pleasure.

ANNEX

SOME IMPORTANT CASES TO FOLLOW UP

1 Srpski Brod Oil Refinery Case

On 6 June 1999 the Center of Public Safety in Doboj filed criminal charges against six leading people employed in this firm for abuse of official authority and forgery of official documents under Articles 226/4 and 236/2 of the Criminal Code (CC) of Republika Srpska - Special Part.

The District Public Prosecutor Doboj under official number KT-71/99 submitted on 8 October 1999 to the investigative judge of the District Court Doboj a petition for an inquiry against Mr. Vojin Mujicic, the managing director, and five others because of grounded suspicion that they committed the aforementioned criminal acts. Interestingly, the police ordered three days' custody for four of suspects, except the principal suspect. The offence took place from 5 February 1999 to 12 April 1999 (only five weeks) and the prosecution alleged that the Srpski Brod Oil Refinery had made an unjust profit of 2,881,787 KM by using a fictitious product name to cheat the public and to avoid the tax laws of RS, which caused loss of revenue for the RS budget amounting to 11,935,321 KM.

On 22 October 1999, the panel of three judges of the Doboj District Court cancelled custody for all five suspects based on Article 198 of the Code of Criminal Procedure (CCP). Based on Article 394 /2 of the CCP an appeal is not allowed against such a decision.

After this there was no tangible progress except the technical experts' analysis and opinion from 9 March 2000 (four and a half months after aforementioned decision about custody). These experts concluded that Oil Refinery in Srpski Brod had the technical capability for production of new products such as the so-called "VELD-S" and the so-called solvent RB-096, because this production is simpler than production of diesel and petrol.

The investigative judge tried to organize a financial expert evaluation but with unexpected difficulties mainly because of money shortage; at first the Institute for Economics from Banja Luka asked for their work 110,000 KM, which was an unacceptably high fee, and after this a new expert team of four economists (two from Doboj, two from Banja Luka) asked for 60,000 KM as an expert fee, which is also exceptionally high. During the whole criminal procedure the Doboj District Court never received any special funding for this case although this court requested this a few times officially from the Ministry of Justice.

JSAP learned that the court has been waiting for this expert evaluation for more than six months without any visible progress.

Comments:

This is a typical example of how much politics can be involved in one criminal case and how much a shortage of money can influence the whole investigative proceeding with no visible progress for the last eight months. For the RS 15 million KM is a huge amount of money and as far as JSAP knows, this is the biggest case of economic crime in the RS. For this reason

JSAP considers that is unacceptable to tolerate any kind of excuse for unfinished investigation after one year of activity, knowing that investigative judge was really active only in the beginning of proceedings when the most of the suspects were in detention. JSAP knows the fact that the longest period of time spending in detention in this case was 17 days, and it was really hard to expect much more in a such serious and important case, especially in situation when representative in the National Assembly of RS spent one whole day during the end of last year discussing about this case with no real knowledge about the facts and evidences.

2 Doboј Cases against “Celebrities”

Andrija Bjelosevic, former head of the police in Doboј and now a very high-ranking adviser to the Ministry of Interior in Banja Luka, has criminal charges pending for abuse of official authority from Article 226/3 of the Criminal Code of Bosnia-Herzegovina. Just before the war in 1991, when Slovenia declared itself independent, a truck loaded with six brand-new VW “Golf” cars, which had been parked at the police station as a precautionary measure, was not returned to the driver from the Slovenian company “Compass-Hertz.” The “explanation” given was that the cars would serve as compensation for losses suffered by the Bosnian government during the war in Slovenia. In the file there is a certification about temporary deprivation of items in which it is clear that a perpetrator with his signature confirms aforementioned deprivation. The Basic public prosecutor in Doboј after nine years of inactivity did not submit even a petition for an inquiry with the very unconvincing reason that he had to have before this a statement from perpetrator. It is unbelievable that this was impossible to do during all those years.

JSAP thinks that aforementioned certificate is very strong evidence, which allows at least giving an initiative for investigation and this inactivity from the prosecutor is simply unacceptable.

Milovan Stankovic, the former RS Minister of Interior, is under indictment from 16/October1997 for two criminal violations: Attacking an Official While Carrying Out Security Work and Inciting to Resistance (Articles No. 199/2 and No. 201 of CC RS). The Basic Court returned the indictment to the Prosecutor asking more details on personal data of the indicted person. On 31 January 2000 the prosecutor furnished details of personal data but until now JSAP has not received any new information about scheduled hearing.

Milena Panic was indicted for abuse of official position while she was serving as the Secretary of the Doboј Municipality from 4 November 1997 to 14 December 1999. She is accused of having misappropriated the equivalent of 12,000 KM. The accused is a sitting member of the RS National Assembly and so far she had not invoked the parliamentary privileges.

Goran Neskovic, formerly the President of the Doboј District Court and former Deputy Minister of Justice in the RS, who is now a lawyer with private practice in Doboј, received from the police an illegally-confiscated car, taken from a Croat owner and he continues to use this car until now.

The injured party filed a suit in the Doboј Basic Court asking for restitution of the car in 1995. After JSAP pressure the court made a deliberately erroneous decision on 21 April

2000 in favor of the claimant. It awarded 15,580 KM as the value of the car and 3,680 KM for court expenses. As expected, the public attorney filed appeal against this judgement. The judgement was procedurally flawed due to the change in composition of the panel of judges at the end of the proceedings. JSAP believes that aforementioned procedural error was calculatedly committed to force the Doboj District Court to send the case back to the first instance to repeat the proceedings. The intention of the first-instance court to render judgement was not reasons of justice and rule of law, but to appease JSAP and frustrate the plaintiff.

Comments:

JSAP found that in every one of the aforementioned cases the courts and public prosecutor's office did not show any real interest in proceeding against those local celebrities.

3 Doboj Murder Case in 1993

A Serb woman, Mrs. Milica Savic, allegedly murdered a Bosniak victim, Mr. Nermin Mulamehic, on May 15, 1993. JSAP has been told that in this case there is no instrument of commission of criminal act; since the automatic rifle was allegedly confiscated by SFOR from the police and destroyed during its weapon-collection action named "Harvest". Our team received the first information about this case a few months ago from victim's father without any material evidence except police's photo-documentation made during their investigation on the spot. In the file there is neither any medical documentation nor the autopsy report.

The Doboj District Public Prosecutor's Office has a file with this case under official number KT-67/00. JSAP has learned that as of 1 November 2000 there has been no progress in gathering new evidence.

Apparently, the victim's father after witnessing inaction on the part of the Doboj Public Prosecutor's Office for about seven years, wrote a letter to the Tuzla Cantonal Public Prosecutor's Office naming the suspect and a few witnesses. In turn, the prosecutor from Tuzla forwarded the related documents to the Doboj District Prosecutor on 25 May 2000, and upon JSAP's request the prosecutor from Tuzla forwarded a copy of his letter to JSAP Doboj. On the basis of this letter, JSAP conducted an inspection of the registry in the Doboj District Public Prosecutor's Office to trace the file, but found that the letter was not recorded in the register. After JSAP's intervention, on 11 September 2000, the Doboj District Public Prosecutor sent a letter to local police asking for new information and evidence relating to this case.

Comments:

The incident took place near a busy market and in broad daylight and many people witnessed the incident and identified the perpetrator, including the victim's father. Interestingly, a majority of the people in Doboj know the perpetrator, but strangely the local police were not able to identify the suspect. The case has been in the Doboj Prosecutor's Office without any action for the last seven years and the suspect is enjoying her liberty. JSAP hopes that the situation will change quickly in the coming days.

4 Teslic Murder Case

A Bosniak victim, Mr. Faruk Hadzimujic, was allegedly murdered by two Serbs on 17 February 1999. One of them, Mr. Marko Peric, was arrested the next day and kept in pre-trial detention until the end of trial while the other, Mr. Brane Milicic, was tried in absentia. The first one received a guilty verdict only for the charge of grievous bodily injury under Article 42 /1 CC RS - Special Part and the Doboj District Court pronounced, under official number K-19/99 on 20/08/99, a verdict acquitting the accused of the charge of murder under Article 36/1 of CC RS -Special Part.

The Doboj District Public Prosecutor lodged an appeal against this verdict on 4 October 99 and the RS Supreme Court rendered a decision vacating the verdict in the first instance and returning the case for retrial.

The aforementioned court scheduled a new hearing on 6 November 2000 and the panel of judges ordered pre-trial detention against both accused from 22/09/00. In this case the Doboj District Court, even after the lapse of six months, failed to forward the prosecutor's appeal, but after intervention by JSAP the judge did so quickly.

Comments:

JSAP found that the judge was not acting according to the law in submitting the appeal to the Supreme Court. The delay of more than six months in sending the appeal to the Supreme Court is not justifiable under the law and it may be a calculated move to damage the prospect of the appeal.

5 Tax Evasion Cases in Municipal Court, Zenica

Kasim Krehic was indicted under Article 272 CC FBiH for tax evasion amounting to 4 million KM and this case was posted for hearing on 31 August 2000

Midhat Delibasic and Hasib Hodzic, the ex-Mayor of Zenica Municipality, were indicted for tax evasion amounting to 3 million KM. The first trial was concluded on 6 March 2000 and they were sentenced to one year and six months' imprisonment respectively but after their appeal against the verdict the Cantonal Court sent back the case to Municipal Court for repetition of the proceedings.

Mirko Markic was indicted for tax evasion in the amount of 2.1 million KM but using Croatian citizenship he escaped to Croatia. Efforts were made to extradite the accused with no results.

Srecko Kraljevic was indicted for tax evasion in the amount of 1.6 million KM but the suspect escaped to Croatia using dual citizenship of BiH and Croatia, the Court issued arrest warrant and through the Ministry of Foreign Affairs tried to extradite him but so far with no results.

Rafat Malavi was indicted for tax evasion in the amount of 509,203 KM, but the accused escaped from BiH using the fact that he was born in Damascus and has US citizenship. An arrest warrant was issued against the suspect, but authorities have been unable to arrest him.

Ivan Markovic was indicted for tax evasion in the amount of 370,000 KM. After the trial court acquitted him public prosecutor preferred appeal against the verdict.

Murat Nuroglu was indicted for tax evasion in the amount of 61,640 KM, but he escaped from BiH using the fact that he was born in Turkey.

Comments:

In just these seven tax evasion cases JSAP found more than 11 million KM of unpaid taxes with no final verdict, and most of the suspects have fled using other citizenship. There is no visible progress in any of these cases and it is very hard to expect it in the near future with no activities of the judiciary.

6 Red Cross Case in Zenica

This is a criminal case against two local “celebrities,” Mr. Mustafa Mehmedbasic and Mr. Husein Muranovic, the president and secretary of the Zenica Red Cross, for alleged misappropriation of 274,180 KM belonging to this organization. The accused allegedly tried to cover this misappropriation with forged vouchers for about 200,000 KM, purportedly for ‘payments’ made to companies for their services to the Red Cross. The district court in Zenica refused to order pre-trial detention. Even worse for the prosecution, the court experts accepted the vouchers as real and the court refused to grant the prosecutor’s request for another expert opinion. Both suspects were indicted on 31 December 1999 but until now JSAP has no information about any scheduled hearing.

7 Traffic Accident Case against Minister Gligoric in Derventa

From the very beginning JSAP thought that this case, which took place on 19 March 2000, was an ordinary traffic accident and did not pay much attention. But after an enquiry about the case from MHQ, JSAP submitted on 16 May 2000 a brief report on the case with all available information including a translation of the prosecutor’s petition for an inquiry. After completion of the investigation on 14 August 2000 the Derventa Basic Public Prosecutor submitted an indictment against Mr. Tihomir Gligoric under official number KT-26/00 and the lawyer for the accused submitted an objection against the indictment to the Derventa Basic Court on 4 September 2000.

JSAP checked a status of this case on 2 November 2000 and learned that after this objection the prosecutor wrote his reply and until now there is no progress in this case. Without the court’s decision after the objection formally the indictment does not exist because it becomes non-final.

JSAP thinks that the most important thing in this case is the fact that accused was a member of one of ruling parties (the Socialist Party RS) and at the time of the accident he was a minister in the RS government. Later he became Minister for Civil Affairs at the State level.

Comments:

JSAP noticed in this case that the Basic Prosecutor after finishing the investigation received the file and after a few days decided to go on a three-week vacation with no activity in this case. During this time the District Prosecutor insisted on an indictment and the Deputy

Basic Prosecutor wrote one. The Basic Prosecutor thinks that this indictment is adequate for a guilty verdict because of the traffic expert's opinion, and she explained that she intended to ask for another expert opinion, but now she thinks that she has no responsibility in this case because her deputy wrote an indictment without her knowledge. On the other hand, the court could not find time in a two-month period to make a decision after the defense lawyer's objection against the aforementioned indictment.

These facts very clearly show how the judiciary hesitates in every case with a political background.

8 Some Cases in the Zavidovici Municipal Court

8.1 Cases Against Dr. Ermin Cehic, Assistant Cantonal Public Health Director, Acting Director of Regional Health Center Zenica and Member of Cantonal Assembly

8.1.1 Case Relating to Forceful Occupation of an Apartment and Aggravated Theft

After constant intervention from JSAP, the prosecutor initiated criminal action against Mr. Cehic and seven others for infringing the inviolability of an apartment (Article 191 of the Criminal Code of FBiH), aggravated theft (Article 274 of the Criminal Code of FBiH) and malicious mischief (Article 281 of the Criminal Code of FBiH), for an incident where he, accompanied by seven known criminals of the locality, broke open an apartment and took away things belonging to the complainant.

Mr. Cehic was involved in a civil case to determine title to property occupied by the complainant. He issued a notice to the complainant demanding vacation of the apartment, but she refused. In her absence, he allegedly broke open the apartment and took away her valuables. The public prosecutor did not take any action until the injured party asked for the intervention of JSAP. Accordingly, JSAP intervened and the prosecutor initiated criminal proceedings against the eight suspects. After the investigation the proceedings were dropped against one of the suspects. The prosecutor indicted the remaining seven suspects for the aforementioned criminal acts. The trial has yet to be scheduled.

8.1.2 Case Dealing with False Reporting of a Criminal Offence

According to prosecution, Mr. Cehic filed a complaint in the court stating that one Mr. Amel Hasanic was engaged by Mrs. Bahrija Kadic (injured party in the first case) to kill him. During the interrogation of Mr. Hasanic, he told the police that Mr. Cehic paid him 5,000 KM and promised him a resident visa for Germany, and asked him to tell to the police and court that Mrs. Kadic paid him 5,000 KM to kill Mr. Cehic. In the process of investigation he admitted that this play was enacted by Mr. Cehic to put Mrs. Kadic in trouble. The investigative judge has yet to take statements from Mr. Cehic, who has been avoiding summons from the court.

8.1.3 Abduction of a Juvenile and Execution of Custody Case

The father abducted the child in question from the mother by threatening with a pistol. Strangely, the public prosecutor initiated proceedings only for violent behavior. The father was tried and awarded six months suspended sentence. JSAP had a discussion with the

prosecutor and asked him to initiate criminal action for the continued offence of juvenile abduction from the lawful custody of the mother. On the basis of this suggestion, the prosecutor indicted him for abduction of a juvenile on 6 July 2000. The case is pending for trial.

During one year this father has failed to follow the court's order and escaped from the court executor despite some support from local police and IPTF. During September of this year the man even attacked a policeman from IPTF and after a joint meeting with the heads of judiciary and police in Zavidovici, IPTF Zavidovici, Human Rights Officer Dobož and JSAP on 19/09/2000, action was finally taken. JSAP has learned that the child is in the custody of its mother again.

JSAP considers this case to be a typical example of how courts and local police can be ineffective.

Comments:

JSAP found it hard to believe that one aggressive person could be able to stop several execution attempts by local policemen. The executing judge blames the police and shortcomings in the Law on Execution, the police blame the court for not giving specific orders to the police as to what to do and how much power they are allowed to use.

All of these facts to be bad excuses for doing nothing in a very sensitive and urgent case over a very long period of time.

8.3 Case against Mr. Bubic, Commander of the Police in Teslic

The President of the basic court in Teslic informed JSAP that he had professional difficulties in presiding over the trial of Mr. Bubic, commander of the police in Teslic. Mr. Bubic had been indicted with causing grievous bodily harm. This incident took place in 1996. Mr. Bubic worked for the military police in the war and there is some confusion as to if he was indeed working as an MP at the time that the crime was committed.

Since the court is working on a regular basis with the commander of the police and there has been no disciplinary action in reaction to the indictment, the court feels uncomfortable in handling this case. The President therefore requested officially at the Dobož District Court on the basis of Article 35 of the Law on Criminal Procedure to transfer this case to another court. This request was denied by the District Court.

The Teslic Basic Court subsequently had to continue proceedings as soon as possible. JSAP has learned that the President of the Court has now scheduled a retrial. During this retrial the court is planning to hear all witnesses again. This request, especially in light of the background of the case, can be seen as a delaying tactic. It may take a long time before a final decision will be rendered.

Comments:

This case gives the impression that the Commander of Police will be protected and impunity can be the result.

(d) Maglaj Mujaheddin Criminal Case

JSAP and other members of the international community were the driving force behind the indictment of two Mujaheddin (or Islamic freedom fighters) Imal Al Husein of Lebanese nationality and Omar Bedjavi of Sudanese nationality, for illegal confinement and torture of two Serb displaced persons. In this case, two displaced Serbs were abducted and allegedly tortured by Mujaheddin when they lost their way and entered the Donja Bocinja area, their former area of residence. Until recently this area was the de facto power base of the Mujaheddin forces that fought alongside the Bosniaks during the war. In first instance the court found the suspects guilty of illegal confinement and did not explain the dismissal of the torture charges. Both were sentenced for two months' suspended sentence.

The Maglaj prosecutor, after intervention from JSAP and UNMIBH Human Rights, filed an appeal against this decision of the trial court. Accepting the contention of the prosecutor, the Cantonal Court sent the case back for retrial. The retrial took place in Maglaj Municipal Court and several hearings were held in which the victims (under IPTF protection), two witnesses (local policemen) and the accused were heard. In the end the panel of judges decided to once again reject the indictment for torture and sentenced both suspects to two months' suspended imprisonment. The prosecutor appealed and the appeal is still pending.

Comments

There is no doubt that the sentence of the court was rendered under influence of fear of the Mujaheddin. That is the reason why JSAP, IPTF and other members of the international community were keen to monitor this case. It will be interesting to see what the verdict of the Zenica Cantonal Court will be.