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**Judicial System Assessment Programme
(JSAP)**

Mostar Team

FINAL REPORT

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UNITED NATIONS

The designation employed and the presentation of material in this report do not imply the expression of any opinion whatsoever on the part of the United Nations Mission in Bosnia and Herzegovina (UNMIBH) concerning the legal status of any country, territory, city or area or of its authorities, or concerning the delimitation of its frontiers or boundaries.

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

Pursuant to Security Council Resolution 1184 of 16 July 1998, UNMIBH established the Judicial System Assessment Programme (JSAP) and deployed seven regional JSAP teams in November 1998. At that time, the JSAP Mostar team started its operation and, for the last two years, has worked towards the fulfilment of its mandate to “monitor and assess the judicial system in Bosnia and Herzegovina” (BiH).

The JSAP Mostar Team was comprised of two international system officers¹, one national professional officer², one senior language assistant³, and one administrative/language assistant⁴. Initially, the Team completed a comprehensive review of the court system in the JSAP Mostar area of responsibility (AOR)⁵, focusing on its institutional aspects. A significant part of the Team’s activities in the last two years has been devoted to the establishment of the unified multi-ethnic court system in the Herzegovina-Neretva Canton.

During the two-year period, JSAP Mostar Team reported about its activities in the Weekly Reports. Additionally, the team conducted thematic research work on specific topics such as court experts and *ex-officio* appointment of the defence counsels, thus contributing material for the relevant Thematic Reports. The Team also conducted micro-audits of the local court system, providing data for JSAP reports on Implementation of Insignia Decision by Judicial Institutions and on Implementation of Amnesty Legislation in the Republika Srpska (RS). JSAP Mostar Team staff participated in the Inspection of the Municipal Public Prosecutor’s Office in Livno and in drafting of the relevant report.

In view of the closure of JSAP at the end of November 2000, the purpose of this report is to highlight the main activities and achievements accomplished by JSAP Mostar Team. This report is not intended to be exhaustive and focuses on activities undertaken by the Team since the arrival of the last Team Co-ordinator and thus mainly covers the period from December 1999 to November 2000. The report is organised in the following manner: (1) Introduction, (2) Formation of the Unified Multi-Ethnic Court System in the Herzegovina-Neretva Canton; (3) War Crimes Cases at the Mostar Cantonal Court; (4) Monitoring of Other Sensitive Cases; and (5) Implementation of Insignia Decision by Herzegovina-Neretva and Western-Herzegovina Cantons Judicial Institutions.

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Herzegovina-Neretva Canton (Canton 7), Western Herzegovina Canton (Canton 8), and South-Eastern RS (e.g., Trebinje District and Basic Courts, Nevesinje Basic Court).

2 Formation of Unified Multi-Ethnic Court System in Herzegovina-Neretva Canton

When JSAP arrived to Mostar in November 1998, the Herzegovina-Neretva Canton (H-N Canton) was the only canton in the Federation whose court system was not established in accordance with the Federation and Cantonal Constitutions. Mainly, the Herzegovina-Neretva Cantonal Law on Courts, according to which the composition of the courts should reflect the 1991 census, was imposed by the High Representative in August 1998 and should have been implemented later that year. However, until Summer 1999, the court system in H-N Canton, similarly to other cantonal structures, remained, both, functionally and physically divided and parallel judicial structures of the “Croat Republic of Herceg-Bosna” and the Republic of BiH were still in place. For example, there were two mono-ethnic High Courts, one on the Bosniak and one on the Croat side of Mostar. Composition of each basic (or municipal) court also reflected only the majority ethnicity of the area under the court’s jurisdiction. The structure of the prosecutor’s offices reflected that of the courts. Additionally, H-N Canton Ministry of Justice remained completely divided.

Under these circumstances, when minority was involved, not even the perception that justice was being administered fairly existed. Unification of the court system in H-N Canton was crucial for the establishment of the rule of law and complemented other UNMIBH efforts to unify the police administrations in the Canton.

2.1 Beginnings at the Multi-Ethnic Cantonal Court and Cantonal Public Prosecutor’s Office

For months, the local authorities were unable to agree on how to establish the multi-ethnic court system in H-N Canton and, during Summer 1999, the High Representative imposed a Decision with deadlines for implementation of the H-N Cantonal Law on Courts. Following the successful mediation by OHR South (OHR (S)) with the local government representatives, on 23 July 1999, the multi-ethnic Herzegovina-Neretva Cantonal Court was established when the Cantonal Assembly appointed 7 Bosniak, 7 Croat and 4 “Other” judges. At the same time, 2 Bosniak and 2 Croat prosecutors were appointed to the Cantonal Public Prosecutor’s Office but a position for a prosecutor from the category of “Others” remained vacant due to the inability/unwillingness of the Bosniak and Croat side to agree whether the Bosniak proposed “Other” candidate or the Croat proposed “Other” candidate should be appointed. According to a political agreement, the Cantonal Court President is a Croat and, in return, the Cantonal Public Prosecutor is a Bosniak. There were reasons to believe that at least some appointments were of political nature but, at that time, the international community did not interfere in the appointment process

Shortly after the establishment of the Cantonal Court and Prosecutor’s Office, the ethnic divisions came into play. The Croat Cantonal Court President Castimir Mandaric proposed a Schedule of Duties that would have resulted in cases being judged by mono-ethnic panels. It appeared that the composition of these panels would result in the creation of the Bosniak and Croat sub-courts within the Cantonal Court. Furthermore, the Bosniak Cantonal Court judges complained that the distribution of offices in the Court was organised in a discriminatory manner and that each Croat judge had his own room while the Bosniak judges

were made to share offices. Due to the lack of unification of the cantonal budget, the Bosniak judges were receiving lower salaries (around 500 KM less each month) than their Croat colleagues, which created further divisions and feeling of discrimination within the Court. Additionally, the ethnic composition of administrative staff and even the language of the sign on the court building were subject of dispute. Work of the Cantonal Public Prosecutor's Office was mainly impeded by the lack of physical integration since the pre-war seat of the District Prosecutor's Office was occupied by the Federation Ministry of Finance. Both institutions lacked the basic equipment such as furniture and computers.

In addition to the problems faced by the recently established multi-ethnic Cantonal Court and Prosecutor's Office, it became evident that the formation of the H-N multi-ethnic municipal courts would be delayed. According to the HR Decision, nine multi-ethnic municipal courts and the Mostar Central Zone Court were to be established by 1 November 1999. To start with, already the advertising of judicial vacancies for all above courts was delayed due to the Croat side's opposition to the establishment of the Central Zone Court.

2.2 Action Plan on Canton 7 Judiciary

In September 1999, the H-N Canton Minister of Justice Ahmet Halebic approached the JSAP Mostar Team and requested its assistance in resolving some outstanding issues. JSAP Mostar and OHR (S) co-ordinated their positions in the high-level meeting held in Sarajevo in October 1999 and created an Action Plan on Canton 7 Judiciary. The following division of labour was agreed upon:

- (1) *OHR will advise the Cantonal Court to follow the Model Book of Rules on Internal Court Organisation prepared by ABA/CEELI and require it to recruit administrative staff in accordance with the national composition of the 1991 census*
- (2) *JSAP will continue to monitor the activities of the Cantonal Court*
- (3) *OHR will seek donor assistance for equipment for the Cantonal Court*
- (4) *OHR and JSAP will approach relevant authorities to equalise salaries for Bosniak and Croat judges*
- (5) *OHR will attempt to convince the Ministry of Justice to advertise positions for municipal court judges for all courts other than that of the Central Zone and then ensure that a separate advertisement for that court will be published*
- (6) *OHR will try to convince the Federal authorities to move out of the premises that should belong to the Cantonal Public Prosecutor*
- (7) *OHR will continue to work with the relevant authorities to implement its arbitration decision on the nationality of the president of the Cantonal Minor Offence Court and Cantonal Public Attorney*
- (8) *UNMIBH will pursue the unification of the Ministry of Justice.*
- (9) *OHR will require the Cantonal Assembly to adopt the Law on Courts (imposed by OHR) so that amendments required by the D/SRSG in his letter of July 1999 can be made.*

In January 2000, the Action Plan was expanded to address the additional issues and it has been further agreed, *inter alia*, that (10) *OHR and UNMIBH will pursue the establishment of the security measures for the Cantonal Court; and (11) JSAP will pursue the formation of the unified minor offence courts.*

2.3 Improvements at the Multi-Ethnic Cantonal Court and Cantonal Public Prosecutor's Office

Since the formation of the Mostar Cantonal Court in Summer 1999, JSAP continued to monitor its activity by conducting frequent meetings with the Court President Mandaric and individual judges as well as inspecting court documents and attending court hearings. For example, in November 1999, JSAP spent the full day at the Court interviewing its President and seven judges about the operation of the Court. JSAP noticed that while the ethnic tensions⁶ and infrastructure difficulties⁷ persisted, the operation of the Court had progressed. Mainly, judges were processing cases and the cases started to be assigned to them based on need and not on the judges' ethnicity. The criminal department processed cases in the multi-ethnic panels of judges.

In December 1999, ABA/CEELI presented to the Court President Mandaric its model Book of Rules proposing the multi-ethnic composition of the court panels as well as administrative staff, which Mandaric was to follow in his Book of Rules on the Internal Organisation of the Cantonal Court. The H-N Ministry of Justice approval of the Cantonal Court Book of Rules was required, and *inter alia*, important for the official appointment of the administrative staff at the Cantonal Court. The long "battle," mainly between the Bosniak Minister of Justice Halebic and the Croat Court President Mandaric, about the approval of the Book of Rules ensued. Halebic was withholding his approval of the Book of Rules and thus challenging some irregularities in the Court and Mandaric was unwilling to make concessions. Following the full-capacity involvement of JSAP and OHR (S), Mandaric finally made necessary amendments and the Bosniak Minister of Justice and his Croat Deputy approved the Book of Rules in March 2000.

JSAP felt very strongly that, in order to prevent discrimination, the salaries of the Bosniak Cantonal judges should be increased to the level of their Croat colleagues performing the very same job at the same building. Around 500 KM per month difference in the salary was caused by the lack of the unification of the Cantonal budget and the fact that the Bosniak side paid 85 KM per co-efficient, while the Croat side paid 120 KM per co-efficient. Following JSAP and OHR (S) interventions, in February 2000, the Cantonal Government adopted an Interim Decision increasing the salaries of Bosniak Cantonal judges and prosecutors. Again, upon various JSAP and OHR (S) interventions, this decision was later expanded to encompass other officials working for the joint institutions such as Cantonal Minor Offence Court, Cantonal Attorney's Office and Municipal Courts and Prosecutor's Offices.⁸

Closely related to the increase of salaries, was the establishment of the joint accounts at the newly formed cantonal institutions. Upon its establishment, the H-N Cantonal Court⁹ continued to function with two different accounts, the account of the former East Mostar High Court to which the Bosniak side of the Ministry of Justice deposited the funds and the account of the West Mostar High Court to which the Croat side of the Ministry of Justice

⁶ Bosniak judges continued to complain about discriminatory allocation of office space, their lower salaries and that majority of the administrative staff (including typists) are Croat.

⁷ Lack of equipment, space and security for the Court.

⁸ Originally, it was expected that the May 2000 High Representative Decision to impose the Federation Law on Judicial and Prosecutorial Service which prescribes the increase of judicial and prosecutorial salaries, should solve the problem of difference in salaries between Bosniacs and Croats. However, due to the lack of money in the H-N Canton budget, and mainly in the budget of the Bosniak side, this Law is not likely to be implemented in the H-N Canton before the beginning of 2000. Thus the policy of equalizing the salaries of the Bosniak judges and prosecutors, as an interim measure, proved to be wise.

⁹ Cantonal Court is used as an example only. The same situation applied to the Cantonal Prosecutor's Office,

¹⁰ Cantonal Minor Offence Court and Cantonal Public Attorney's Office.

deposited the funds. Initially, the Croat Cantonal Court President had no access to the Bosniak funds, which were collected by a Bosniak Cantonal judge.

It was obvious, that the Court cannot function jointly with this parallel financing. In April 2000, JSAP and Civil Affairs negotiated an agreement with the Bosniak and Croat representatives of the Ministries of Justice and Finance that the four joint cantonal institutions should each establish a single (joint) account to which both the Bosniak and Croat funds should be deposited and that the former, separated, accounts should be abolished. Even though the Presidents of the Cantonal Court and Cantonal Minor Offence Court as well as the Cantonal Prosecutor opened the single (joint) accounts¹⁰, the implementation of the joint funding/accounting in these institutions continued to cause head-aches and, periodically, the authorities continued to deposit funds to the old accounts. Mainly, in Spring 2000, due to the lack of money in its budget, the Bosniak side started to face increased financial difficulties and was late in payment of salaries for several months. In order to implement the joint funding for the Cantonal judicial institutions, JSAP and OHR requested the Bosniak Minister of Finance to prioritise the payments of the relevant salaries and deposit the funds to the joint accounts at the same time as the Croat side. The Bosniak side appears to honour this agreement and, since August 2000, timely deposit funds to the joint accounts of the three cantonal institutions. As of November 2000, Cantonal Minor Offence Court and Prosecutor's Office abolished the old accounts. Apparently, the former account of the East Mostar High Court, even though no longer used, has not been abolished due to the outstanding debt for material expenses that the Bosniak side has to pay.

The main problem faced by the H-N Cantonal Public Prosecutor's Office upon its establishment was the lack of a joint seat. Both, the Bosniak and Croat prosecutors identified the lack of physical integration as undermining the work of the Office but also stated that there was a good professional co-operation between them, regardless the nationality. In January 2000, JSAP, UNMIBH Civil Affairs and OHR (S) increased the pressure on the Cantonal Government to allocate the joint seat for the Cantonal Prosecutor's Office.¹¹ The prosecutor claimed the premises of the former District Prosecutor's Office,¹² which were occupied by the Federation Ministry of Finance.

During the meeting held on 27 March 2000, the authorities agreed with OHR (S) and JSAP that the Prosecutor's Office should immediately move to the above premises recently vacated by the Federation Ministry of Finance. Meanwhile, however, these premises were allocated to the Federation Civilian Administration Department and OHR (S) requested the Croat Governor to "urgently react." As a result, the Governor requested the Civil Aviation Department to vacate the premises. OHR (S) further stepped up the pressure by setting a deadline of 3 May 2000 for the Prosecutor's repossession of the premises and stating that if the Civil Aviation does not vacate by that day, the Prosecutor, accompanied by OHR, local police and IPTF would take possession of the premises. This joint pressure bore results. On 5 May 2000, in the presence of OHR, JSAP, UNMIBH Civil Affairs, IPTF and local police, the Civil Aviation Department handed over the keys to the Bosniak and Croat staff of the Cantonal Prosecutor's Office. Subsequently, the Croat staff of the Prosecutor's Office

¹⁰As of November 2000, Cantonal Public Attorney has not yet opened the joint account because her Book of Rules, which is the prerequisite for the joint accounting, has not yet been approved by the Ministry of Justice.

¹¹Similarly, the lack of premises for about to be formed Cantonal Public Attorney's Office, Cantonal Minor Offence Court, Jablanica and Neum Municipal Courts were brought up. In February, attempts to physically integrate the Ministry of Justice commenced.

¹²Located in the Mostar Central Zone at the Mostar I Municipal Court building adjacent to the Cantonal Court.

vacated their former premises at the Mostar Cantonal Court which, in turn, provided additional space for purposes of this Court.

Inadequate material situation of the H-N Cantonal Court was addressed by the German donation of 250,000 DM for equipment, furniture and vehicles. In October 2000, the H-N Cantonal Prosecutor's Office as well as other judicial institutions in Mostar were equipped from the Spanish Government donation in the total amount of 470,000 DM.¹³

2.4 Other Cantonal Institutions Established

Following negotiations, the local authorities agreed to accept the OHR (S) mediation decision according to which the Cantonal Public Attorney should be a Croat with two Bosniak Deputies and, in turn, the President of the Cantonal Minor Offence Court a Bosniak. In November 1999, advertisements for three positions at the Cantonal Public Attorney's Office and for seven positions at the Cantonal Minor Offence Court were published.

In January 2000, the joint Cantonal Public Attorney's Office was established when the Cantonal Government sworn into office the Croat Cantonal Public Attorney and her two Bosniak Deputies. In March 2000, three Bosniak and three Croat judges were appointed to the joint Cantonal Minor Offence Court.

In accordance with the 1991 census, the Cantonal Minor Offence Court was to be composed of an additional judge from the category of "Others." JSAP learnt this judge was not appointed due to failure of the Governor and the Vice-Governor to reach the political consensus as to whether the Bosniak-proposed "Other" candidate or the Croat-proposed "Other candidate" should be appointed. JSAP stressed to the Governor and Vice-Governor that this was unacceptable and that a candidate with better professional qualifications should be selected. JSAP and OHR(S) then indicated which of the two candidates have better professional qualifications and, on 23 May 2000, the Cantonal Assembly finalised the Cantonal Minor Offence Court's composition by appointing additional, Serb judge. Despite JSAP and OHR(S) efforts, as of November 2000, the Cantonal Minor Offence Court and Public Attorney's Office has not been each allocated the joint seat.

2.4.1 Multi-Ethnic Municipal Courts and Public Prosecutor's Offices

According to the HR Decision of July 1999, nine municipal courts and Central Zone Court were to be established by 1 November 1999. Publication of advertisements for judicial positions at the above institutions has been delayed due to the deadlock on the Central Zone Court. In mid-November, the Bosniak Minister of Justice Halebic agreed to advertise positions for nine municipal courts with the view that the OHR (S) would ensure that the Mostar Central Zone Court is established separately in the future. At the beginning of December 1999, the Ministry of Justice received around 120 applications. The appointment process has been further postponed due to the inability/unwillingness of the Bosniak Minister of Justice Halebic and his Croat Deputy Marko Loncar to agree on the ethnic compositions of the municipal courts, which should reflect the 1991 census and thus should not had been difficult to determine. The process was further delayed by the Deputy Minister Loncar's resignation in December 1999. Following numerous meetings and negotiations with JSAP and OHR, at the end of January 2000, the Minister and his Deputy finalised the ethnic

¹³The European Commission's donation of around 400,000 DM is expected for additional judicial institutions in the H-N Canton (mainly, those outside of Mostar).

composition of the municipal courts which was forwarded, together with the list of applicants, to the Cantonal Court President Mandaric for appointment. Judges were to be appointed upon consultations with the Heads of the Municipalities.

In February 2000, Cantonal Court President Mandaric started to interview candidates for the judicial positions and requested consultation meetings with the Heads of the Municipalities. There were reasons to believe that municipal officials exercised inappropriate influence in the appointment process. According to Mandaric, the appointments were delayed due to the reluctance of the Bosniak candidates and municipal officials to answer his requests for interviews and consultations, respectively. In mid-March, after receiving the municipal officials' "feedback" about the candidates, Mandaric advised JSAP that he was ready to finalise the appointment process but that an additional obstacle appeared. Apparently, the Bosniak President of the Cantonal Assembly pointed out that the Cantonal Constitution also requires the approval of the Cantonal Assembly for the appointment of the municipal court judges. At this time, OHR D/HR Lyngghjem stressed to all involved that the approval of the Cantonal Assembly is a formality which should not be used as an excuse by the Assembly to give opinion on candidates or to further delay the appointment process. At the beginning of April, Mandaric finalised the lists of appointed judges and forwarded them to the Cantonal Assembly for confirmation.

After JSAP examined the lists of appointed judges, we discovered that several of them did not satisfy the H-N Canton Law on Courts requirement of "two years of working experience in legal matters after the passed judicial examination" and that some of them were not included on the original list of candidates. Subsequently, JSAP and OHR South issued a joint letter to the relevant cantonal authorities, indicating the names of individuals who did not satisfy the appointment criteria. At the beginning of May, following OHR and JSAP suggestions, Mostar Cantonal Court President amended lists of candidates by removing a total of eight persons (including the Croat Vice-President of the Cantonal Assembly Ljubo Zovko) who did not satisfy the appointment criteria and replacing them with suitable candidates.

In April 2000, JSAP and OHR facilitated a meeting in which the Bosniak and Croat sides finalised the numerical and ethnic composition of the municipal public prosecutor's offices, which were to be established at the same time as the municipal courts. Upon negotiations, the Croat side agreed that the Stolac Municipal Prosecutor will be a Bosniak (with a Croat Deputy) but insisted on a "gentlemen agreement" that the prosecutor and the president of the municipal court in Stolac will not be of the same ethnicity.

The vacancies for the municipal prosecutors were not advertised and the candidates were chosen from the list of applicants for the municipal judges. This caused difficulties when two candidates proposed by the Governor and Vice-Governor to the Assembly for appointment as prosecutors, were at the same time proposed for judicial positions.

On 24 May 2000, the H-N Assembly confirmed appointments of 57 judges of all ethnic groups into nine joint municipal courts. At the same time, 14 prosecutors were appointed into six joint municipal public prosecutor's offices. Seven days later, prior to his signing of an oath of office, Josip Kresic, an appointee for the Capljina Municipal Prosecutor's resigned. Due to the lack of Croat candidates, Capljina, Citluk and Prozor-Rama Prosecutor's Offices remain to be formed. No Bosniak candidates applied to work in the Capljina and Prozor-Rama Municipal Courts and, similarly, no Croat candidates applied for the Jablanica and

Konjic Municipal Courts whose vacancies remain to be filled. Regardless, the above appointments, and mainly the resulting multi-ethnic composition of the Mostar I, Mostar II and Stolac municipal courts and prosecutor's offices, constituted considerable progress.

2.4.2 Central Zone Court and Prosecutor's Office

Following the years-lasting political deadlock over the Mostar Central Zone, in March 2000, OHR (S) negotiated an agreement with the H-N Canton authorities on the functioning Mostar Central Zone. *Inter alia*, the authorities agreed to establish the Mostar Central Zone Court and Prosecutor's Office. In July 2000, the H-N Ministry of Justice advertised vacancies for the Mostar Central Zone Court and Prosecutor's Office. Appointments to these institutions are subject to the Federation Law on Judicial and Prosecutorial Service, which was imposed by the HR in May 2000. Accordingly, in October 2000, the Federation Commission for Selection and Appointment of Judges, in the presence of the Cantonal Commission, proposed five candidates for appointment to the Central Zone Court. Judges remain to be appointed by the H-N Cantonal Court President. At the same time, the Federation Commission proposed candidates for the Central Zone Prosecutor's Office.

2.4.3 Unification of the Municipal Minor Offence Courts

Even though the joint Cantonal Minor Offence Court has been recently established in the H-N Canton, the Cantonal Law on Minor Offences does not regulate the organisation or funding of the municipal minor offence courts. Two parallel systems continue to exist. While the municipal minor offence courts in the Bosniak majority municipalities are funded by the Canton, those in the Croat majority municipalities are funded from the municipality which compromises their independence.

To complete the establishment of the unified court system in the H-N Canton, JSAP encouraged the H-N Cantonal Minor Offence Court judges as well as the Ministry of Justice to initiate the reform of the municipal minor offence courts. As a result, in August 2000, the Collegium of the H-N cantonal minor offence court judges proposed, and the Ministry of Justice supported, the initiative for alteration and amendment of the Cantonal Law on Minor Offences. The amendments remain to be adopted by the Cantonal Government.

2.4.4 Unification of the Ministry of Justice

Similarly to other Ministries in the divided H-N Canton, with the exception of the Ministry of Interior, the Ministry of Justice remains both physically and functionally divided. This parallel organisation impedes the effective functioning of the Ministry of Justice and the unified court system in general. Since January 2000, JSAP, UNMIBH Civil Affairs and OHR (S) pursued the physical integration and establishment of the single account of the Ministry of Justice. Following the example of the Ministry of Interior, the Ministries of Justice and Finance were identified as the "priority ministries" for integration.

During 15 March 2000 meeting with JSAP and UNMIBH Civil Affairs, the Croat Governor and the Bosniak Prime Minister agreed that the Bosniak Minister of Justice and his Croat Deputy could work out an "immediate solution" for the physical integration of the Ministry of Justice which would precede the co-location of all the Cantonal administration in a common building located in the Mostar Central Zone. The following week, the Bosniak Governor offered seven offices in the East Mostar building occupied by various Bosniak Ministries, for the accommodation of the joint Ministry of Justice. Contrary to the previous

statements, the Croat Deputy Minister of Justice declined the offer, stating that he welcomes the physical integration but in the premises located in the Mostar Central Zone.

For many months and contrary to the Schwartz-Schilling Agreement,¹⁴ the Croat side has been using the Central Zone as an excuse to integrate the Cantonal administration, knowing that there are not enough available premises in the Central Zone for its accommodation. Following the lapse of additional OHR (S) deadlines for temporary integration of the Cantonal administration, in October 2000, the Croat Deputy Minister of Justice promised to integrate at the Central Zone Bus Station, once renovation works are completed.

When approached about the establishment of the joint single account for the Ministry of Justice in March 2000, the Ministry of Finance indicated that the establishment of the joint accounts for the cantonal and municipal institutions should precede. Establishment of the joint account for the Ministry of Justice remains to be implemented.

As of November 2000, the major part of the parallel court system in the H-N Canton was abolished and the new unified multi-ethnic court system established. To complete the formation of the multi-ethnic court system, at least the following tasks remain to be done: (1) establishment of the Mostar Central Zone Court and Prosecutor's Office, including allocation of offices (2) amendment of the H-N Canton Law on Minor Offences as a basis for the establishment of the unified municipal minor offence court system funded from the Cantonal budget; (3) allocation of premises for the Cantonal Minor Offence Court and Public Attorney's Office, and (4) physical and functional integration of the Cantonal Ministry of Justice. Additionally, the Law on Judicial and Prosecutorial Service with regard to increase of salaries remains to be implemented.

3 War Crimes Cases at the Mostar Cantonal Court

At the beginning of January 2000, the H-N Cantonal Court received from the Cantonal Public Prosecutor's Office an indictment charging five Bosnian Croats from Mostar with allegedly committing war crimes against civilians and prisoners of war (hereinafter, "Mostar Five" case). In accordance with the Rules of the Road Agreement, the criminal investigation case file has been previously reviewed by the ICTY Prosecutor who included the case in the "A category"¹⁵ and informed the domestic authorities accordingly.

Initially, the Cantonal Court judges of all ethnic groups disputed feasibility of having this trial conducted in the Cantonal Court in view of the high profile status of the first accused and the current political and security situation in Mostar. It was questionable whether the local police would be willing/able to execute the arrest warrants against the accused and there were concerns about the security of any judge involved in processing of this case.

JSAP identified that the Court had a backlog of around 30 war crimes indictments and investigations, which were in process to be sent to the ICTY for review. In view of the

¹⁴In May 1999, the cantonal authorities signed the Mostar Schwartz-Schilling Agreement according to which, as a temporary measure, the cantonal administration was to integrate "within existing space."

¹⁵The ICTY Prosecutor has taken position that, for the purpose of determining whether the criminal charges will be continued at this stage, the documents submitted are sufficient evidence, according to the international standards, for securing acceptable basis that an individual in question committed serious violations of the International Humanitarian Law, excluding genocide.

prospect that the recently established Cantonal Court might be processing a large number of these sensitive cases in the near future, international community became increasingly concerned about the lack of material conditions, impartiality, and general security in the Court. The court police have not been deployed in the H-N Canton and the Ministry of Interior provided temporary security protection to the Court only on rare occasions. Additionally, there was a need to provide training and support for judges and prosecutors processing these cases.

3.1 “Mostar Five” Case

On 17 January 2000, the H-N Cantonal Court sent to the ICTY for review the Cantonal Public Prosecutor’s indictment against Zeljko Dzidic, Mater Anicic, Ivan Skutor, Erhad Poznic and Zoran Soldo charging them, as members of the HVO military formations in a group led by Zeljko Dzidic, for allegedly committing war crimes against mainly Bosniak civilians and prisoners of war in the Mostar School of Engineering during the period from May to July 1993. On 7 February, the ICTY informed that no further review of the indictment is needed since the case has been already reviewed.

On 2 March 2000, the H-N Cantonal Court extra-judiciary panel decided to order the detention of the five accused. On 3 March, judge Mladen Jurisic, who is in charge of the case, ordered: (a) Mostar South-West police administration to bring into custody accused Dzidic, Skutor and Poznic as well as (b) Mostar West police administration to bring into custody accused Anicic and Soldo. (This coincided with the announcement of the verdict in the Blaskic case and the next week’s anti-international community demonstration in the West Mostar and resignation of the Chiefs of the Mostar South-West and West police administrations. Apparently, the five accused previously indicated to the Court their intentions to surrender but it was not realised.)

Following the inability and/or unwillingness of the local police to detain the five accused, judge Jurisic ordered the local police to issue warrants for arrest of the five fugitives, on 28 March 2000. Subsequently, the Federation Ministry of Interior issued the warrants for arrest of the five fugitives to all Cantonal Ministries of Interior and police administrations. (The police continued to claim inability to arrest the “Mostar Five,” even though it was believed that they continue to reside in Mostar.) On 19 June 2000, two accused, Erhad Poznic and Zoran Soldo, requested separation of their court proceedings from those of other three accused and, if realised, offered their surrender to the Court. Meanwhile, the Deputy Cantonal Prosecutor Ibro Bulic opposed the separation of proceedings and, on 31 July 2000, the Cantonal Court panel of judges rejected the motion for the separation as groundless.

Following JSAP’s request, on 1 August 2000, Judge Jurisic suggested to the Cantonal Ministry of Interior to use all available means to arrest the Mostar Five and to inform the public about the arrest warrants. (At the same time, international community and local media informed the public about the arrest warrants and publicised photos of the Mostar Five.) On 7 September 2000, Erhad Poznic surrender to the Cantonal Judge Jurisic and was detained at the West Mostar District Prison. On 13 September and 26 September 2000, Zoran Soldo and Zeljko Dzidic, surrendered and were detained, respectively. As of 6 November 2000, Mate Anicic and Ivan Skutor remain at large. Recently, the three detained accused requested the separation of their proceedings and the Cantonal Court remains to decide on their motion.

Since January 2000, JSAP closely monitored the processing of this case at the Cantonal Court and closely co-operated with OHR (S) and other UNMIBH Mostar units to facilitate this process. In June 2000, OHR and JSAP conducted meetings with the ICTY representatives in the Hague to, *inter alia*, provide training, access to ICTY jurisprudence and other forms of support for local judges and prosecutors dealing with the war crimes cases. As a result, in September 2000, ICTY representatives conducted “Facts and Models for Co-operation Symposium” in Mostar which was welcomed by the local judiciary. Subsequently, several H-N Cantonal judges visited ICTY.

JSAP saw a positive change in attitude of judges involved, who by now appear, in the least, “reconciled” with the view that they will process the war crimes cases. Throughout this period, JSAP had frequent contacts with the Cantonal Court Head of the Criminal Department Judge Jurisic who was co-operative in providing information, approached the processing of the case professionally and was willing to make extra-steps, for example, by issuing an opinion urging the local police to use all available means, including publicising of the accuseds’ photos, to arrest the Mostar Five.

UNMIBH MHQ representatives on the highest-level addressed the failure of the local police to arrest the “Mostar Five.” Within the Mostar Region, this has been an example of all UNMIBH units, including IPTF, Civil Affairs, HRO, and JSAP joining their efforts to assure that each responsible component of the law enforcement structure performs their function. Especially significant was the contribution of UNMIBH Mostar Spokesperson who publicised the arrest warrants and photographs of the accused and thus exerted an additional pressure on the accused to surrender.

OHR (S) and JSAP Mostar also advocated with the relevant authorities for the urgent establishment of the court police in the H-N Canton that is necessary for the safe processing of the numerous war crimes cases.

The above efforts supporting and preparing the Mostar judges to process the war crimes cases proved useful when during the autumn 2000, the ICTY reviewed and sent for domestic processing additional four cases. Currently, the Cantonal Court panels are in process of issuing detention orders in three individual cases against the total of 21 Bosniaks charged with war crimes. Additionally, a Court panel is expected to issue the detention order in the case of three accused Serbs, who are, however, believed to reside in the RS or FRY and thus to be unavailable.

Meanwhile, on 25 July 2000, the multi-ethnic Cantonal Court panel completed the processing of the first war crimes “Golubovic case¹⁶” and found Miralem Macic, Jusuf Potur and Adem Landzo, three former Bosniak police officers, guilty of committing war crimes against civilian population, *inter alia*, by killing Serb civilians Djuro and Vlasta Golubovic in Konjic during July 1992. Macic, Potur and Landzo were sentenced to 12, nine, and 12 years of imprisonment, respectively.

In view of the sensitive political situation in the H-N Canton and the fact that the joint Cantonal Court has been only recently established, there is a continuous need for the IC

¹⁶Prior to the establishment of the joint H-N Cantonal Court, this case was under the jurisdiction of the East Mostar High Court and many delays in its processing were noticed. Ibro Bulic, the current H-N Deputy Cantonal Prosecutor (and the former East Mostar Deputy High Prosecutor) pursued the prosecution in this case for several years.

monitoring of the war crimes cases. To facilitate security, the court police should be deployed in this Canton as a matter of priority.

4 Monitoring of Other Sensitive Cases

During the two-year period, JSAP Mostar monitored various individual cases in all parts of its AOR. Due to the complicated situation in the H-N Canton judiciary, the majority of our time was devoted to this Canton. Further monitoring needs to be conducted, not only of the H-N judiciary but also of the judiciary in the Western-Herzegovina Canton and South Eastern RS, which were not assessed as thoroughly. This report covers only the most sensitive cases (involving the inter-ethnic conflict, a crime conducted by a member of the former (Croat) Special Police, and return-related incident) which are reproduced to demonstrate the endemic problems affecting the functioning of the judiciary in the H-N Canton. Additionally, the report addresses the delays in processing of cases of alleged police brutality in the Ljubuski Municipal Court of the W-H Canton.

In the H-N Canton, the processing of cases was paralysed by the delays in establishment of the municipal courts. Jurisdiction of the Cantonal Court, which was established in July 1999, has changed from that of the former two High Courts. The former two High-Courts were, *inter alia*, competent to rule in the first instance on crimes for which the law provided a prison penalty of over 10 years. The Cantonal Court is, *inter alia*, competent to rule in the first instance only on crimes for which the law provides a prison penalty of over 15 years. Subsequently, the jurisdiction of the joint municipal courts increased to adjudicate crimes for which the law provides imprisonment up to 15 years.

During the period from the establishment of the Cantonal Court to the establishment of the municipal courts, the former basic courts were to assume the larger jurisdiction of the municipal courts.¹⁷ During this transitional period which protracted for ten months, the basic courts, however, often did not have enough qualified personnel to process these complicated cases, partially because some of its judges left for the appointment to the Cantonal Court. For example, the West Mostar Basic Court had only judge experienced in the criminal matters at that time, while its successor, the Mostar I Municipal Court currently has a total of 15 judges, around five of which work in the criminal department. Many cases, such as the Liska Street case and Pranjic case were thus waiting to be processed.

4.1 Liska Street Case

On 10 February 1997, both Croat uniformed and special police officers, which were allegedly securing Carnival in the West Mostar, became aware that a group of Bosniaks was approaching the Liska Street to visit its cemetery. While the police were trying to stop the group, they opened a fire that resulted in the death of one and injury of around 20 Bosniaks. This February 1997 incident escalated tensions and ethnic divisions in Mostar. The first trial in this case, conducted in 1997 by Judge Devour Zilch of the West Mostar Basic Court, failed to properly address the incident. Evidence from a biased and incomplete first police investigation was considered during this trial.

In 1999, the UNMIBH Human Rights Office oversaw the re-investigation of the incident by the joint H-N canton Ministry of Interior Crime Unit. On the basis of the subsequent police's

¹⁷Former basic courts adjudicated crimes with prescribed imprisonment of up to 10 years. During this transition, the basic courts were supposed to adjudicate crimes with prescribed imprisonment of up to 15 years.

report, on 16 August 1999, the former West Mostar Deputy Basic Prosecutor Zeljko Knezovic filed a Request for Investigation with the West Mostar Basic Court. JSAP and HRO urged the processing of this Request with the former President of the West Mostar Basic Court Davor Zilic who advised that, due to the lack of qualified criminal judges, this Request will not be processed until the Mostar I Municipal Court is formed.

Upon the appointment of 15 judges to the joint Mostar I Municipal Court in May 2000, OHR(S), JSAP and HRO communicated to the relevant court officials that a thorough, impartial and speedy judicial investigation of the Liska Street incident is expected. Davor Zilic, as a President of the Mostar I Municipal Court, advised that the Croat investigative judge, Irena Pehar, was assigned to this case. Subsequently, D/HR Judge Lynghjem sent a letter to Davor Zilic, expressing happiness with the fact that Investigative Judge Irena Pehar scheduled the first hearing in this case but also stating that Zilic's previous involvement in this case prejudices him and disqualifies him as "President of the Court for this case." On 4 July 2000, Davor Zilic informed D/HR Lynghjem that he filed an "irrevocable resignation" from the position of the court president. Shortly afterwards, Zilic also resigned from his position of a judge and left the court. The international community agreed and communicated to the court officials that JSAP will closely monitor the processing of this sensitive case.

On 5 July 2000, Investigative Judge Irena Pehar conducted the first hearing in this case, informing the suspected former special police officers that they face charges of "grave offences against public safety of persons and property," included in the Article 308(4) of the Federation Criminal Code, in relation to the Article 304(4) that defines offence of "causing general danger by negligence." On 11 July, all five suspects Ivan Hrkac, Bozo Peric, Zeljko Planinic, Zlatko Pavlovic, and Josip Cvitanovic adopted the same line of defence by exercising their right to remain silent and declined to give any statement to the court. On 14 July, the court passed a Resolution to Conduct Investigation.

Following summer holidays, the Liska Street investigation resumed on 25 August 2000, when Judge Pehar took statements from first three witnesses. As of 11 October 2000, Pehar conducted 11 investigation hearings and took statements of 37 witnesses. Generally, all 20 Bosniak witnesses appeared reluctant to disclose any relevant information and tended to forget the important events that they previously recalled in their statements to the police. Almost none of the witnesses identified the suspects in the court. One witness stated to the court that even if she would have had recognised any of the suspects, she would not disclose this information. This trend among the Bosniak witnesses seemed to be less than spontaneous and was of concern for the successful investigation into the events of 10 February 1997. There were reasons to believe that the witnesses might be reluctant to talk because they indeed returned or plan to return to the West Mostar.

Witness statements of 17 Croat police officers were, generally, not logical, full of contradictions and evidently false. They provided almost no relevant information about the events of 10 February 1997. For example, several witnesses stated that, as members of the (Croat former) Special Police, they were ordered to provide security for the Carnival and were present on the scene. Generally, they were unable to recall who ordered them to provide the security. Allegedly, they were in civilian clothes because the Special Police was in the period of re-organisation. Even though some witnesses established that the Special Police Officers were still in February 1997 assigned with weapons, batons and badges, almost none of the witnesses admitted having a weapon while assigned to provide security for the

carnival. Some witnesses admitted to carrying batons during the incident but others stated that they were providing the security by physical force only. Almost none of the witnesses remembered that any of the suspects were present at the scene. Additionally, Marko Radic, the former Chief of the Mostar Police Administration, gave a broad statement that was not always necessarily relevant to the incident, had a nationalistic undertone, and lasted almost three hours.

Defence counsels who belong amongst the most prominent counsels in the West Mostar, continuously tried to channel the statements of witnesses in other direction, mainly to show that “ the events of 10 February 1997 were the result of a well prepared and organised action by Bosniaks which the international community contributed to.”

Throughout this complex investigation, the conduct of the investigative judge, Irena Pehar, appeared professional. Judge Pehar succeeded in adequately directing the proceedings and focusing the conduct of the parties on the incident. During the initial hearings in September 2000, the deputy public prosecutor, Zeljko Knezovic, appeared to be inactive in questioning witnesses and did not insist upon the “confrontation” of the witnesses with the suspects. On 14 September, JSAP met with Knezovic to address his lack of activity. As a result, Knezovic showed an increased participation in the following hearings. On 11 October 2000, following Knezovic’s request, Judge Pehar summoned additional Bosniak witnesses for the future hearings, mainly the important figures of the Bosniak political and religious scene such as Mayor Safet Orucevic, Hamdija Jahic, Mustafa Iovic, Mufti Seid Smajkic and Sefko Tinjak and Deputy Minister of Interior Sefkija Dziho who led the procession of Bosniaks to the Liska Street cemetery. Interestingly, they previously gave no statements to the law enforcement authorities about the events in question.

The fact that this judicial investigation is conducted more than three years after the incident is beneficial for the suspects. The suspects defended themselves by maintaining their silence and the witnesses pretended not to see what they have seen. As of November 2000, the great majority of witnesses has been heard but, even with the increased activity and efforts of the prosecutor, their testimonies provided very little evidence. The material evidence, mainly the photographs obtained during the incident and identifying some people holding guns, remains to be presented in the court. The prosecution is planning to use these photographs as the main basis for raising the indictment and thus continuing the procedure.

This investigation again revealed the difficulties of administering justice in the ethnically and politically divided City of Mostar, regardless of the recently formed unified judiciary. The unwillingness/inability of the Bosniak witnesses to shed light into the events of February 1997, after when they finally received “their day in-the-supposedly-impartial court,” was of disappointment to JSAP and pointed at the complexity of the political environment in which the court officials are to operate.

4.2 Pranjic Case

Marko Pranjic, a former member of the (Croat) Special Police was charged with alleged murder of Zdravko Susac (Croat) with whom he had a conflict over the washing of the car in February 1999. This case became of interest to JSAP during the Summer 1999 trial hearing, when the West Mostar High Court agreed to supplement evidence by additional neuropsychiatry expertise of Dr Uglesic from Republic of Croatia who argued that Pranjic’s liability was significantly decreased due to his suffering from the post-war trauma.

Additionally, the June 1999 hearing in the Mostar High Court was attended by around 30 males who together arrived to the court room, appeared to have a special bond with the accused and had intimidating impact on the witnesses.

Due to the change of subject matter jurisdiction of the Cantonal Court that was established in July 2000, the Pranjic case fell under the jurisdiction of the Mostar I Municipal Court. During the transition period preceding the formation of the Mostar I Municipal Court, the case was supposed to be adjudicated by the West Mostar Basic Court which claimed to have no capacity to do so. During that time, Pranjic awaited the resumption of his trial in the West Mostar District Prison.

Apparently, upon the formation of the Mostar I Municipal Court, none of the judges wanted to process this case due to the accused's dangerous profile and his ties with the former Special Police. Bosniak Judge Sems Droce, as the Head of the Mostar I Municipal Court Criminal Department, undertook to preside over this case and the prosecution was pursued by the Bosniak Mostar I deputy municipal prosecutor Sabina Beganovic. This ethnic make-up of the court officials was a result of the formation of the unified court system in the H-N Canton and was possible since the alleged crime did not have an inter-ethnic component.

During the 24 July 2000 trial hearing in front of the multi-ethnic court panel, the neuropsychiatry court experts Dr Dzudza (Bosniak) and Dr Uglesic (Republic of Croatia) presented their different opinions about Pranjic's liability. The presiding judge Droce upheld the prosecution's motion that an additional evaluation by team of experts from Sarajevo Institute will be required. When the court adjourned, Pranjic under the police guard in the court's hallway, shouted at Dr Dzudza who was walking by: "You should kill yourself, it would be better for you. We should build a monument for Karadzic for killing so many of you." Judge Droce, when informed about the incident, conducted herself professionally, noted the incident for the record and warned the accused to behave properly.

On 4 September 2000, the multi-ethnic panel of judges heard the results of the neuropsychiatry-team expertise, which supported the previous conclusions of Dr Dzudza that Pranjic's sanity at the moment of the commission of the crime "was not significantly diminished." On 5 September, the parties delivered their closing arguments in the large presence of the public. Amongst approximately 30 males attending were also two former police officers who are suspected in the Liska Street case. Pranjic's many supporters further attended the 8 September session in which the Mostar I Municipal Court multi-ethnic panel of judges found Pranjic guilty of murder and sentenced him to eight years and nine months of imprisonment. According to judge Droce, this sentence constituted the most severe punishment pronounced by the Mostar I Municipal/former Basic Court since the end of the war. The prosecution, however, planned to appeal and argue for more severe sentence in view of the seriousness of the crime committed.

This court verdict was a significant break-through into the post-war notion existing in the H-N Canton, according to which the (Croat former) Special Police Officers were allegedly beyond the rule of law.

4.3 Frankovic Case

On 29 April 2000, the Stolac Municipal Housing Official Augustin Frankovic (Croat) was allegedly assaulted by Andrija Marcic (Croat). This incident happened during a weekend

when Frankovic was off-duty but appeared to be related to his Office's decision to evict Marcic. In view of the sensitive political situation in the Stolac return area and the fact that no return-related incidents were previously brought to justice there, international community was concerned about the proper processing of this case.

Subsequently, JSAP and IPTF HRO discussed the processing of the police's criminal complaint with the Croat Stolac basic prosecutor, Niko Moro, who, on 17 May 2000, filed the request for investigative action due to the reasonable doubt that crime of "violent behaviour" was committed. Allegedly, Frankovic then approached the Stolac prosecutor and demanded that the crime is qualified as attempted murder.

During the 24 May 2000 investigative action hearing in the Stolac Basic Court, the prosecutor amended his request, raising qualification of the criminal offence to the "grievous bodily injury in concurrence with the violent behaviour."¹⁸ During June 2000 hearings, the Stolac Municipal Court judge Marko Raguz heard several witnesses who seemed to be reluctant to testify or appear in the court at all. Prior to the conclusion of the investigative action, the court obtained medical and neuropsychiatry reports on Frankovic's injuries.

On 31 July 2000, the Stolac deputy municipal prosecutor Niko Moro issued an indictment against Andrija Marcic for a reasonable doubt that he committed criminal offence of violent behaviour from Article 339 (2) of the Federation Criminal Code which prescribes six months to five years of imprisonment. Based on the neuropsychiatry expert opinion that Frankovic suffered "light bodily injury," the prosecutor abandoned in the indictment the previous classification of "grievous bodily injury".

During October 2000, the Stolac Municipal Court judge Branko Karadeglic (Serb) held two trial hearings and heard testimonies of the accused, victim and several witnesses. Additionally, the neuropsychiatry expert opinion was read. On 26 October, the court found Andrija Marcic guilty of committing criminal offence of violent behaviour from the Article 339(2) of the Federation Criminal Code and sentenced him to five months of imprisonment, suspended for two years. While passing this sentence, the court several times stated that Marcic' status of a refugee who committed the act in question out of fear of being displaced again, was a mitigating circumstance and referred to Articles 40, 41, 42, 49, 50 and 51 of the Federation Criminal Code. The Stolac Municipal Prosecutor Mehmed Pezo (Bosniak), who pursued the prosecution in this case during the trial stage, planned to appeal the sentence.

The main trial in this case was held in a professional manner by, both, the presiding Serb judge and the Bosniak prosecutor. While JSAP welcomed that the Stolac Municipal Court for the first time delivered a verdict in the property-related incident, the sentence could have been more severe. This trial further disclosed the underlying feeling of guilt among those in charge of implementing the property laws in the Stolac returnee area. The victim Augustin Frankovic, who meanwhile resigned from a position of the president of the Stolac Commission for the Return of Property, in his emotional testimony complained that, due to the enforcement of evictions, he was labelled as an enemy of the Croat nation and his and his family's movements were restricted. Thus, it is questionable whether justice could be satisfied by the court's announcement of a guilty verdict while the anger prevails towards officials who implement the property laws and who, at the same time, feel guilty for doing so.

¹⁸ This was still prior to the formation of the multi-ethnic Stolac Municipal Court and Prosecutor's Office.

4.4 Ljubuski Cases of Alleged Police Brutality

In August 2000, the complainant Zeljko Culjak asked JSAP to monitor the criminal investigation against two Ljubuski police officers Mate Jelcic and Drazan Pehar suspected of “inflicting grievous bodily injuries” to Zeljko Culjak on 13 August 1998 in concurrence with the criminal offence of “maltreatment in the discharge of duty”.¹⁹ Zeljko Culjak advised that based on the Ljubuski police’s counterclaim, there is a pending criminal investigation against him in the Ljubuski Municipal Court for a reasonable doubt that he committed criminal act of “assault on official while carrying out security work.”²⁰

While examining the above criminal investigation case files in the Ljubuski Municipal Court, JSAP discovered additional cases of alleged involvement of the same police officers. Namely, on 31 December 1998, the Ljubuski municipal public prosecutor filed a Proposal for Indictment against Mate Jelcic and Drazan Pehar for a reasonable doubt that they committed criminal offence of maltreatment during the discharge of duty by allegedly assaulting Jozo Vujevic in the Ljubuski police administration on 6 October 1997.²¹ Furthermore, on 31 December 1998, the Ljubuski prosecutor filed a Proposal for Indictment against Mate Jelcic and Milenko Madunovic (Ljubuski crime inspector) for a reasonable doubt that they committed criminal offence of maltreatment during the discharge of duty by allegedly assaulting Nikola Simovic in the Ljubuski police administration on 7 November 1997.²²

Even though the above two proposals for indictment were submitted to the Ljubuski Municipal Court in December 1998, the court did not start to process them until February 2000. Similarly, the court was dragging its feet in processing Zeljko Culjak incident. When JSAP addressed the significant delays, the Ljubuski Municipal Court president Tomo Simic, who only joined the court in around January 2000, absolved himself from the responsibility for those cases not being processed during 1999. Apparently, the former court president Tvrtko Bozic, who resigned to undertake a post in the Republic of Croatia in Autumn 1999, did not insist on their processing. Simic undertook to approach the processing of the above cases as a priority. The Ljubuski municipal public prosecutor Jasminka Misetic provided no explanation as to why she did not urge the processing of these cases throughout 1999 but stated that she was informed by the current court president Simic that the processing of these cases are now a priority. Meanwhile, the Ljubuski Municipal Court conducted a reconstruction of events in the Zeljko Culjak criminal investigation²³ and held trial hearings in the case of alleged assault on Jozo Vujevic.²⁴ Misetic advised that, due to the lack of evidence, she stepped away from the prosecution in the alleged assault on Nikola Simovic.²⁵

In view of the above procedural delays and the alleged involvement of the police officers, there is a need for continuous international community monitoring of the Ljubuski court and prosecutor’s office conduct. Additionally, these cases high-lighted the importance of the close UNMIBH monitoring of the Western-Herzegovina Canton Ministry of Interior Disciplinary Commission actions vis-à-vis the police officers’ alleged misconduct.

¹⁹ Ljubuski Municipal Court, case no: Ki:33/98

²⁰ Ljubuski Municipal Court, case no: Ki:32/98

²¹ Ljubuski Municipal Court, case no: K: 8/99

²² Ljubuski Municipal Court, case no: K: 9/99

²³ Ljubuski Municipal Court, case no: Ki:33/98

²⁴ Ljubuski Municipal Court, case no: K: 8/99

²⁵ Ljubuski Municipal Court, case no: K: 9/99

5 Implementation of Insignia Decision by Herzegovina-Neretva and Western-Herzegovina Cantons Judicial Institutions

On 30 July 1999, High Representative issued a Decision on Common Insignia, which was, on 8 October 1999, followed by the IPTF Commissioner's Instruction setting the deadline for implementation for 15 November 1999. Since the Decision and Instructions applied not only to the police but also to all judicial institutions in the Federation, all JSAP Teams conducted inspections in four randomly chosen judicial institutions in each Canton, to ascertain their compliance. This JSAP Mostar report chooses to cover this inspection as well as the Team's follow-up work with the local authorities on the implementation since we consider the compliance of the judicial institutions in the H-N and W-H Cantons as a great achievement.

According to the IPTF Commissioner's Instruction, the Cantonal Ministries of Justice were supposed to instruct their respective judicial institutions to comply as of 15 November 1999. The H-N Canton Ministry of Justice timely distributed instructions to both Bosniak and Croat judicial institutions. At that time, the W-H Ministry of Justice, apparently pursuant to the Cantonal Government directives, had not done so. Later, in December 1999, UNMIBH SRSG requested the Ministers of Justice to update him on the compliance.

On 16 and 17 November 1999, JSAP Mostar audited total of eight institutions in the H-N and W-H Cantons. There was complete compliance in the two institutions inspected in the Bosniak-majority municipalities of the H-N Canton. JSAP welcomed that also the two institutions inspected in the Croat-majority municipalities of the H-N Canton made efforts to comply, even though some non-neutral signs remained in the rooms. The main problem, however, were the signs on the exterior of the buildings referring to "Herzeg-Bosna," which was in violation of the Decision. The Croat Deputy Minister of Justice agreed with the institutions that they should continue to display the old signs until the new neutral signs for the joint multi-ethnic municipal courts will be issued. Additionally, some municipal minor offence courts in the Croat-majority municipalities disputed whether they should be receiving instructions from the Ministry of Justice since they are also administered by the municipalities. The four inspected institutions in the W-H Canton did not comply with the Decision, apparently because they were not instructed by their Ministry of Justice to do so.

In January 2000, JSAP Mostar raised the issue of inappropriate institutional signs in the Croat-majority municipalities with the H-N Canton Minister of Justice and his Deputy and stressed the need to take further steps to ensure the removal of other non-neutral symbols. Additionally, JSAP discussed the infringements of the Decision with the individual court presidents and prosecutors. By the end of January, following advise of the Croat Deputy Minister of Justice and JSAP, the heads of the relevant institutions removed inappropriate signs on the exterior of the buildings and replace them with neutral ones. Furthermore, the relevant presidents of the municipal minor offence courts advised about their compliance, which was then verified by JSAP.

At the beginning of January 2000, JSAP Mostar forwarded the relevant Decision and Instruction to the heads of judicial institutions in the W-H Canton, requesting them to provide an update on their compliance and indicating that the obstructing officials could be removed from the office. Following various meetings with JSAP, by mid-January, the W-H Canton Minister of Justice also forwarded the Decision and Instruction to the judicial institutions. By mid-February, JSAP confirmed that the heads of all judicial institutions in the W-H Canton

complied with the Decision and removed the non-neutral insignia from offices and the exterior of the buildings.

6 Conclusion

In the last seventeen months, JSAP has been instrumental in bringing about a significant progress towards the establishment of the functioning multi-ethnic unified court system in the H-N Canton. Even though the court system is far from being functional, independent and impartial, the formation of the joint Cantonal Court and Prosecutor's Office as well as nine municipal courts and prosecutor's offices were a significant step towards the establishment of the rule of law. In this fundamentally divided Canton, JSAP was encouraged to start to see judges and prosecutors from all three ethnic groups working together at the H-N Cantonal Court, Prosecutor's Office, Mostar I, Mostar II and Stolac Municipal Courts and Prosecutor's Offices. One can thus conclude that, as of now, the major part of the parallel court system in H-N Canton, was dismantled.

JSAP Team structure, comprising international and national legal professionals, as well as its efforts to empower the local court officials, played a significant role in gaining their respect and trust. JSAP efforts to establish the functioning multi-ethnic court system in H-N Canton, were supported by UNMIBH Mostar Civil Affairs and IPTF and their expertise from the integration of the local police. There was a natural link and co-operation with UNMIBH Mostar Human Rights Office on the monitoring of sensitive cases such as Liska Street case. The case of "Mostar Five" is an example of co-operation between all UNMIBH Mostar units, including the Public Affairs Unit, which played a significant role in publicising the warrants for arrest of fugitives, three of whom had surrendered to the law enforcement authorities.

Furthermore, the *Action Plan on Canton 7 Judiciary* spurred a very good co-operation between JSAP Mostar and OHR (S)²⁶. The H-N judiciary benefited from the arrival of the Deputy High Representative judge Finn Lynghjem under whose administration there was a significant increase of focus on the local judiciary and rule of law, and, of course, from the changes in political leadership in neighbouring Croatia.

²⁶ Judge Finn Lynghjem, D/HR and Head of OHR (S); Javier Mier, OHR (S) Legal Department and D/H OHR (S); Nenad Bago, OHR (S) Legal Department; and Fidelma Donlon, OHR (S) Human Rights Office.