

United Nations Mission in Bosnia and Herzegovina

Judicial System Assessment Programme (JSAP)

Sarajevo Team

FINAL REPORT

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UNITED NATIONS

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 and Plan

This report contains the findings of the Sarajevo Team on the judicial system with special emphasis on criminal justice within the limits of our area of responsibility¹ (AOR), as per mandate of the Judicial System Assessment Programme (JSAP) as set out in the Security Council Resolution 1184 of 16 of July, 1998. This resolution created JSAP as a unit of the United Nations Mission in Bosnia and Herzegovina (UNMIBH) to “monitor and assess” the judicial system in Bosnia and Herzegovina.

The conclusions reached in this paper are the product of work in the field, monitoring of selected high-profile cases and discussions with judges, prosecutors, police chiefs, investigators, prison managers as well as authorities of the Ministries of Justice and Interior. They address the positive and negative aspects of the present status of law enforcement.

We have tried to enhance the independence of the judiciary, in particular by supporting the process of raising their salaries as prescribed by the new laws on Judicial and Prosecutorial Service² and the Law on Courts and Judicial Service and Law on Public Prosecutor Office³. After the laws were passed, we advocated providing the context to enable the law in the Federation of Bosnia and Herzegovina (FBiH or Federation) to be enforced by revising the budget in the cantons under our mandate.

Also in our agenda was addressing the relationship between the press and those responsible for enforcement of criminal law in order to help secure the independence of judges and freedom of expression and information.

To provide a systematic structure to this work, a division in different substantial topics has been conceived. The following key ideas will constitute the subject of our analysis in our aim to determine the state of affairs of criminal justice in Sarajevo Region:

Normative Framework

Court Structure

Role of the Police, Prosecutor, Investigative and Trial Judges

Cooperation Between Police and Judiciary

Prisons and Other Related Institutions

Security Issues –Court Police and Prison Wardens.

High-Profile Cases and Economic Crime.

Independence of the Judiciary – Salary Increase and Budget Restructure.

Press, Judiciary and Police Relations.

Methodology and Conclusion.

¹ Comprising the courts in Sarajevo and Gorazde in the Federation and the courts of Srpsko Sarajevo, Foca, Sokolac Vlasenica, Rogatica and Visegrad in Republika Srpska.

² Official Gazette of FBH 22/00 of June 16, 2000.

³ Official Gazette of RS 13/00 of May 28, 2000.

2 Normative Framework

After the Dayton Peace Agreements, Bosnia and Herzegovina was divided into two entities, the FBH and the Republika Srpska (RS), with separate court systems and laws.

In the Federation, a new Criminal Code and Criminal Procedure Code came into effect in 1998⁴. Prosecutors and judges, but mainly the police during the investigation phase, are finding technical hitches in adapting their work to the new rules.

In RS a new Criminal Code⁵ came into force on October 2000, and an innovative criminal procedure code is being drafted, which might eliminate the investigating judge and grant this powers to the prosecutor. In a future step the international community (IC) will encourage the Federation to adapt its own procedure code to the new approach in RS, also trying to eliminate the investigating judge.

The team cooperated with the local police as well as with the International Police Task Force (IPTF) of UNMIBH with a number of lectures on criminal procedure on the academy for local police and at the induction course for new come IPTF officers. The results were not one way. We provided our colleagues from the police with the legal theory and interpretation of the criminal law and law on criminal procedure. In exchange, we learned their views on different practical aspects, which proved to be extremely useful in our activities in the field.

3 Court Structure

As previously mentioned, each entity has its own independent judicial structure. There are also two special courts at the state level: the Human Rights Chamber and the Constitutional Court.

The Human Right Chamber is formed by six local judges (two per ethnicity) and eight international judges selected by the Committee of Ministers of the Council of Europe. They deal with individual claims related to violations of European Convention on Human Rights (ECHR) and other instruments providing for the protection of universal rights of the individuals.

The Constitutional Court of Bosnia and Herzegovina consists of six local judges (two per ethnicity) and three international judges nominated by the European Court on Human Rights. Its competence is related to the Constitution of Bosnia-Herzegovina in relation to disputes arising between the state of Bosnia-Herzegovina and one or both entities, between the entities and between the institutions of the state. The regular courts can refer cases to this court if any law is not in accordance with the central constitution or with the European Convention of Human Rights.

One of the main problems observed by our team is the lack of a high court at the state level, resulting in lack of uniformity on the interpretation of the law for all the citizens of the country.

⁴ Official Gazette of FBH No 43/98 on November 20, 1998.

⁵ Published at the Official Gazette of RS 22/00 of September 2000.

A project establishing one state court with competency in specific penal matters and administrative litigation was imposed by decision of the Office of the High Representative (OHR) on 12 November 2000, entering into force immediately⁶.

At entity level, the Federation has as its highest instance court the Supreme Court of FBH, and each canton has a Cantonal Court and Municipal Courts. For Republika Srpska, at the top of the judicial pyramid is the Supreme Court of RS, followed by District and Basic Courts. Each court has its corresponding prosecutor's office. Minor offences courts exist also in both entities.

We met with Judges Ilic and Selimovic, the former and new presidents of the Supreme Court FBH, in order to help them in their efforts to strengthen inter-entity judicial co-operation. We were informed that the courts in Republika Srpska do not co-operate with the courts of the Federation in a systematic way. Our team was actively involved in trying to solve the transfer of numerous cases from the courts of the Federation to the courts in Republika Srpska, which have been in a kind of legal limbo since the Dayton Agreement.

After several discussions with Supreme Court FBH judges, we learned that the authorities of Republika Srpska were unwilling to receive these cases, resulting in delay and deprivation of justice for hundreds of citizens, in contravention of article 6 of the ECHR. This attitude is contrary to the "Memorandum of Understanding on the Regulation of Legal Assistance between the Institutions of the FBH and the RS (MOU)" that the Ministers of Justice of the two Entities signed on 20 May 1998.

At the special request of the president of the Sarajevo Cantonal Court, the team prepared a document advising the court on a new method of allocation of cases. The project was intended to provide speed in solving cases which took a long time to be decided at first instance, as well as an improved system to replace the existing one.

4 Role of the Police, Prosecutor, Investigating and Trial Judges

In our opinion, it is certainly important to clearly establish the competence of the different institutions dealing with criminal procedure. It is in the interpretation of the code of criminal procedure that the differences arise among the law enforcement institutions concerning their competence in different aspects of the investigation.

This problem has been perceived in both entities, more acutely in RS. The police have a tendency to look to the past, when their function was broader and more autonomous than today. Police chiefs and investigators are reluctant to accept the limits that the laws on procedure establish, subordinating some measures to the control and approval of the prosecutor or investigating judge.

A cornerstone principle currently is that the basic duty – and right - of the competent prosecutor is to *guide* preliminary criminal proceedings⁷, and *supervise* the activities of the police⁸. As a

⁶ OHR led this project, with the cooperation of the Council of Europe and judges of both entities, which resulted in the creation of the State Court of Bosnia and Herzegovina.

result of the new political approach and the changes in the procedure law, the powers of the police have been watered down.

The investigating judge conducts the pre-trial investigation⁹, choosing the measures to reveal the evidence and deciding on the investigating actions proposed by the parties. In case of disagreement between the investigating judge and the parties, a panel of judges will ultimately decide.

The police should act in close consultation with the prosecutor and investigating judge during the preliminary criminal procedures and the pre-trial investigation respectively. They will report to the prosecutor the immediate necessary steps taken in the preliminary proceedings. They will support the investigating judge in the pre-trial investigation stage.

These days the most sensitive controversy concerns the role of the police in gathering information from citizens in their capacity as accused, witnesses or experts. The law¹⁰ is unambiguous on the point that the police may only take “information” from individuals, but this would be excluded from the official records by being kept in a separate sealed envelope as so called “invalid evidence”. Some police officers consider that would be beneficial for the effectiveness of the investigation to have more autonomy in deciding issues like searching of premises and surveillance and recording of telephone conversations.

Finally, and after the indictment has been raised by the prosecutor, a panel of lay and professional judges will deal with the main trial, which is public and directed by the presiding judge. The accused, witnesses and experts will be heard at this phase, and all the evidence will be presented. New evidence can be also admitted. After the final statements of the parties (prosecutor and defence) a sentence will be pronounced, concluding the first instance.

Our team, in a joint effort with American Bar Association/Central and East European Legal Initiative (ABA/CEELI) and United States Department of Justice (DOJ), organised seminars in Gorazde and Bihac. Criminal judges, prosecutors and police inspectors participated, aiming to clarify all possible doubts on the proceedings and define the roles of the different actors during the investigation. Our contribution was highly appreciated by the members of the judiciary and police officers who attended the discussions. The exercises consisted of conferences by legal and police experts in different areas, practical exercises where all the participants were actively involved and the exhibition of a much-praised video on domestic violence produced by the Organization for Security and Cooperation in Europe (OSCE).

As a practical problem, some courts in our area of responsibility were unable to form panels due to lack of a sufficient number of professional judges. We also observed generally poor performance of the lay judges, who are in some way controlled by their professional judge

⁷ Consisting of the actions undertaken by the police investigators to discover crimes and identify the perpetrators before the formal decision on conducting an investigation is made by the investigating judge

⁸ As prescribed by Article 41 (2) 1) of the CCP of the FBiH.

⁹ This stage starts with the formal decision on conducting an investigation and lasts until pronouncement of indictment or dismissal of the investigation.

¹⁰ Article 143 of the CCP of FBiH.

colleagues. The presiding judge has a prominent role in conducting all of the initiatives and actions during the trial.

In our work in the field, we monitored several trials in both entities of our area of responsibility. Several of the hearings lasted for weeks and sometimes months. An improvement in the speed of cases would be highly desirable, particularly in cases involving detainees.

5 Cooperation between Police and Judiciary

From the beginning of our interaction with the judiciary and the police, we were informed by both sides of serious problems of communication, which resulted in numerous difficulties in investigations. Our team promoted a facilitation programme at the beginning of this year in the Federation, which succeeded in easing the tense relations between the ministry of interior (MoI) and the judiciary of Canton Sarajevo.

We sponsored a meeting of the top authorities of both institutions (Ministry of Interior and judges and prosecutors from cantonal and municipal courts). The meeting was organised in UNMIBH premises on 6 March 2000. Since then, a more positive approach and better cooperation has been experienced in a joint effort to combat endemic organised crime. The president of Sarajevo Cantonal Court and the Ministry of Interior expressed in meetings with JSAP their satisfaction with their cooperation in the investigation of a chain of high-profile criminal cases in the canton.

We encountered a similar but more acute problem in RS, at Srpsko Sarajevo district, where we found a lack of cooperation, and reciprocal accusations of corruption and bribery. In a joint Civil Affairs/IPTF/JSAP initiative we tried to promote a series of meetings among the actors (chief and inspectors of Public Security Centre (PSC) of Srpsko Sarajevo, a special envoy from Republika Srpska Ministry of Interior, and judges and prosecutors of district and basic courts of Srpsko Sarajevo).

The dialogue exposed a number of problems existing in their mutual relations.

The police pointed out:

- a) The recurrent absence of the investigating judge from the scene of the crime
- b) The leniency shown by the judiciary in sentencing
- c) The fact that in spite of police efforts to curtail crime, the delinquent imprisoned were often released by the courts

The judiciary complained about:

- a) The poor reports received from the police during the preliminary proceedings

- b) The lack of knowledge of the laws of procedure and penal code by the police, who frequently qualify serious crimes as minor offences, sending the file to the wrong court
- c) The authoritarian style of the police, probably inherited from the former regime, which causes them to act in complete disregard of the role of the judiciary, considering it as an inferior or subordinate institution

Despite some agreements to cooperate, the results have not been as encouraging as expected. Recently the Chief of PSC of Srpsko Sarajevo complained about delays and conflict of interest problems at the basic prosecutor office in Srpsko Sarajevo. JSAP reviewed the relevant files and the problems reported were confirmed. In one case¹¹ the indictment had not been made within required period of 15 days.

In accordance with Article 174, paragraph 2 of the Code on Criminal Procedure, the public prosecutor is expected to make an indictment within 15 days starting from the date of completion of the investigation procedure, or he must drop the charge. In the case where the indictment was delayed we found that the mother of the accused works in the registry in the basic public prosecutor's office in Srpsko Sarajevo.

6 Prisons and Other Related Institutions

The team was also made aware of some serious problems in the penitentiaries and other special centres intended for treatment and security of mentally ill individuals and juveniles offenders in the Federation.

The judges complained that when their courts send dangerous patients for psychiatric treatment to the special institution within the Zenica prison, they are often not accepted for lack of space and are released onto the streets, with a consequent threat to public safety.

We participated in various meetings with representatives of the federal and cantonal Ministries of Justice and Interior and inspected the Zenica and Sarajevo detention centres. The conditions were far from optimal, with overcrowded premises and lack of resources. Inmates with mental problems are not receiving any medical treatment.

Negotiations resulted in a government decision to return to the control of the Central Prison in Sarajevo premises which had historically belonged to it and which were being used by the Sarajevo courts. The implementation of this decision is still pending.

7 Security Issues – Court Police and Prison Wardens

¹¹ Case Ki: 46/00, before investigating judge Ljubo Badnjar in Srpsko Sarajevo, where Aleksandar Gajic was suspected of the criminal offence of illegal manufacture and trafficking of drugs, under Article 245, paragraph 1 of the Criminal Code of Republika Srpska, as well as the criminal offence of enabling another person to consume narcotics, under Article 246, paragraph 1, of the Criminal Code of Republika Srpska.

Security of detainees as well as the safety of judges and court buildings has been a cause of serious concern of judges, as well as the Ministries of Justice and Interior. Recently JSAP was called for assistance after one judge received death threats from an Iranian inmate serving his term at the Sarajevo Central Prison.

We attended several meetings with court and prison authorities, attended also by representatives of the Ministries of Interior and Justice, where the security situation was discussed. As a result, it was decided to increase security measures intended to prevent any sort of terrorist attack against judges by snipers, commando operations or car bombs targeting the court building. A special squad of the cantonal police was to surround the courthouse 24 hours a day and parking in the area was restricted only for official vehicles. Since there were alarming signs that a riot was planned in the central prison, and due to the inability of the prison wardens to prevent this type of problem, the cantonal police feared that the situation could get out of control.

The cantonal Minister of Interior, Mr. Dahic, is concerned with this difficult state of affairs, but he noted that the responsibility for court and prison security lies with the prison and court police, not with the regular police forces. Nevertheless, he agreed to supply his men on an emergency basis, provided that this would not become a permanent status.

The court and prison police were shown to be unable to perform their professional tasks in an adequate manner, either for lack of technical training or due to budgetary problems.

8 High-Profile Cases and Economic Crime

In the course of 2000, we monitored a number of high-profile criminal cases in the courts of Sarajevo and Gorazde cantons. In Sarajevo, **Ismet “Celo” Bajramovic** and others were arrested suspected of murder in a shooting at a restaurant in Ilidza. A man was killed in cold blood apparently in a settlement of accounts. In spite of political interference and pressures coming from criminal circles, the investigative judge managed to perform his duty in a professional and independent manner.

The judge often warned the defence counsels for their improper professional behaviour. The prison was unable to control its personnel, who provided cell phones to Celo. Prison doctors also provided him with dubious medical certificates. Due to the sensitivity of this case, for first time protected witnesses were allowed to testify without disclosure of their identity, as permitted by a special law¹².

It is our opinion that the prosecutor should be more active in the hearings, by questioning the accused, witnesses and experts. In the main trial phase, we observed a large deal of authority in the hands of the presiding judge. Security was tightened and appeared to be effective in the courtroom and the area surrounding the court building, both to protect the accused from the threats of revenge by the victim’s family and to prevent a plot to escape. The main trial in this case is taking place as this report is written.

¹² Law on the Special Protection of the Identity of Witnesses in Criminal Proceedings in the Federation of BH, Official Gazette of the FBH 33 of 09-08-99.

Nijaz Karkelja, who has been accused numerous times for multiple crimes, was detained and charged with a driving and shooting incident. Our team closely followed up another case where Karkelja was beaten up allegedly by police officers wearing hoods after he accused Sarajevo Canton Minister of Interior Dahic of selling seized contraband cigarettes for his own profit. He repeated the accusation before the court during his testimony as a victim of the attack.

We put special attention on cases of economic and white-collar crime, including the following cases:

Alemko Nuhanovic was detained for fraudulent activities connected with SAB Banka, and received four and a half years' imprisonment at his first instance sentence. He has been released pending his appeal.

Alija Delimustafic was recently imprisoned as a result of an investigation carried out by the Federal Prosecutor for his alleged involvement in a scam orchestrated through BH Banka. Multiple accusations came from different angles in this case, ranging from corruption at the police level, who allegedly neglected to arrest **Mirsad Delimustafic**, Alija's brother and the main suspect in the case, to assertions made to JSAP by Alija himself that his case has been fabricated by the SDA Secret Service.

A German court is investigating another case for kidnapping and attempted murder against Alija Delimustafic. We carefully monitored the communications and exchange of documents and information between the German court and the local one, which was a good example of international judicial co-operation.

Our team monitored the hearings and is keeping regular contact with the investigating judge and prosecutors (both federal and canton, intervening in different issues) on the evolution of the case. Some obscure points, such as the failure of the police to arrest the main suspect, remain still to be clarified.

Besides the cases of the fraud perpetrated through the bank system, we have also been closely monitoring the cases of privatisation of Holiday Inn and Marshal Hotels.

In the Holiday Inn case, administrative litigation has been commenced before Sarajevo Cantonal Court, seeking the invalidation of the sale, which is alleged to be contrary to the regulations and for an unjustifiably low price. Later our team was informed that criminal investigation has been initiated against those presumed responsible for these actions.

In the Hotel Marshal privatisation, a criminal investigation was opened against directors of Energopetrol, the socially owned company that owned the hotel, for misuse of authority resulting in irregularities in the process. The tender was abolished.

In Gorazde, in a combined attempt, police, judges and prosecutors opened an investigation against the former Major of the Municipality and Prime Minister of the Canton, for alleged corruption while performing their public office mandate. JSAP was present at the hearings and followed up the investigations. We especially appreciate the courageous attitude of the

prosecution¹³ and judiciary in their initiative against impunity of the politicians in a traditionally corrupt system.

Recent reports from Gorazde revealed that the new executive authorities are now carefully respecting the laws in their public office activities, and consulting with the cantonal public attorney regarding the use of the budget. This is a clear example of the effectiveness of the actions undertaken by the judiciary.

The team met with a USAID specialist in banking issues working in cooperation with the Federal Banking Agency. He highlighted the fact that the courts here are reluctant to apply the new banking laws. According to him, in cases of bankruptcy for example, the court's tendency is to apply the old laws, with the intention of favouring the directors of financial institutions, who have invariably committed illegal actions to the detriment of depositors. Though the recent banking law from October 1998 could be defined as a complete and updated law regulating the banking system, there remain anachronisms such as the fact that even after being granted a licence, a bank cannot make internal payments - a hangover from the communist era. The arrival in Sarajevo of Volksbank from Austria could serve to promote dynamic banking practices in the country.

In the event of liquidation of a bank, the case is often assigned to incompetent and inexperienced judges. We can mention as an example of the lack of speed and efficiency by the court the bankruptcy of the Kamel Bank in Teslic, where one of the directors entered the premises even after intervention of the banking agency, opened the safe with his key and absconded with 1 million DM in his pocket.

We also learned that an International Advisory Group has been set up to deal with the reform of the Payment Bureau System and a Banking Advisory Group will be responsible for all remaining laws concerning the financial system. We were also informed that of 37 banks in the Federation, the intention is to reduce this number to 25 this year.

There has been growing international and public alarm at the increasing number of bank failures. Investor confidence has been eroded by the apparent existence of a "Wild West" mentality by "robber barons" in the local community who were permitted to set up banks so easily and then set forth to plunder them with apparent impunity. Inadequate protection to bank investors by the court system has been complained of as well as the lack of immunity for banking oversight supervisors. While the local banking laws seek to be in harmony with prevailing international standards, a PriceWatershouse audit ordered in BH Bank is expected to disclose shortcomings in the laws and the report should be studied with a view to ascertaining its implementation.

After discussions with the judiciary, our team has concluded that existing bank legislation should be changed in order to regulate more in detail and restrict the activities of the "connected persons" to the banks. The practice shows that a common way to defraud depositors is the dishonest loan policy that directors of collapsed banks implement, in agreement with "connected

¹³ It is essential to appreciate the determination of the prosecutor's office in its commitment to combat crime to cite the statement of the Cantonal Prosecutor, Mehemet Batotic, who declared in a meeting with JSAP that he will fight corrupt politicians "until the end!!"

persons”, to liquidate the assets of the institutions they manage for their own profit. Prosecutors have asked for amendments to the criminal code of the Federation increasing the sanctions and creating new criminal offences in relation to economic crime.

The same approach of tightening the laws in order to provide a more accurate system of control should be used for the privatisation process. A working group of national law experts for drafting amendments to the mentioned legislation was created through the initiative of the international community. Recently, the federal prosecutor, Suljo Babic, who is a member of the working group, told us that the initiative is paralysed due to lack of budget, technical resources and interpreters.

In RS, the judiciary initiated an investigation in Srpsko Sarajevo against **Darko Elez** and his father for murder. The police suspect the Elezes of being involved in drug trafficking and other criminal activity. In spite of the reluctance of some members of the police to proceed against them, the investigation was successfully completed and an indictment was passed by the office of public prosecutor. The defendants are still in detention waiting for main trial. The team visited the defendants in custody, met several times with the defence counsel and monitored many hearings during the investigation. Also we discussed in detail and provided advice on the different legal aspects of these proceedings with judges, prosecutors and police officers involved in the case. No irregularities were detected.

The Chief of PSC in Srpsko Sarajevo reported to JSAP that a serious crime of tax evasion involving millions of deutschmarks has been committed in the jurisdiction of Sokolac Basic Court. The file with the investigation will soon be hand to the prosecutor, and the case involves suspects in both entities. Further collaboration among police and judiciary at inter-entity level will be required to clarify this affair. Our team, in response to a request of the Chief of PSC of Srpsko Sarajevo forwarded a written demand to the JSAP Mostar team, asking for special cooperation in evidence gathering from the Mostar police on behalf of their colleagues of Srpsko Sarajevo.

The problem of inter-entity cooperation is becoming more significant, creating difficulties at the stage of investigation because of lack of communication between police forces and judiciary, lack of exchange of information concerning arrest warrants, which ensures impunity for criminals searched in one entity and fleeing to the other.

8 Independence of the Judiciary – Salary Increase and Budget Restructure

Independence of the judiciary is a precondition for the rule of law and protection of human rights and fundamental freedoms, and a cornerstone of democracy and economic progress of each society. The issue of the status of the judges includes various aspects of election, continuous education, career and responsibility. It is also an issue that involves the questions of objectivity, and impartiality.

Article 6 of the ECHR provides that “(i)n the determination of his/her civil rights and obligations or of any criminal charge against him/her, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.”

The European Charter on the Statute of Judges (Council of Europe, July 1998), Article 1 (General Principles), paragraph 1.3 states: “For any decision regarding election, appointment, improving of the career or finishing of the judicial service, the statute presumes the intervention of an organ that shall be independent from executive and legislature. At least half of members of that organ shall be the judges elected by their colleagues in accordance with methods that guarantee the widest presence of judicial power”. Paragraph 1.6 of the same Article says: “The state has obligation to provide the judges with necessary means to regular fulfilment of their tasks, and particularly of those regarding making decision in the cases in a reasonable time”. Paragraph 1.8 of the same Article emphasizes that “(t)hrough their representatives or through their professional associations, the judges are included in decision-making regarding court administration, and allocation of financial means at the level of the state or at local level. In the same way the judges must be consulted regarding the plans of change of the statutes as well as regarding regulating of their salaries or health protection”.

The team has put emphasis on this problem. We primarily focused on three main aspect of judicial system: technical, covering legislation and other legal norms and standards; institutional, relating to the capacity of the system in terms of physical resources, personnel and their organisation; and political, concerning the political framework and factors determining the operation of judicial system and the level of independence of the judiciary.

Increased financial independence of the judiciary was extremely important and we participated in the preparations of conferences on this theme and submitted through OHR proposals to potential donors for funding a close examination of the budget system for the judicial system in both Entities.

8.1 Actions in Sarajevo Canton

On 18 February 2000 the Assembly of Canton Sarajevo adopted a budget proposal for 2000 in which the budgets of the court and prosecutor office were separated from the budget of the Ministry of Justice. This idea came up in April 1999 at the Cantonal Government Session, where Judge Amir Jaganjac, president of the Sarajevo Cantonal Court, presented his point of view on the matter of independence of the judiciary. Besides changing the procedures of selection, appointment and dismissal of judges he insisted on the importance of financial independence of the courts from the executive power. He asked for a separate budget to be granted to the court, avoiding unnecessary requests to the politicians at the Ministry of Justice. The idea was supported by the Cantonal Government and later on worked out in a form of draft version being submitted to the Cantonal Government and Cantonal Assembly by the Minister of Justice, Ms. Semiha Borovac

The adoption of the Sarajevo canton budget with separate accounts for the court and prosecutor’s office was the first step on the road to real financial independence of the judiciary from the executive. As pointed out by Judge Jaganjac on a meeting with JSAP, a technical problem

remains on the control of the budget, which is still under the Ministry of Justice. The transfer of monthly installments to the courts in Sarajevo by the Ministry of Justice should be automatic, without any initiative or request from the court

The new Law on Judicial and Prosecutorial Service of the Federation that came into effect in June 2000 promoted independence of the judges and prosecutors in several aspects. It established new methods of election, appointment and disciplinary proceedings against judges and the prosecutors. The rights, duties and responsibilities of judges and prosecutors now are more specifically defined. The Law also significantly increased the salaries of judges and prosecutors. Besides the salary issue, the Law established a Federal Commission for Election and Appointment of the Judges to give recommendations to the government of the Federation, and authorized Cantonal Commissions to give recommendations to the governments of the cantons regarding financial needs of the courts.

Latest developments give a sense of optimism for future relations between the legislature and executive of Sarajevo Canton on one side, and the cantonal judicial power on the other side. A rebalance of the budget for the increase of judicial salaries under the recently-approved Federal Law on Judicial and Prosecutorial Service received the blessing of the Cantonal Government at its session of 11 and 12 July 2000.

8.2 Actions in Gorazde Canton

Aware of our efforts in promoting the implementation of the new Law, the president of Gorazde Cantonal Court requested our support on this matter. The situation was aggravated by the fact that in this canton, reluctance to implement the new Law was expressed at the meeting of the government on 20 August.

Our team was invited to speak on the meeting on behalf of the budget. We stressed in our presentation that the higher salaries for the judges were closely connected with the principle of independence and impartiality of the institution, and was a universal policy in other countries. We also used the argument that the council of ministers in Sarajevo Canton already approved the rebalance in question, as an example to be followed. Finally we emphasised that since the proposed budget had the intention of complying with a federal law which mandated a rise in the salaries of judges and prosecutors, the approval was a question of legality. The rebalance of the budget was approved. We got the impression that JSAP intervention by making a speech before the Government was fundamental in obtaining a positive answer. After government approval of the rebalance of the budget for courts, the canton started paying the increased salaries as mandated by the law, even without the sanction of the cantonal assembly. Later on the Cantonal Assembly approved the proposal of the government regarding the rebalance of the budget.

On the other side, the federal budget recently approved by the Federal Assembly included resources to enable the payment of increased salaries for the judiciary at the federal level. Even if the Federal Law on Judicial and Prosecutorial Services was imposed by OHR, after strong resistance or reluctance on the Federal Assembly, the present budget shows at least respect for the law, and a clear willingness to start complying with the payment of increased salaries from July 2000.

Nevertheless, some politicians in the Federation will still have to learn much about the system of division of powers, and about the independence of the judiciary. JSAP still deals with confusion in the procedures for judicial appointment in several cantons. The Federal Judges Commission has still not produced a Book of Rules, and politicians have attempted to take advantage of the law's ambiguities to influence the process.

The above-mentioned facts give grounds to recommend that the example of separate court budgets in Sarajevo Canton should be used as a model for other cantons in the Federation of Bosnia and Herzegovina. According to the Federation Constitution, the cantonal judiciaries are under the competencies of the cantons, so the same parliamentary procedure should be repeated in these cantons. Some technical questions could be resolved by the help of the international community in familiarising the domestic judiciary with the legal solutions in the Nordic countries on the same matter, whose experience in enforcing separate court budgets has obviously been used in this case.

9 Press, Judiciary and Police Relations

The team prepared and successfully conducted, jointly with the Council of Europe, a round table, which endeavoured to resolve long-standing conflicts among the media, the judiciary, the legal profession and the police. This initiative stemmed from the unhappy state of affairs surrounding negative publicity concerning the judiciary as has been regularly reported in the mass media emanating from Sarajevo.

Just to illustrate the problems that existed at the time, we would like to mention that regarding the controversial article published by Dani at the beginning of May 2000, with the headline "UNMIBH Reveals that Prosecutors and Judges Make the Best Cover for Organised Crime" we met the editor responsible for the article, Ms. Vildana Selimbegovic.

We asked her to explain who in JSAP revealed the accusations against the judiciary stated in the article in question. She limited her answer to saying that JSAP was not the source of the information. In view of that, we made clear that even if we did know about problems in the functioning of the courts, we would not use the press to criticize them in such a manner. We agreed that we would let the judges who felt offended by the article know that we had not cooperated with Dani, and that Ms. Selimbegovic could corroborate this if necessary. On another issue, we asked for the latest developments in the case Dani has against "Celo" Bajramovic and his gang for threatening the staff of the magazine with "toy" plastic guns. Ms. Selimbegovic mentioned that recently they had a new hearing, with the same negative result as the previous ones. She expressed again her anger at the inefficiency of the judges. On 8 May we met Judge Senad Kreho, president of Sarajevo Municipal Court II, to hear his explanation regarding the information he provided to the press in the case of illegal arrest and maltreatment of a group of persons by the local police in a restaurant in Hadzici. According to the press article, a squad of 20 police officers, masked and without ID, were responsible for the brutal beating of a number of individuals, among them Mr. Nijaz Karkelja, known for his accusations against Minister of Interior Dahic.

The Human Rights Office of UNMIBH considered the fact of Judge Kreho giving the names of the victims/witnesses to the press a violation of the right of the victims to preserve their anonymous status. Judge Kreho explained that he provided the information to the press with the intention of making public the illegal behaviour of the public security forces, hoping that this will act as a deterrent to future similar actions. He insisted that he didn't do anything illegal or against the regulations, since the only thing that can not be revealed is the identity of the accused.

Finally JSAP called to the attention of the judge the fact that the law specifically gives him the possibility to provide for the protection of some witnesses, when they could be endangered. It is clear that will not be very sensible in the future to endanger their life and security with this type of public statement, even if they are made with the best of the intentions.

As a result of these developments, Judge Amir Jaganjac, president of Sarajevo Cantonal Court, requested our team to organise a roundtable among press, judiciary and police to clarify professional approaches. We developed a proposal and passed it to all parties who reacted positively. It was expected that appropriate methods of communication between the parties would be developed as well as a better understanding of the role of the parties respectively within a developing democracy.

These facts made us conclude on the necessity of organising an open discussion to clarify the role of the press on this field. We received valuable support from the Council of Europe, who financed the event and contributed with two experts for the lectures –the president of a regional court in Netherlands and a British lawyer specialising in media. The President of the International Media Commission in BH acted as chairman and moderator.

During the round table, held on 12 September 2000 at the Federal Ministry of Justice, international and national experts spoke about standards established by the European Convention on Human Rights and national law, with emphasis on the recently-drafted draft Law on Freedom of Information.

More than seventy participants from media, judiciary and law enforcement from both entities engaged in a passionate debate during the panel discussions in the second part of the programme, which finished with a press conference. An appeal to a careful revision of the new draft Law on Freedom of Information before its adoption was launched, since this legislation is far from being satisfactory for the interest of the judiciary.

Was concluded that BH needs a strong judiciary, but also a strong media that would know how to ask questions and try to reach a higher level of professionalism.

10 Methodology and Conclusions

We can acknowledge that for the judiciary in our region, mainly in Sarajevo, we started to see a light at the end of the tunnel, even if international standards are far from being reached.

The administration of criminal justice has demonstrated some degree of ability to deal with cases essential for creating the feeling of security in the society, even if regular support coming from the international community has been a prerequisite for that.

The cooperation and commitment demonstrated by our counterparts, judges and prosecutors, deserves to be highlighted. We established a very fluent dialogue and reciprocal exchange of information and practical experiences as the methodology of our work.

Creating the feeling among the local authorities that our mission was focusing more in support than in surveillance granted us access to key information and full acceptance in our advisory role. We recommend this approach for future activities to be continued within the judiciary.