DENIED JUSTICE:

Individuals Lost in a Legal Maze

23 February 2000

An International Crisis Group Project funded by the European Commission

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Bosnia Legal Project Report N° 3
ICG Balkans Report N° 85
Sarajevo

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EXECUTIVE SUMMARY

Thousands of people try to find their way daily through an immensely complicated labyrinth established by the three separate and very often conflicting legal systems in Bosnia and Herzegovina (BiH). Evidence presented in this report, the third in the ICG legal project series, proves that unexplained time delays, dubious application of law and blatant ethnic discrimination contribute greatly to the ad hoc nature of Bosnian justice.

This report scrutinises six individual cases of ethnic and political discrimination. Recommendations are presented to counteract the violations committed by judges and prosecutors in these cases and to ensure that such violations are prevented in the future, through the strengthening of the concept of rule of law and of judicial and prosecutorial independence.

Data on the cases contained herein was provided by ICG partner organisations based throughout Bosnia and Herzegovina. All are Bosnian NGOs providing, *inter alia*, free legal aid to Bosnian citizens.

Sarajevo, 23 February 2000

DENIED JUSTICE:

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I. INTRODUCTION

This is the third report of the European Commission-funded ICG project “Promoting Justice in Bosnia and Herzegovina."

Using six representative cases, this study sheds light on the experiences of ordinary individuals in the Bosnian legal process. The experiences of the individuals contained herein are all too common, in that the individuals have experienced the misuse or abuse of court or governmental authority. In many cases, local authorities have undertaken discriminatory or illegal acts in contradiction of the judicial process. The cases were chosen using such criteria as ethnic background, the category of human rights violation, and the field of law where the violation occurs. Special attention is paid to ethnic minorities that attempt to exercise their fundamental human rights and freedoms, as set forth in the applicable national laws and international instruments to which Bosnia and Herzegovina is a signatory.

Currently a total of 194[1] organisations in Bosnia and Herzegovina are active in the field of human rights monitoring. All are capable of submitting numerous cases of human rights abuses that they come across in their every day work. Reports on the continuance of systematic human rights abuse in Bosna and Herzegovina appear in the local media on an alarmingly regular basis.

This report gives evidence that systematic human rights abuse is alive and well in Bosnia and Herzegovina. This is in spite of the fact that Bosnia and Herzegovina citizens, on paper at least, are some of the most protected individuals in the world, as the European Convention of Human Rights and Fundamental Freedoms and its Protocols take precedence over all local laws. Yet, in spite of these "paper freedoms," judicial and administrative authorities are willing and able to wantonly victimise and abuse citizens. Should that citizen represent the "wrong" ethnic group or "wrong" political affiliation, or if that person is simply not part of the ruling nationalist structures in post-war Bosnia and Herzegovina, then the likelihood of abuse dramatically increases.

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[1] See International Council of Voluntary Agencies (ICVA) "Directory of Humanitarian and Development Agencies in Bosnia and Herzegovina," April 1999, pg. VI.

Data on the six cases presented has been provided by the ICG' field partners situated throughout Bosnia and Herzegovina. These organisations, all of which are Bosnian non-governmental agencies, provide, *inter alia,* free legal services to citizens of Bosnia and Herzegovina.

II. BORO BRNIC CASE (LIVNO)

A. Background to the Trial

On 16 July, 1998, at approximately 21:00 hours, Boro Brnic, [2] a Croat, having allegedly caused trouble in the café "Latino" in Livno, drove to Dinarina Street 8 in Livno, where he entered into a quarrel with Sefik Torlak, a Bosniak. In the course of the argument Boro Brnic took a 9-mm machine gun from his car and shot Torlak in the head. Torlak later died in the Firule hospital in Split on 17 July, 1998.

B. The Tribunal

The Livno Municipal Court assembled the following panel to hear the trial: Mirko Bralo as Presiding Judge, Ozrenka Vidacak as a member of the panel, and three lay judges: Josip Djaja, Pavo Duvnjak and Bozo Suker.[3] Jakov Dujic, the Municipal Public Prosecutor, represented the prosecution, while Josip Muselimovic, an attorney from Mostar, appeared as the defense counsel. Mehmed Sator, a lawyer from Mostar, represented the injured party. All five judges, the prosecutor, and the defence counsel, were of Croat nationality.

C. The Prosecution Case and Summary of the Prosecution Evidence

The defendant was charged with committing a murder under Article 36, Paragraph 1 of the Criminal Code of the Socialist Republic of Bosnia and Herzegovina,[4] which reads that "whoever deprives another person of his life shall be punished by imprisonment for not less than five years". The procedure was conducted in accordance with the Code of Criminal Procedure of the SFRY,[5] which was then still in force in Bosnia and Herzegovina. The defendant admitted his guilt in killing Torlak, but did not admit to murder.

In a notable departure from standard procedure, the prosecution did not set out to prove the case against the defendant, but instead attempted to have the defendant receive a sentence far lighter than that prescribed for murder under the law. The prosecution - acting more like a defence counsel - attempted to prove to the court that the defendant

[2] Born on 1 May 1967 in Dobro, Municipality of Livno. The defendant was a Croatian soldier throughout the wars in Croatia and Bosnia and Herzegovina. He was detained in Mostar jail while awaiting trial.
[3] All of them were of Croat nationality.
[4] *Official Gazette of the SR Bosnia and Herzegovina, No. 16/77.* At the time when the crime was committed, the Code was in force throughout Bosnia and Herzegovina. The new Federation Criminal Code was not yet adopted. Many old SFRY laws are still in place throughout Bosnia and Herzegovina, so they will be regularly referred to (e.g. Code of Criminal Procedure of the SFRY is still being applied in the Republika Srpska).
[5] *Official Gazette SFRY, No. 26/86, 74/87, 57/89, 30/90.*

had committed the crime while mentally unstable. The prosecution's chief witness in this unusual "defence" process was a neuro-psychiatric medical expert from Livno, Ms. Marica Babic-Arambasic. Ms. Babic-Arambasic's stated that blood tests revealed the defendant was extremely intoxicated, with a blood-alcohol level of 1,23 grams/kg (1,89 grams/kg in the urine). This testimony ran counter to a report that was delivered from Zagreb, which showed the defendant to be only slightly intoxicated.[6] Ms. Babic-Arambasic claimed that the concentration was higher at the time when the crime was committed. According to her, the defendant suffered from post-traumatic stress disorder (PTSD), a consequence of war trauma. In her opinion, the defendant drank for reasons of mental relief.

Ms. Babic-Abramovic's most significant statement was that the defendant was a pathological alcoholic who was not capable of understanding the consequences of his actions, nor was he able to control his conduct. At the time the crime was committed he was not fully conscious and was mentally unstable. She added that the defendant, when drunk, suffered from almost total amnesia, i.e. he was not able to recall his actions. Another expert witness, Ms. Ivana Vukadin (Professor of Psychology) from Tomislavgrad, stated that the defendant was suffering from PTSD as well as neurosis, but did not lose contact with reality.

D. The Nature of the Defence

The defence, in agreement with the prosecution, relied upon the mental incapacity (insanity) of the defendant, based on the expert opinion of Ms. Babic-Abramovic.

E. The Judgement and Sentence

The Court found the defendant guilty of murder, yet judged that the crime was committed while the defendant was in a state of mental incompetence. The Court pronounced mandatory psychiatric treatment and custody in a medical institution,[7] as a "security measure", as per Article 63 of the Criminal Code of the SFRY,[8] as the Court also established that the defendant was dangerous to the environment. The lightness of this sentence appeared to contradict existing Federation law.

F. Appeal

As the Municipal Public Prosecutor made no effort to appeal the sentence, the relatives of the injured party, through the injured party's representative, were forced to file an appeal against the lightness of the sentence on 21 October, 1998 with Livno Municipal

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[6] The Zagreb expert's report said that the defendant was slightly drunk (under the influence of alcohol). Such expertise could have been gathered in Sarajevo, however, as in many other cases, Croats from the former "Herzeg-Bosnia" referred the case to an institution in Zagreb, Republic of Croatia, demonstrating their illegal deference to foreign institutions.

[7] KBC (Klinicko-bolnicki centar) Mostar.

[8] "The court shall impose mandatory psychiatric treatment and custody in a medical institution on an offender who has committed a criminal act while in the state of mental incompetence or substantially diminished responsibility, if it establishes that the offender poses danger to the environment and that his treatment and custody in such an institution is necessary for the sake of removing that danger."

Court. The Court rejected the appeal as unauthorised, in a decision of 10 November, 1998.[9]

The representative of the injured party filed an appeal against the decision with the Cantonal Court. On 15 January 1999, the Siroki Brijeg Cantonal Court[10] rejected the appeal, on the basis that the petitioning parties had no legal standing to file an appeal, and confirmed the decision of the Livno (first jurisdiction) Municipal Court.

On 20 January 1999, the Municipal Public Prosecutor, in a clear case of favouritism toward the convicted Brnic, proposed that the execution of the "security measure" against Brnic be ceased.[11] The Livno Municipal Court decided, on the same day, to cease the execution of the security measure, and ordered that Brnic be released from Mostar Jail. The Court ordered mandatory psychiatric treatment outside prison, as per Article 64 of the Criminal Code of the SFRY).

The representative of the injured party succeeded in having the Federation Prosecutor's Office file a "protection of legality"[12] claim with the Federation Supreme Court against the decision on Brnic's release from prison (10 May, 1999).

The Federation Supreme Court ruled that the decision of the Livno Municipal Court of 21 October, 1998 was found to be in violation of Article 13, Paragraph 3 and Article 358, Paragraph 1, Item 11 of the Federation Code of Criminal Procedure.[13] It also established that the decision of the Siroki Brijeg Cantonal Court of 15 January 1999 was in violation of Article 358, Paragraph 1, Item 11 as well as Article 381, Paragraph 1 of the Federation Code of Criminal Procedure.[14] The Supreme Court, however, neither ordered a retrial nor modified the contested decision.[15]

G. Comments

1. Prosecutorial Malfeasance

The desire to confer the lightest sentence possible on a Croat accused of murdering a Bosniak clearly directed the actions of the Municipal Public Prosecutor, Jakov Dujic, in this case. Instead of pursuing his prosecution with intent to prove that the defendant

[9] A representative of an injured party may contest a verdict only with respect to the costs of the criminal proceedings (Article 354 of the Code of Criminal Procedure of the SFRY).

[10] The appeal should have been filed with the Livno Cantonal Court but, due to the fact that the Livno Cantonal Court had not been established at that time, the case was referred to the Cantonal Court in the neighbouring Canton of Western Herzegovina in Siroki Brijeg.

[11] In an instance when the public prosecutor offers his opinion on the release or otherwise of a person sentenced to mandatory psychiatric treatment in an institution, Article 498 of the Code of Criminal Procedure of the SFRY states that the Court May "ex officio or upon a recommendation made by a medical institution, after hearing the competent prosecutor and defence Council…order the release of the perpetrator."

[12] An extraordinary legal remedy that can be filed as an appeal against a final court decision with a third instance (Supreme Court) body.

[13] *Official Gazette of the Federation of Bosnia and Herzegovina, No. 43/98.*

[14] Ibid.

[15] Under Article 409 Para 1 of the Code of Criminal Procedure of the Federation, the Supreme Court is not authorised to change the decision in cases where "the petition for protection of legality has been filed to the detriment of the defendant."

committed an act of murder, the Prosecutor set out to argue the defence's case, i.e. that Brnic had committed the act while in a state of mental incompetence. Furthermore, Dujic did not appeal the lightness of the court's decision, instead leaving that task to the representative of the injured party.

2. Actiones Liberae in Causa

As the Federation Supreme Court established correctly, the decision of the Livno Municipal Court violated Article 13, Paragraph 3 of the Federation Criminal Code. This article states that "the offender shall be considered criminally responsible if, by indulging in alcohol, drugs or in some other way, has brought himself to a state of not being capable of understanding the consequences of his actions or his conduct, and if prior to his placing himself in such a state, the act was premeditated, or if he was negligent in relation to the criminal offence and the act in question is punishable by law if committed by negligence."[16]

3. Super Expertise

The representative of the defendant proposed that a *super expertise* be conducted. The Court ignored that proposal, despite the practice that, in a case where differing expert opinions are offered, the Court traditionally orders a *super expertise*, to be conducted by a third expert team. Ms Babic-Abramovic claimed that the defendant, when drunk, suffered from almost total amnesia. Other eyewitnesses, however, said that the defendant, right after committing the crime, said he did not know what to do, that he should be taken to the police, that he said he was going to commit suicide, and that he was wondering who would look after his wife and children. This was strong evidence supporting the claim that he was conscious of his actions at the time when the victim was murdered. Ms. Vukadin (expert) said that the defendant did not lose contact with reality. *Super expertise* should have been ordered particularly in the light of the above.

4. Composition of the Panel

The President of Livno Cantonal Court, Mr. Andrija Kolak, has decided that lay judges in all Municipal Courts of Canton 10 shall be of Croat nationality.[17] Such composition differs sharply from the national composition of the Municipality of Livno as determined by the 1991 census. Given that the Prosecutor, and the defence counsel were Croats, and that the crime was committed by a Croat against a Bosniak victim, the ethnic composition of the panel raises serious doubt as to the impartiality of the Court.

5. Mandatory Psychiatric Treatment Outside Prison

To hand down a sentence such as that pronounced by the Livno Court, to an offender who has committed a criminal act in a state of mental incompetence, the Court has to establish that the treatment of the perpetrator outside the prison is sufficient for the removal of danger. It is highly questionable that a person who committed a violent crime is not dangerous after three months spent in custody under mandatory psychiatric treatment.

[16] In Socialist Federal Republic of Yugoslavia Criminal Law doctrine this situation was known as "*Actiones liberae in causa".*

[17] Decision published in *Sluzbene Novine Hercegbosanske Zupanije* (Official Gazette of "Herzeg-Bosnia" Canton*), No. 6/98,* 27 April 1998.

6. Hazardous Decision

Having been asked whether he always carried a machine-gun with him in the car, the answer of the defendant was affirmative. Ms Babic-Abramovic (expert) said the defendant carries a machine gun for his own safety, due to his paranoid behaviour, and the belief that someone was after him. The Court ran, and continues to run, a high risk by releasing a person such as Brnic.

7. Livno – All Croats are Created Equal

Political and ethnic prejudice has characterised Canton 10 – "Herceg-Bosna Canton" in the eyes of Croat separatists – since the inception of the Bosnia and Herzegovina Federation. In September 1999, the High Representative Carlos Westendorp removed Livno Canton Justice Minister Stipo Babic from office, claiming that Babic was "responsible for the persistent inefficiency of the Justice Ministry in Canton 10, in particular the poor performance of the public prosecutors at both the municipal and Cantonal level."[18] The judicial system in Canton 10, as demonstrated in earlier ICG reports,[19] remains under the control of the HDZ. The Boro Brnic case only highlights the ethnic and political prejudice faced by non-Croats in the Canton 10 legal system.

III. CASE OF L.R. (BANJA LUKA)

A. Background to the Trial

LR is a Bosniak, and the widow of a former Yugoslav Peoples' Army (JNA) soldier. She owns a two-room apartment in Banja Luka. The apartment was owned by the JNA and was bought by LR (contract number I-OV-4111/97) prior to 1992. Prior to acquiring the apartment, LR had a legal occupancy right to apartment (decision number 33/9-19 of 18 February 1991). She used the apartment with her mother until 1995, when, as a result of territorial losses by the Bosnian Serb Army and the fall of the Serbian Republic of Krajina in Croatia, thousands of Serb refugees arrived in Banja Luka. At that point LR entered into a contract (lease) with DjV (a Serb refugee from the Republic of Croatia and an officer of the Army of Republika Srpska (VRS - Vojska Republika Srpske), hoping to protect herself from third party interference. The contract was entered into on 9 September, 1995 for a two year period. Although LR left the apartment, she did not leave Banja Luka. When her temporary accommodation fell through, she attempted to repossess the apartment prior to the expiration of the contractual two-year term. She asked DjV to vacate the apartment, however DjV did not wish to leave.[20]

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[18] OHR Press Release, 16 September 1999. See also UNMiBH's JSAP report "Thematic Report 2: Inspection of the Municipal Public Prosecutor's Office in Livno, Canton 10, During 5-16 July 1999."

[19] See "Rule over Law: Obstacles to the Development of an Independent Judiciary in Bosnia and Herzegovina," ICG Legal Project Report No. 1, 5 July 1999, pg. 6 for evidence of HDZ tampering with the Livno Municipal Court.

[20] Since being unable to reclaim her apartment, LR was accommodated in the ICRC premises in Banja Luka (7 October 1995 –30 November 1995) and later in the Children's Home "Rade Vranjesevic" in Banja Luka where a certain number of "expelled" people from Banja Luka were accommodated in 1995. They were, *de facto,* "refugees in their own city". Many of these people have not been able to repossess their property thus far.

B. The Course of the Legal Procedures

In October 1995, the apartment was declared abandoned by the Banja Luka municipal housing authority (*Sekretarijat za stambeno-komunalne poslove)*.[21] Once the housing authority declared the apartment abandoned, the Military Housing Commission illegally allocated the apartment to DjV. As a result of these decisions, LR has been forced to file a number of separate civil and administrative procedures in order to try to regain her apartment.

1. Civil Procedures

The first procedure was a civil lawsuit, lodged with Banja Luka Basic Court[22] (on 4 July, 1996) whereby LR demanded cancellation of the lease contract with DjV on the grounds of "defect in consent"[23] as well as "fictitious contract"[24] (Case no P-1943/96).
The judge assigned to handle the case exercised her right to maternity leave, which resulted in a long delay in the procedure as a new judge was not immediately assigned to the case. Eventually, in 1998, the case was assigned to another judge. However, after having held one hearing, the defendant DjV, through his lawyer, demanded the removal of the judge from the case as a means of delaying the process.[25] The copy of the motion was not delivered to LR. The President of the Court then decided to assign the case to another judge.

After a number of submissions by LR urging the Court to hold a hearing, the Court eventually did so on 22 December, 1998, in the course of which DjV presented a new Decision of the Banja Luka Office of the Ministry of Refugees and Displaced Persons (MRDP).[26] The decision granted him use of the same apartment that was deemed to be abandoned property. In the meantime, the judge was dismissed upon his personal request. A fourth judge took over the case.

LR contacted the Office of the Military Attorney of Republika Srpska[27] as well as DjV's superiors in the Military Bureau "Kosmos" without any success. Eventually, the VRS Banja Luka Garrison Headquarters filed a lawsuit against LR, aimed at cancelling the

[21] Decision number DJ-136 of 15 October 1995.
[22] "Osnovni sud Banja Luka" – The Banja Luka Basic Court. In the Republika Srpska the Courts at the municipal level are titled "Basic Courts", while in the Federation they are titled "Municipal Courts".
[23] A ground to file a lawsuit in order to annul the contract i.e. to declare it invalid due to lack of will or due to the fact that the party to a contract was misled by the other party, etc.
[24] In domestic legal doctrine, a "fictitious contract" is one where the parties enter into one type of the agreement while actually intending something completely different (e.g. to cause other legal consequences other than the one that is commonly expected from the contract that has been entered into).
[25] A procedure allowed for in the Code of Criminal Procedure, if a party can convince the Court President that the judge will be biased in his judgement against that party. The President of the Court will then decide on the removal or not. In practice it rarely happens that a judge is removed from a case, for the President usually does not want to undermine the authority of his or her colleague, or to be seen to be acting under the influence of one of the parties to a court proceeding.
[26] No 08-476-7134/97 of 11 November 1997).
[27] "Vojni pravobranilac" – Office that renders legal aid to Military forces by appearing at trial where Armed Forces or its unit are party to the dispute.

contract for the apartment, despite the fact that the apartment was private property.[28] The suit was withdrawn upon LR's intervention with the competent Military authorities.

Finally, at a hearing held on 4 February 1999, over two and a half years after the lawsuit was filed, the Court declared itself as lacking jurisdiction in the matter (Decision No P1943/96 of 4 February 1999). The Court rejected LR's claim, stating that the dispute had to be resolved before the administrative organ(s).[29] LR filed an appeal against the Court Decision, claiming that DjV was acting in violation of the Code of Civil Procedure.[30] No decision following the appeal has been taken to date. LR has also filed an application with the Human Rights Chamber for Bosnia and Herzegovina[31] (Case No. CH/98/1195). Again, no decision has yet been taken.

2. Administrative Procedures

LR filed a number of administrative procedures before both the Ministry of Refugees and Displaced Persons, and the VRS, in addition to an appeal[32] with the Army Higher Housing Commission (through the Organ for Garrison and Housing Affairs – V.P. 7001[33]) against the October 1995 decision to allocate the apartment to DjV on 25 November, 1996. LR informed the Housing Commission about the fact that the apartment could not be considered abandoned property, given that she was the lawful owner and resident (who had temporarily entered into a contract on use with a third party), as well as highlighting other relevant facts pertaining to the case. Her direct appeals to the Banja Luka Housing Authority had been in vain due to "silence of the administration."[34]

LR filed another appeal, on 28 January 1999, to the Republic-level Ministry for Refugees and Displaced Persons[35] (MRDP), against the decision to grant DjV use of the apartment. She presented the evidence supporting her claim that she never left Banja Luka as proof that her property could not be considered abandoned in line with the Law on the Use of Abandoned Property.[36] The Republic-level MRDP should have ruled in

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[28] The lawsuit was withdrawn on 11 May 1998 after LR intervened with the competent military authorities (Basic Court case No P-1621/97).

[29] The Court decided so in accordance with the Law on Use of Abandoned Property (*Zakon o koristenju napustene imovine*), published in the *Sluzbenik Glasnik Republike Srpske* (Official Gazette of the Republika Srpska) *No 3/96* as well as in accordance with the jurisprudence of the Banja Luka County Court (Decision No SU-394/96). The relevant administrative organ referred to was the Ministry of Refugees and Displaced Persons and its branch (*odsjek*) in Banja Luka.

[30] Official Gazette of the SFRY No 4/77, 36/77, 36/80, 69/82.

[31] The HRC is a judicial body established by Annex 6 of the General Framework Agreement for Peace in Bosnia and Herzegovina (Dayton Peace Accords) in order to secure protection of human rights at the State level.

[32] "Zalba u upravnom postupku."

[33] V.P. - "Vojna posta" – Army Post Office (APO).

[34] Phrase also know as "non-feasance". The Law on General Administrative Procedure (*Official Gazzete of the SFRY N0 47/86*)applicable in the Republika Srpska refers to "sutnja administracije" in Article 218. The provision of the law protects claimants against undue procedural delays by providing for the right to appeal the silence if the first instance body does not decide the case within the deadline spelled out by law. For a more detailed discussion of administrative silence, please refer to *"Rule of Law in Public Administration: Confusion and Discrimination in a Post-Communist Bureaucracy,"* ICG Bosnia Legal Project Report No. 2, 15 December 1999, pg. 13.

[35] Decision (No 08-476-7134/97) of 11 November 1997.

[36] *Official Gazette of the Republika Srpska No 3/96, 8/96, 21/96.*

LR's favour, as the Law on the Use of Abandoned Property ceased to be in force on 18 December, 1998, following the RS National Assembly's adoption of the Law on Cessation of Application of the Law on Use of Abandoned Property.[37] However no decision has been rendered so far.

LR filed an application, this time for repossession of the apartment, with the Ministry of Refugees and Displaced Persons of the RS on 26 March 1999. Following many interventions, the MRDP handed down a decision in the applicant's favour (No. 05-050-02-01-883/99). LR filed an appeal against the decision, as the decision gave DjV a right to alternative accommodation. DjV also appealed the decision.[38] The MRDP rendered a new decision (No. 05-050-01-248/99) which ordered that DjV could not be evicted prior to repossessing his property that he allegedly left in Croatia, or prior to being provided with adequate alternative accommodation. In practical terms, the decision means that DjV will not be evicted for quite some time.

C. Comments

This case would appear to be yet another case of ethnic discrimination in Republika Srpska. Although there are no clear violations that prove that LR's ethnicity was the deciding factor, the sheer weight of evidence suggests that a Serb would not be subjected to the same treatment.

1. Banja Luka Basic Court, without any procedural justification, failed to schedule the hearing for a long period of time. Moreover, it caused undue delays as well as deciding to finally declare itself lacking jurisdiction.

2. After the first judge exercised her right to maternity leave, a long delay ensued before a new judge was assigned to the case.

3. Upon the defendant's request for the removal of the judge in charge, the President of the Court decided to assign the case to a third judge. One has to question the prejudices of the Court President in deciding to allocate a new judge to the case. It is obvious that the case in question had already experienced undue delays, and that DjV was employing delaying tactics.

4. LR had to urge the court to schedule hearings a number of times, which indicates that the Court consistently failed to act in a timely manner.

5. The third judge was eventually dismissed upon his personal request. Could the President of the Court not have foreseen that this judge would ask to be dismissed?

6. In the appeal LR presented evidence that she never left Banja Luka, thus removing the possibility that her property could be considered abandoned in line with the Law on the Use of Abandoned Property. This crucial fact was not assessed properly by the administrative housing authorities.

7. The MRDP rendered a decision whereby it ordered that DjV could not be evicted prior to being able to repossess his property in Croatia, or prior to being provided with

[37] *Official Gazette of the Republika Srpska No 38/98.*
[38] LR was never delivered a copy of his appeal.

adequate alternative accommodation. This point must be considered as completely irrelevant in terms of the substance and premise of the case.

IV. CSB BANJA LUKA CASE

A. Background

On 26 February 1994, a Bosniak employee of the CSB[39] Banja Luka, hereinafter referred to as the occupation right holder (ORH), received a decision on the cancellation of his occupancy right. The police forcefully evicted him, without obtaining any decision of Banja Luka Basic Court by which the occupancy right could have been legally cancelled.[40] One of those actively involved in the eviction took over use of the apartment, and is currently occupying the apartment. The apartment was never declared abandoned by the Banja Luka Housing Authority.[41] Ever since that day, ORH's family has been living in a garage in the vicinity of the apartment building in Banja Luka.[42]

B. Course of the Proceedings

Despite being aware that ORH did not leave Banja Luka, the CSB eventually filed a lawsuit against him with Banja Luka Basic Court, in 1996, aiming to cancel the contract on the use of the apartment. The CSB claimed the grounds for such a motion was based on the fact that ORH left Banja Luka. The Court eventually rejected the plaintiff's claim.[43]

While waiting for enforcement of the Court's decision, ORH died on 12 April 1999. In accordance with the Law on Housing Relations,[44] his wife filed a request with the CSB, requesting that the CSB recognise her as the occupancy right holder. Her request was supported by the Contract on the use of the apartment, as well as her husband's death certificate. Having received no reply, she intervened orally, only for the CSB to claim that it had not received the District Court second jurisdiction decision from the Office of the Public Attorney, who represented them before the Court. In the meantime, the ORH's wife filed a written submission with the Office of the High Representative for Bosnia and Herzegovina (OHR),[45] insisting upon the application of Article 19 of the Law on Housing

[39] "CSB" – Centar sluzbi bezbjednosti (*Security Services Centre*) *i.e.* section of the Ministry of Interior of Republika Srpska.
[40] In a case where the owner of a socially-owned apartment wishes to cancel a contract on the use of a socially-owned apartment with the occupancy right holder, he must initiate a court procedure. *Zakon o stambenim odnosima* (Official Gazette of the SR Bosnia and Herzegovina No 14/84), Article 50.
[41] The CSB has granted the occupancy right to its employee despite being aware that he had a habitable private house in the vicinity of Banja Luka. Moreover, his wife had a house situated close to Banja Luka. Eventually, he had acquired ownership over another house in the City of Banja Luka a year ago.
[42] As with LR in the previous case, this person is referred to as a "floater" by international organisations working in Bosnia and Herzegovina.
[43] Decision of Banja Luka Basic Court No. 4348/96 of 2 December 1997. This decision was confirmed by the Banja Luka District Court when the CSB appealed the Basic Court decision (Decision No. GZ 785/98 of 11 January 1999). As ORH was "absent", the interim representative appointed by the Court represented him.
[44] *Zakon o stambenim odnosima, Official Gazette of the SR Bosnia and Herzegovina No 14/84*.
[45] *Ured Visokog predstavnika medjunarodne zajednice za Bosnu u Hercegovinu,* established by Annex 10 of the General Framework Agreement for Peace in Bosnia and Herzegovina (GFAP). The OHR is final authority as to civilian implementation of the GFAP.

Relations.[46] The Office of the High Representative may well have intervened, since the ORH's wife received a decision from the Ministry of Refugees and Displaced Persons Banja Luka office (MRDP BL),[47] that recognised her as occupancy-right holder, in line with Article 19 of the Law on Housing Relations. The temporary occupant was given 90 days to leave the apartment,[48] but was also declared entitled to accommodation in accordance with the Law on Housing Relations.[49]

The ORH's wife intervened in writing to the Internal Inspection of the Office of the RS Minister of the Interior, after the 90-day deadline had expired.[50] She received a reply stating that the clerk in charge of legal and personal issues was ordered to resolve the case upon receiving the final decision. Therefore, upon the CSB's oral petition, the ORH's wife added the second jurisdiction decision to her request to be declared the occupancy-right holder. As this yielded no success, she sent a letter to the Chief of Staff of the CSB on 17 September, 1999. She received a phone call from the assistant to the Chief of Staff who told her that the case was going to be resolved within a couple of days. However, as this deadline expired without news, she called the CSB, urging it to decide the matter. The reply was once more that the CSB had not received a copy of the second jurisdiction (District Court) decision. A letter to the Internal Inspection of the Office of the RS Minister of the Interior asking for a response. To date no reply has been.

In the meantime, the Court has not handed down a decision on the lawsuit filed by the (deceased) occupancy right holder against his illegal eviction in 1997.[51] The ORH's wife has informed the MRDP Banja Luka by written submission, that the current occupant has the choice of three other houses, which they are able to take up residency in immediately. This was done to prevent the MRDP from rendering a decision on extending the deadline for the current occupant to leave the apartment. The current occupant remains in the apartment without any legal basis whatsoever.

C. Comments

1. The ORH was evicted from his apartment without any legal basis. As he never left Banja Luka, the CSB lawsuit aimed at cancelling the contract on the use of the apartment had no legal justification. In addition to this, the CSB tried to mislead the Court with a false allegation that the ORH had left Banja Luka.

2. The CSB did not show any interest in enforcing the final Court decision on eviction of the current occupant who has been illegally occupying the ORH's apartment.

3. The CSB, prior to and after the ORH had died, caused undue procedural delays by failing to recognise the occupancy right of the ORH's wife. Accordingly, she has been discriminated against by the CSB's refusal to enforce the Court's decision as well as their inability to grant her occupancy rights.

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[46] Article 19 states that if a spouse dies, the other one is considered to be the occupancy right holder.
[47] No. 05-050-02-021035 of 16 September 1999.
[48] The deadline expired on 16 December 1999.
[49] *Zakon o stambenim odnosima, Official Gazette of the SR Bosnia and Herzegovina No 14/84*, Article 7.
[50] Motion No 06/1-059-046-13 of 23 July 1999 with the *Inspekcija unutrasnje kontrole u kabinetu Ministra unutrasnjih poslova Republike Srpske.*
[51] Case No 681/97.

4. The current occupant was granted rights to alternative accommodation in accordance with the Law on Housing Relations. This should not be the case, since he has three available houses at his disposal.

5. This is a clear case of the Banja Luka MUP abusing their position and acting outside the confines of the law in order to favour one of their rank.

V. NADA DJAKOVIC AND OTHERS CASE (TRAVNIK)

A. Background

In early April 1997, the Bosniak-controlled Municipality of Travnik (investor) and the Bosniak-majority Army of the Federation of Bosnia and Herzegovina (contractor and co-investor)[52] conducted a reconstruction project on a local road running from Dolac to Guca Gora, in the Travnik municipality. In addition to the reconstruction, a new segment of road was constructed. Implementation of the above-mentioned project caused considerable material damage to the properties, access roads and fruit trees of 31 Bosnian Croats, all of whom had been expelled during the war. In their absence, the investor and co-investor seized the opportunity to perform the works without the knowledge of those expelled, and without going through the legal expropriation procedure. Nearby rubbish dumps that were created also caused additional environmental harm to the property owners. Individuals affected by these developments tried to reach a peaceful settlement with the Municipality and the Federation Army, but without success.

B. Course of the Proceedings

Nada Djakovic and others filed lawsuits on 14 November, 1997 and 13 October, 1998 claiming illegal expropriation against the Municipality of Travnik and the Federation Ministry of Defence. Several hearings took place in the course of 1998. The defendants denied both the legal bases of the claims, as well as rejecting the claim for compensation

Since Autumn of 1998 the Municipality of Travnik has been waiting to appoint a new Municipal Public Attorney.[53] Accordingly, the Mayor of Travnik sent a letter to the Court, requesting it not to schedule any hearings in any cases where the Municipality appears in the capacity of either the plaintiff or the defendant, since no one was able to represent the Municipality. As a result of this, all existing cases are on hold, including the Djakovic case, as well as others.

[52] This case appears to be a clear "conflict of interest" case, as the Army of the Federation of Bosnia and Herzegovina is both the contractor and (co)investor in the same project.
[53] *Opcinski javni pravobranilac.*

C. Comments

1. In this case, the real estate was taken illegally, as the expropriation procedures were ignored.**[54]** The basic features pertaining to all expropriations derive from the principles contained in the basic provisions of the law. These features are as follows:

   - Expropriation can be executed solely for the purpose of construction of buildings or carrying out other works of common interest that is determined in the procedure envisaged by law;

   - The object of expropriation can solely be real property that is owned by someone;

   - The beneficiary of the expropriation can be public institutions and, under specific circumstances, an individual (citizen);

   - In order to perform an expropriation, some preparatory activities can be carried out. Also, for the same purpose, a peace of land can be temporarily occupied;

   - The owner has a right to compensation.[55]

2. In cases where the above-listed pre-conditions are not fulfilled, the "expropriation" is considered to be illegal. As already noted, compensation in this case was neither defined nor paid.

3. The owners of the land were not heard despite the fact that this is a legal requirement. The law also requires that having submitted a proposal for expropriation[56] and before a decision on expropriation is ruled on, "a competent municipal administrative body is obliged to hear the owner of the property."[57] No hearing was ever held.

4. The competent Municipal body had other possibilities available to them to inform the owners of the property that an expropriation procedure was ongoing. The Law on General Administrative Procedures provides for substitute notice,[58] other than that which is given to the owners personally. The Municipality, however, made no such efforts.

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[54] The expropriation procedure in the Federation of Bosnia and Herzegovina is contained in the *Zakon o eksproprijaciji* (Law on Expropriation), revised text, published in the *Official Gazette of SR Bosnia and Herzegovina No 12/87,38/89 and 4/90.*

[55] The law provides for the right to *"fair compensation".* The compensation procedure consists of two alternative stages: (1) when the parties' agree on a settlement, or (2) a procedure before the competent court (if a settlement fails to occur).

[56] Article 26 of the Law on Expropriation.

[57] Article 27 of the Law on Expropriation.

[58] Article 84 of the Law on General Administrative Procedure reads:
"If the court deposition needs to be delivered to a person or to several persons either unknown to the organ or who can not be determined as recipients, the court deposition delivery shall be carried out through a public announcement on a bulletin board of the organ which issued the court deposition. The court deposition delivery shall be carried out after 15 days from the day on which the announcement was displayed on the bulletin board, provided that the organ that issued the court deposition did not prescribe a longer deadline. Apart from displaying it on the bulletin board, the organ may publish the announcement in the newspapers, i.e. other media or in another appropriate manner."

5. Ethnic discrimination to plays a part in a legal case once again. Travnik Municipality and the Federation Army clearly took advantage of the fact that the property belonged to expelled Croats, and one can speculate that the reason such action was taken was that the defendants gambled that the landowners would not receive justice in court due to their ethnicity.

VI. M.K. & M.K. CASE (LIVNO)

A. Background to the Trial

MK (hereinafter referred to as Plaintiff 1) and his wife MK (hereinafter referred to as Plaintiff 2), Bosnian Serbs, residents of Livno, were employees of Hrvatska Elektroprivreda d.d. HE[59] Split, branch office Podgradina, Livno (hereinafter referred to as the “Defendant”). Plaintiff 1 had worked as a driver for 27 years, while Plaintiff 2 had worked as a cleaner for 10 years. No disciplinary proceedings had been instituted against them at any time during their employment.

The defendant placed Plaintiffs 1 and 2 -- both Serbs -- on a waiting list ("na cekanje") on 1 August, 1992,[60] with a commitment to pay 70% of their monthly salary. According to the defendant, the reasons for those decisions were the decreased volume of work and the subsequent decreased need for labour. On 1 March 1993, by a subsequent decision, the defendant decided that the need for Plaintiffs 1 and 2 would be assessed every six months. On 1 September,1993, both were put on waiting lists for an unlimited period of time. The defendant justified the decision on “organisational” grounds.

On 15 October, 1996, the defendant cancelled the labour contracts entered into with Plaintiffs 1 and 2. At the same time, the plaintiffs were offered new labour contracts under altered terms and conditions in HE Obrovac (Republic of Croatia), 200 km from Livno.[61] The Plaintiffs were given 15 days to accept the new contracts. It was stipulated that, in the event of their rejecting the new contracts, their employment would cease. The plaintiffs submitted claims for protection of their rights within the time frame given. On 11 November 1996, their claims were refused as being without basis, and the decision on the cancellation of their labour contracts was confirmed.

After the decisions on the cancellation of the labour contracts became final, the Plaintiffs received severance pay without an explanation of how the defendant had arrived at the sum. Other workers who had been previously fired, had received a decision containing clear explanations of the procedure as well as a breakdown of the calculations in the severance packet. For Plaintiffs 1 and 2 the proceedings had all been conducted orally.

[59] *Hidroelektrana* – Hydroelectric power station.
[60] A discriminatory practice widely used throughout Bosnia and Herzegovina during the war years. It was a way of declaring people, in a way, *persona non grata*. In the defendant's branch office in Livno, not a single Serb or Bosniak is employed. All the workforce are Croats. The positions which MK and MK used to hold were filled with other Croats already employed within the company while MK and MK were "na cekanju."
[61] New contracts were attached to the decision on cancellation.

B. The Course of Procedure and Decisions

On 21 January 1997 Plaintiffs 1 and 2 filed lawsuits with Livno Municipal Court requesting annulment of the decision on the cancellation of the labour contracts and their reinstatement. In the course of the preliminary hearing, held on 20 February 1997, the Court of Judge Ozrenka Vidacak, to whom Plaintiff 1's case had been assigned, did not accept the proposal that both claims be processed in one procedure. However it was obvious that both claims had emanated from the same legal and factual grounds.[62] As there were two separate procedures conducted, they are dealt with hereinafter separately.

The Case of Plaintiff 1

The Court, with Judge Bozo Mihajlovic in the chair, held a preliminary hearing on 20 February 1997. The plaintiff claimed that the defendant did not comply with legislation that the Federation had taken over from the Socialist Republic of Bosnia and Herzegovina. The companies and their branches were legally mandated to comply with the Law on Labour Relations of the SR Bosnia and Herzegovina.[63]

The defendant claimed that the plaintiff's allegations were groundless and that the defendant's decisions were lawful. According to the defendant, the reason for taking the contested decisions was to ensure a more suitable political environment for the plaintiffs, as would be offered to them in the Republic of Croatia, particularly in the light of its Law on the Protection of National Minorities. The Court decided to adjourn the hearing for an unlimited period of time.

The next hearing was held 13 months later, on 31 March 1998. The plaintiff repeated the statement he made during the preliminary hearing. The defendant did the same. The Court ruled on the case by rejecting the plaintiff's claim. Despite the procedural rule that a judgement must be produced in writing within 8 days upon the conclusion of the procedure, it took the Court seven months to produce it. The plaintiff received the judgement on 5 October, 1999.

The Court's written assessment was limited to stating the facts as they had occurred, without containing the legal arguments supporting the court's decision, as required. The Court did not address the legality of the cancellation of the labour contract, or the new contract offered in a foreign country. The Court simply established that the plaintiff was stating that the laws in force within the territory of his residence should have been applied *in concreto.* The Court drew a conclusion that the Labour Law of the Republic of Croatia was applicable in this case and was the basis for the cancellation of the labour contract.[64] The Court, however, did not advance a single argument in favour of

[62] Article 181 (1) of the Code of Civil Procedure of the SFRJ *(Official Gazette of the SFRJ No 4/77,36/77, 36/80, 69/82).*
[63] *Official Gazette of the SR Bosnia and Herzegovina No 20/90.*
[64] The article provides for cancellation of labour contract with proposing a new contract. In such a case, the employer has to justify the cancellation, regardless the offer from the altered contract. This provision regulates transfer to other post but not the transfer to the other organisational unit within the company (that was, in this case, 200 km far from the plaintiff's residence). In 1993, defendant had put on waiting list Bosniaks, without bothering to grant them an opportunity to express their consent as well as without offering them new post within the company.

application of Article 114 Paragraph 1 of that Law. This of course was irrespective of the fact that citizens working under Bosnian law, involved in a labour dispute before a Bosnian court against a Bosnian employer, cannot be judged under the labour law of a foreign country.

The plaintiff filed an appeal in due course. The plaintiff urged the Court of second jurisdiction (Livno Cantonal Court) to rule on the case. The Livno Cantonal Court ruled on the case on 25 May, 1999, rejecting the plaintiff's claim and confirming the first jurisdiction judgement. The judgement was delivered to the plaintiff on 31 July, 1999.

The Cantonal Court reasoned the judgement in the same fashion as the Municipal Court. It simply quoted provisions of the Labour Law of the Republic of Croatia, as well as a provision of the Law on Fundamental Rights Arising from Labour Relations (SFRJ).[65] The judgement's reasoning was unclear and contradictory. The Cantonal Court did not take into consideration the factual and legal allegations put forward by the plaintiff. On 30 August, 1999 the plaintiff filed an extraordinary legal remedy revision against the decision of the Livno Cantonal Court to the Supreme Court of the Federation. The plaintiff cited substantial violation of procedural rules and failure to apply the relevant law, as well as the illegal application of a law of a foreign state. The Federation Supreme Court has yet to rule on Plaintiff 1's case.

The Case of Plaintiff 2

Plaintiff 2's case started in the same manner as Plaintiff 1's. The Court, with Judge Ozrenka Vidacak presiding, decided, at the first hearing, to postpone the hearing for an unlimited period of time. The second hearing was scheduled for 23 August, 1999 - two and a half years after the first hearing. When the plaintiff attended the hearing, judge Vidacak advised the plaintiff to withdraw the suit to avoid further expense, since the case would share the same fate as that of her husband's. Official minutes of the hearing were not made, and in addition to this, on 23 August 1999, judge Vidacak decided to halt proceedings. This was in direct violation of Article 216 of the SFRY Code of Criminal Procedure.[66]

The plaintiff did not appeal against this decision, but made the Court aware of her interest to proceed with her suit by written submission.[67] Despite the fact that the plaintiff filed the lawsuit three and a half years ago, the procedure has never been completed.

C. Comments

The Case of Plaintiff 1

1. Many cases involving members of minority ethnic groups were assigned to Judge Mihajlovic (Serb), who had also been put on a "waiting list"[68] and reinstated after four years. This raises some concerns as to his independence. One can confidently speculate that the reason minority cases were given to Judge Mihajlovic was that it

[65] *Official Gazette of the SFRY No 60/89, 42/90.*
[66] *Official Gazette of the SFRY No 26/86, 74/8757/89.*
[67] Otherwise the lawsuit would have been considered withdrawn.
[68] See footnote 60 for a description of the waiting list system.

gave him the opportunity to "prove his loyalty" to both the Court and his HDZ political paymasters in Livno Canton.

2. The defendant claimed that the reason for making the contested decisions was to ensure a more suitable political environment for the plaintiff in the Republic of Croatia, in the light of its Law on the Protection of National Minorities. This appears totally disingenuous, for obvious reasons relating to the systematic human rights violations that Serbs experience in Croatia.[69]

3. The Court decided to adjourn the hearing for an unlimited period of time, despite the fact that labour disputes are considered to be urgent matters.[70] The Court ruled on the case by rejecting the claim on 31 March 1998, 13 months after the preliminary hearing was held. The Plaintiff received the judgement on 5 October, 1999, seven months later. Both situations point at unnecessary and undue illegal delays.

4. The Court's reasoning and its subsequent judgement concerned itself simply with establishing the facts, in a manner contrary to what is legally prescribed for a judgement.[71]

5. The Cantonal Court, in its judgement, proved itself to be as legally, politically and morally inept as the Livno Municipal Court.

The Case of Plaintiff 2

1. Judge Ozrenka Vidacak decided to adjourn the hearing for an unlimited period of time, which is not acceptable practice when a Court is to rule over a labour dispute. The second hearing was scheduled for 23 August, 1999, two and a half years after the first one - another unacceptable delay. The plaintiff filed a lawsuit three and a half years ago but the procedure has never been completed.

2. Since Judge Vidacak suggested to the plaintiff that she withdraw the suit, it is obvious that the Court pre-determined its ruling against the plaintiff, and that the hearings themselves were mere formalities.

3. No official record or minutes of the hearing was made, although these are required by law.[72] Eventually, on 23 August, 1999, Judge Vidacak decided that the proceedings be suspended, thereby acting in contravention of Article 216 of the SFRY Code of Civil Procedure.[73]

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[69] See "Second Class Citizens: The Serbs of Croatia," Human Rights Watch, Vol. 11, No. 3, March 1999.
[70] Article 434 of the SFRY Code of Civil Procedure.
[71] Art. 338 of the SFRY CCP.
[72] Art. 123 of the SFRY Code of Civil Procedure (*Official Gazette of the SFRY No 4/77, 36/77, 36/81, 69/82*.
[73] The procedural conditions provided for in Article 216 have not been fulfilled. Suspension of Proceedings is applied when both parties reach a settlement of the dispute, or when both parties fail to appear at the preparatory hearing or at the main hearing, or when the parties which are present at the court do not wish to discuss, or when a party, which has been properly summoned fails to appear before the court, and the other party proposes suspension, and if only the plaintiff appears before the court but he does not demand ruling in default, the suspension goes into effect on the day when the parties notify the court.

4. In 1993, the defendant put all Bosniaks on a waiting list, without offering them a new post within the company.

5. All the above clearly constitutes a departure from the standards of even-handed justice required of those who occupy judicial office. These two cases prove the Court in question is strongly biased in the favour of Croat plaintiffs or defendants.

VII. LJILJANA TABAK AND OTHERS CASE (TRAVNIK)

A. Background

During the war, Ljiljana Tabak and 8 other occupation right holders (ORHs) of socially-owned apartments were displaced from the Bosniak-controlled Municipality of Travnik. Their apartments were temporarily allocated to other people by the allocation right holder, Travnik Medical Centre, having the (ultimate) intention to take those apartments away from the ORHs.[74] When the defendants left their residence, the competent administrative body of the Municipality of Travnik did not declare the apartments temporarily abandoned.

B. Course of the Proceedings

The Travnik Medical Centre – OOUR[75] Bolnica Travnik (the plaintiff) filed lawsuits on 24 April 1997 against Ms. Ljiljana Tabak and 8 others (the defendants) intending to cancel their contracts on the use of their apartments. All the defendants were Croats. The plaintiff, citing Article 49:1 of the Law of Housing Relations,[76] wanted to cancel the occupancy rights due to the absence of the occupancy right holders. Since the defendants were absent and their addresses were unknown, the Court appointed an interim representative who was to undertake actions on their behalf. After the formal proceedings, the Court delivered - in almost all 9 of the cases verdicts honouring the plaintiff's claims, constituting an obligation for defendants to hand over the empty apartments to the plaintiff as well as to pay 100 DEM for trial expenses.

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[74] Throughout Bosnia and Herzegovina in the war and post-war period, allocation right holders (i.e. owners) of socially-owned apartments have had a great interest in keeping ownership over the apartments and preventing the occupancy right holders from attaining the rights to purchase the apartments under a privatisation process. The main reason for this was not necessarily ethnic or political background or allegiance, but with the fact that if an occupancy right holder permanently loses his right to the apartment, then the allocation right holder is enabled to subsequently sell the apartment on the open market. Socially-owned apartments will often sell for prices up to 10 times higher than that which the occupancy right holder would have the right to buy the apartment.

[75] OOUR – *Osnovna organizacija udruzenog rada* – Basic organization of associated Labor – type of company known in the Former Yugoslavia's socio-economic system. These organizations were components of the SOUR – *Slozena organizacija udruzenog rada* – Combined organization of associated labor.

[76] *Zakon o stambenim odnosima* (Official Gazette of the SR Bosnia and Herzegovina No 14/84). The Article referred to herein provide for permanent loss of the occupancy right in the case that the occupancy right holder did not use the apartment for more than 6 months. This provision regulated situations that might have occurred in peace-time. During the war, of course, many citizens abandoned their apartments, or were forcefully expelled, rendering all applications of this Law disingenuous.

The interim representative filed appeals. The second jurisdiction Court[77] honoured some of the appeals, repealing 4 verdicts and returning the cases for retrial before the first jurisdiction (Municipal) court.[78] After that, only 1 out of the 4 cases, that of Ljiljana Tabak, was decided in her favour.

In the meantime, a number of laws in this field were passed,[79] all protecting the occupancy right holders, who were almost exclusively refugees and displaced persons. Since Niko Gaso, one of the defendants, in the meantime died in a car accident, the procedure before the court was halted. His wife, who is still a refugee, faces the continuing problem of how to move back into the apartment. Upon her request, the plaintiff made a decision whereby the occupancy right was transferred from the deceased to her. However the Travnik housing authority is openly unwilling to enter into a contract on the use of the apartment with her, justifying their refusal on the tenuous grounds that the defendant's wife has not taken up occupancy of the apartment.

C. Comments

1. In this case, the owners of the apartments tried to keep the current temporary occupants in the apartments without any permanent occupancy rights so as to prevent the legal occupancy right holders from being in a position one day to be able to buy the apartments under the privatisation process. The fact that the occupancy right holders were all Croats only suggests, as in the previous Travnik case, that the apartment owners estimated that the Courts would favour them over Croat defendants.

VIII. CONCLUSION

Systematic discrimination on the basis of ethnicity has been a factor of Bosnian justice since the war years. Rather than openly use ethnicity as grounds, the courts and governmental agencies often mask their prejudices in dubious rulings, or in unexplained delays in the procedure.

Many international community observers in Bosnia and Herzegovina, when hearing of violations committed by those working within the judicial and administrative system, call for newer, tighter regulations and stricter laws, as well as new oversight bodies. But what is often forgotten is that, on paper, many of Bosnia and Herzegovina's legal practices are rooted in western legal traditions, in particular the Austrian *Allgemeine Burgerliches*

[77] The Travnik Cantonal Court.
[78] The remaining 5 cases are still within the Cantonal Court appeals procedure.
[79] Those imposed by the Office of the High Representative for Bosnia and Herzegovina (OHR) were of particular importance (The Law on Cessation of Application of the Law on Abandoned Apartments, *Official Gazette of the Federation of Bosnia and Herzegovina No 11/98*; the Law Amending the Law on Cessation of Application of the Law on Abandoned Apartments, *Official Gazette of the Federation Bosnia and Herzegovina No38/98*; Law Amending the Law on Cessation of Application of the Law on Abandoned Apartments, *Official Gazette of the Federation of Bosnia and Herzegovina No 12/99*; Law Amending the Law on Cessation of Application of the Law on Abandoned Apartments, *Official Gazette of the Federation of Bosnia and Herzegovina No 18/99*; Law Amending the Law on Cessation of Application of the Law on Abandoned Apartments, *Official Gazette of the Federation of Bosnia and Herzegovina No 27/99*).

Gesetzbuch and the *Code Civile Napoleon*.[80] As a result, many of Bosnia and Herzegovina's laws and administrative procedures are good. As seen in all the preceding cases, what is lacking is not an adequate legal framework, but rather the political will to follow the law as written. Imposing new laws and regulations, or creating new oversight bodies will have no effect, provided the individuals in the system follow an agenda based on national differences.

IX. RECOMMENDATIONS

General:

1. The Office of the High Representative (OHR) and the UN Mission's Judicial System Assessment Programme (JSAP) should continue to actively investigate judges, prosecutors, court officials, and others in the administrative apparatus who are suspected of acting in contravention of the law. In cases where evidence of irregularities is uncovered, then the authorities of Bosnia and Herzegovina should be instructed to remove such officials, or OHR should remove them themselves;

Specific:

2. The UN's JSAP should investigate the evidence from the cases in this report. JSAP should examine the activities of the following individuals and determine whether their actions reflect the needed competency to remain in their current positions:

   (a) Judge Mirko Bralo Livno;
   (b) Judge Ozrenka Vidacak Livno;
   (c) Jakov Dujic, Municipal Public Prosecutor in Livno;
   (d) Andrija Kolak, President of Livno Cantonal Court;
   (e) Vukasin Boskovic, President of the Basic Court in Banja Luka;
   (f) Nenad Balaban, President of the District Court in Banja Luka.

3. OHR and JSAP should examine the Travnik Municipality and determine why it has been able to successfully forestall all pending litigation simply by failing to appoint a Municipal Attorney. They should set a 30 day deadline for appointment of a Municipal Attorney.

[80] See "Rule Over Law: Obstacles to the Development of an Independent Judiciary in Bosnia and Herzegovina," International Crisis Group Balkans Report No. 72, 5 July 1999, p.25.