



RULE OF LAW IN PUBLIC ADMINISTRATION:

Confusion And Discrimination
In A Post-Communist Bureaucracy



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EXECUTIVE SUMMARY

To date, little attention has been paid to the role public administration plays in enforcing or violating the human rights and civil liberties of Bosnia and Herzegovina's citizens. Instead, much effort is concentrated on reforming the court system. Yet, the justice system in Bosnia and Herzegovina (BiH) comprises far more than the court system. It also consists of "administrative justice," where small-scale rulings by seemingly minor municipal and cantonal officials in a variety of public administrative organs, exercise a huge influence on the lives and legal rights of ordinary citizens. Many of these rulings prevent citizens from exercising their legal rights and gaining access to due process of law.

In BiH relatively few people come into contact with a court of law. In contrast, the system of public administration sees a constant flow of individuals through its various layers. Whether obtaining birth certificates or identity papers, registering a car, completing property documentation, obtaining a telephone line, or attempting to acquire the numerous permits and certificates required by the complex and often non-transparent BiH administrative system, virtually all BiH citizens queue in front of municipal and cantonal officials at some point. It is there that the citizenry and government meet, and it is there that the vast majority of legal abuses occur, as government officials – protected by a wall of seemingly incomprehensible laws and regulations – intimidate ordinary people.

Public administration in BiH is a labyrinth of pre-war, wartime and post-war institutions, often exercising overlapping administrative authority. As problematic as they may have been, these practices were exacerbated by wartime prejudices and bitterness. The large, cumbersome, bureaucratic apparatus appears to the average citizen to be overly complex, intimidating, and non-user-friendly. The techniques and technology of public administration place people in Kafkaesque situations when attempting to seek justice through the appropriate administrative channels. The bureaucrats who oversee "administrative justice" – most of whom operate on the municipal level – appear prone to misinterpret laws and mistreat individuals. Often, these minor bureaucrats dispense a form of justice that contradicts written law and accepted standards of legal practice.

A number of factors influence the performance of the BiH public administration services. The administrative organs operate within a complicated constitutional and governmental structure that often proves confusing to both legal professionals and bureaucrats alike. Federation Mayors wield more authority in their municipalities than their two counterparts in RS municipalities – the President of the Municipal Assembly and the President of the Executive Board. The power of Mayors in the Federation is diluted by the strong authority given to cantonal officials.

Procedures followed by public administrative bodies often leave citizens in a form of legal limbo. Bureaucrats burden citizens with arbitrary demands to produce documents, most of which already

exist elsewhere as public records. Petitions and claims are often ignored as citizens face a state wall of "administrative silence," a legal concept often used as a weapon by bureaucracies against ethnic minorities and other petitioners who attempt to exercise their rights. Many primary and secondary jurisdiction organs are clogged by the refusal of appeals bodies to re-visit and investigate cases, as they instead prefer to return appeals back to the originating body, with instructions to reinvestigate the procedure. In this manner numerous cases float back and forth on the administrative procedural ladder, before finally ending up back at the organ of primary jurisdiction.

Resources in public administration are scarce and the supply of experienced and qualified civil servants is limited. Both in the judiciary and municipal administration, many pre-war officials have been replaced by inexperienced and untrained political appointees. Often displaced persons hold official positions and take out their aggressions on ethnic minorities. When coupled with the woeful under-funding of municipal departments, arbitrariness, inertia, and corruption are endemic.

Political cronyism has a severe impact on the functioning of public administration. Many local administrative positions are filled with "apparatchiks" appointed by the ruling political party. These appointments pay little heed to qualifications or experience. These politically appointed officials answer almost exclusively to their municipal level party bosses. Protected by layers of political appointees, the local party boss can effectively rule untouched by any appeals process, shielded from the public by the enormous bureaucracy. The pervasive nepotism and the tendency to use contacts to achieve ones rights has become endemic. The standards and practices of the BiH civil service system are all but ignored.

The presence of parallel, illegal institutions creates a duality of law, where rights earned under legislation passed by former, or present day illegal authorities, are not recognised in other areas. This is primarily the case with the derivatives of the former Croatian Republic of Herzeg-Bosna. Weak inspection methods and the susceptibility of many inspectors to succumb to bribery, or to work outside the bounds permissible by law, is another feature of post-Dayton BiH public administration. In addition to the public administration, the various public utility companies maintain monopoly positions, in which they reproduce most of the inefficiencies outlined above.

The unsatisfactory functioning of municipal and cantonal administrations has a negative effect on both the legal system and the rule of law, and drastically affects the administration's main role — the implementation of laws and regulations. Many laws go partially or entirely un-enforced.

This report makes specific recommendations to strengthen the functioning of public administration. By and large these build on already-existing civil service procedures on the books, both in Republika Srpska and the Federation. These include: enforcing existing civil service laws, enforcing existing hiring procedures, increasing the degree of governmental "user-friendliness," increasing public access to records and documents, de-linking the public administration financing from political party control, and strengthening the municipal oversight system under existing JSAP authorisation.

Sarajevo, 15 December, 1999



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Your freedom is just an illusion, Mr. K! Lower officials never pass a final ruling because that right is reserved for those high above. And the High Aboves are unreachable for you and me and for all of us...

Franz Kafka, "The Trial"

I. INTRODUCTION

To date the international community has paid little attention to the role public administration plays in enforcing or violating the human rights and civil liberties of Bosnia and Herzegovina's citizens. Instead, the majority of organisations working in the area of legal reform concentrate their time and efforts on the judicial system. Yet, as this report will demonstrate, the justice system in Bosnia and Herzegovina (BiH) comprises far more than the judicial system. It also consists of "administrative justice," where small-scale decisions and rulings by seemingly minor municipal and cantonal officials in a variety of public administrative organs, exercise a huge influence on the lives and legal rights of ordinary citizens. Many of these rulings prevent citizens from exercising their legal rights and gaining access to due process of law.

In BiH relatively few people come into contact with a court of law. In contrast, the system of public administration sees a constant flow of individuals through its various layers. Whether obtaining birth certificates or identity papers, registering a car, completing property documentation, obtaining a telephone line, or attempting to acquire the numerous permits and certificates required by the complex and often non-transparent BiH administrative system, virtually all BiH citizens queue in front of municipal and cantonal officials at some point. It is there that the citizenry and government meet, and it is there that the vast majority of legal abuses occur, as government officials – protected by a wall of seemingly incomprehensible laws and regulations – intimidate ordinary people. The bureaucrats who oversee "administrative justice" – most of whom operate on the municipal level – appear prone to misinterpret laws and mistreat individuals. Often, these minor bureaucrats dispense a form of justice that contradicts written law and accepted standards of legal practice.

Public administration in BiH is a labyrinth of pre-war, wartime and post-war institutions, often exercising overlapping administrative authority. Public administration in BiH has inherited the single-party practices left over from the previous Yugoslav system. As problematic as they may have been, these practices were exacerbated by wartime

prejudices and bitterness. The large, cumbersome, bureaucratic apparatus appears to the average citizen to be overly complex, intimidating, and non-user-friendly. The techniques and technology of public administration place people in Kafka-esque situations when attempting to seek justice through the appropriate administrative channels.

A number of factors influence the performance of the BiH public administration services. First, the administrative organs operate within a complicated constitutional and governmental structure that often proves confusing to both legal professionals and bureaucrats alike. Federation Mayors wield more authority in their municipalities than their two counterparts in RS municipalities – the President of the Municipal Assembly and the President of the Executive Board. The power of Mayors in the Federation is diluted by the strong authority given to cantonal officials. As a result, many citizens are left wondering with whom lies the responsibility for organising the effective functioning of the public administrations.

Procedures followed by the public administrative bodies often leave many citizens in a form of legal limbo. The tendency to burden citizens with arbitrary demands to produce all sorts of documents, most of which already exist elsewhere in the public records, is commonplace. In certain areas, petitions and claims are ignored entirely, and citizens face a state wall of "administrative silence." Initially envisaged as a check on the tardiness and inefficiency of public administrative organs, the legal concept of "administrative silence" is now used as a weapon by bureaucracies against ethnic minorities and other petitioners who attempt to exercise their rights. Many primary and secondary jurisdiction organs are clogged by the refusal of appeals' bodies to re-visit and investigate cases, as they instead prefer to return appeals back to the originating body, with instructions to reinvestigate the procedure. In this manner numerous cases float back and forth on the administrative procedural ladder, before finally ending up back at the organ of primary jurisdiction.

Resources in public administration are scarce and the supply of experienced and qualified civil servants is limited. Both in the judiciary and municipal administration, many officials have been ethnically cleansed from their pre-war municipal administrations, to be replaced by inexperienced and untrained political appointees. Often displaced persons hold official positions and take out their aggressions on ethnic minorities. When coupled with the woeful under-funding of municipal departments, arbitrariness, inertia, and corruption are endemic. So too is the arrogance inherited from officials in the old communist era bureaucracy.

Political cronyism has a severe impact on the functioning of public administration. Many local administrative positions are filled with "apparatchiks" appointed by the ruling political party. These appointments pay little heed to qualifications or experience. Furthermore, politically appointed officials answer almost exclusively to their municipal level party bosses. Protected by layers of political appointees, the local party boss can effectively rule untouched by any appeals process, shielded from the public by the enormous bureaucracy. The pervasive nepotism and tendency to use contacts to achieve ones rights – always a feature of administration in Titoist Yugoslavia – has become so endemic in the post-war system as to make it almost necessary to realise some rights.

The presence of parallel, illegal institutions creates a duality of law, where rights earned under legislation passed by former, or present day illegal authorities, are not recognised in other areas. This is primarily the case with the derivatives of the former Croatian Republic of Herzeg-Bosna. Weak inspection methods and the susceptibility of many inspectors to succumb to bribery, or to work outside the bounds permissible by law, is another feature of post-Dayton BiH public administration. In addition to the public administration, the various public utility companies maintain monopoly positions, in which they reproduce most of the inefficiencies outlined above.

The unsatisfactory functioning of municipal and cantonal administrations has a negative effect on both the legal system and the rule of law, and drastically affects the administration's main role – the implementation of laws and regulations. Many laws go partially or entirely unenforced. Non-enforcement of administrative rulings – particularly those that centre on ethnic minorities – has given rise to a veritable army of international community officials and NGO's that constantly battle administrative organs that are acting under the instructions of their political paymasters.

Post-war public administration in Bosnia and Herzegovina finds itself at a crossroads between an antiquated mechanism that protects state authorities on the one hand, and a modern state institution that serves the citizens and protects their rights on the other.

This paper studies public administration in BiH, focusing on the primary level of interface between the vast majority of citizens and the government: the municipal and cantonal levels of government. This paper is the second report of the European Commission-funded ICG project "Promoting Justice in Bosnia and Herzegovina." The data presented in this report is provided largely by ICG's partner organisations based throughout Bosnia and Herzegovina. These partner organisations, all of which are Bosnian non-governmental organisations, provide assistance to BiH citizens, including free legal services.

II. AN OVERVIEW OF PUBLIC ADMINISTRATION IN BIH

Public administration in BiH functions in three separate entity-based systems, where the central State has little or no influence.¹ The entities are, for all intents and purposes, states within a state. In the Federation the large degree of cantonal authority makes each canton a form of state within a state within a state. The result is varying degrees of power for the different public organs in different municipalities in different cantons and in different entities, as subject to the political dictates of the ruling political party.

Direct interaction between individuals and the public administration is most common and fundamental at the municipal level. For this reason this report concentrates primarily on municipal administration. The municipal level is where government ministries deal with the vast majority of individual requests. In addition to government offices, state-owned utility companies deal with individuals via their local municipal branches (Elektroprivreda, Sarajevogas, PTT, Vodovod i Kanalizacija, etc.). Municipal record offices ("Maticni Uredi," cadastre, land registry, etc.) also function at the municipal level.² The vast majority of an individual citizen's contact with government is at the local level.

The Constitution of Bosnia and Herzegovina, Annex 4 of the General Framework Agreement for Peace, provided for the complex internal governmental structure of Bosnia and Herzegovina. Each legal entity - the Federation and Republika Srpska – has a constitution that establishes different internal governmental structures. In the Federation, government and public administration are organised on the entity, cantonal and municipal levels. In Republika Srpska, there are only two levels – the entity and the municipalities.

A. Central Government

¹ This de-facto three entity system is discussed in the ICG paper *Is Dayton Failing? Bosnia Four Years After the Peace Agreement*, ICG Balkans Report No. 80, 28 October, 1999, pp.23-34, 55-64.

² For the purposes of setting the parameters on the scope of this study, the law enforcement agencies of the various Ministries of the Interior are not included. For an analysis of the performance of the various police forces in post-war BiH, see *Is Dayton Failing?*, pg. 55.

The central government is concerned primarily with external relations,³ and to date has proven unable to regulate the organisation and functioning of the entities. The central government has no army, no police force, no effective means to raise taxes, and relies on the entities for its budget.⁴ The BiH Constitutional Court exercises jurisdiction only in cases of disputes between the entities on interpretation of the constitution, and on deciding whether entity laws contravene the BiH Constitution.⁵ The Constitutional Court also acts – in theory – as an appellate court for appeals from any other court in BiH on strictly constitutional matters. This role of the court was used for the first time only on 24 September 1999,⁶ and it remains to be seen if the entities will honour and implement the Court's rulings.

The real "government" of the BiH State is the Council of Ministers.⁷ The Dayton Peace Agreement gave the Council of Ministers the responsibility to "carry out the policies and decisions of BiH"⁸ in the areas where the state has responsibility and jurisdiction. The Law on the Council of Ministers⁹ provided for only three ministries that are supposed to cover the 10 responsibilities of the joint institutions.¹⁰ The work of the Ministries is financed from the budget allocated for the central institutions of BiH, which is adopted by the Parliamentary Assembly, but with, of course, the approval of the entities. The three Ministries have to rely on the entities' institutions to enforce their rulings. A recent BiH Constitutional Court ruling declared the current composition of the Council of Ministers unconstitutional.¹¹ Divisions within the Council of Ministers are also evident,¹² and are forcing a national debate about the future role of the Council. Leading opposition figures

³ Annex 4, Article 3:1 of the General Framework Agreement for Peace in BiH outlines the responsibilities of the joint institutions of BiH: a) Foreign policy, b) Foreign trade policy, c) Customs policy, d) Monetary policy, e) Finances of the institutions and for the international obligations of BiH, f) Immigration, refugee, and asylum policy and regulation, g) International and inter-entity criminal law enforcement, including relations with Interpol, h) Establishment and operation of common and international communications facilities, i) regulation of inter-entity transportation, and j) Air traffic control.

⁴ With the exception of revenue from passports issued at BiH diplomatic/consular missions abroad. However not all this revenue may be finding its way to the state coffers. Recent controversy surrounds BiH Ambassador in Ljubljana, Branko Petric, who is allegedly offering Bosnian Serbs passports at a cheaper price than is regulated, and then processing the passports illegally through colleagues in the MUP in his native Derventa, where passports are cheaper again, thus earning Petric and his colleagues 60 DM illegally from each issuance. See "Petricevi elementi za zaradu: Srbi - Ljubljana - Derventa," *BiH Dani*, 10 December, 1999, pg. 12.

⁵ Annex 4, Article VI.

⁶ "Prvi put odlucili o zalbama gradana," *Dnevni Avaz*, 27 September 1999, pg. 3.

⁷ The majority of the functions of the other BiH state institutions, the BiH Presidency and Parliamentary Assembly, are concerned with regulating their own bureaucracy and finances and implementing the rulings of the other. See *Is Dayton Failing?*, Annex 4, pg.23.

⁸ Annex 4, Article V:4(a).

⁹ *Sluzbeni glasnik BiH*, 4/97.

¹⁰ Ministry of Foreign Affairs, Ministry for Civil Affairs and Communications, and the Ministry for Foreign Trade and Economic Affairs.

¹¹ Court ruling of 14 August, 1999, *Sluzbeni glasnik BiH*, 16/99, 28 September, 1999. At a meeting of the Council of Ministers on 8 December, 1999, the Council was unable to come to a decision on the reforming of the Council with respect to the Constitutional Court ruling, and the Council have forwarded the matter to the Presidency for advice. Under the Court's ruling, the Council has until 28 December, 1999, to reform. The Court decided that the BiH Constitution allows for only one Chairperson of the Council, and not the two Co-Chairs, plus Deputy Chair, which currently exist.

¹² The RTV BiH debate on 12 October, 1999 between the two co-chairpersons of the Council of Ministers, Haris Silajdzic and Svetozar Mihajlovic, and the deputy-chairperson Neven Tomic could not hide the animosity between the highest officials of the Council of Ministers. Similarities with the debates of the then national leaders (Izetbegovic, Karadzic and Kljuic) throughout 1991 and the beginning of 1992 were obvious.

have called for the resignation of the Council of Ministers.¹³ With regards to the administrative procedures to be followed by the BiH state Ministries, there is no law on administrative procedure at the State level, thus crippling much of their work, and crippling the ability of aggrieved parties to question their work.

There is a continuing lack of co-operation between law enforcement, administrative and judicial authorities of both entities. The ability of citizens, police and court authorities to access documents and information from a different entity is highly problematic. All told, the central government is unable to function as a mediating force between entities or their respective citizens, and plays little role in the life of the average BiH citizen.

B. Republika Srpska

Government and public administration in Republika Srpska is organised in a relatively straightforward manner. The Prime Minister and his cabinet Ministers govern via a series of ministerial branch offices at the local level. According to Article 97 of the RS Constitution, the RS government is responsible for organising public administration. The various ministries are responsible to implement the laws and regulations adopted by the National Assembly of the RS. There are 20 government ministries in the RS for a population of just over 1 million.¹⁴ Each ministry is accorded powers to implement its respective portfolio, such as issuing statutes, decrees and regulations.

The principle of local self-government in Republika Srpska is enshrined in the Law on Territorial Organisation and Local Self-Government.¹⁵ Under this system, the RS is divided into 63 municipalities.¹⁶ This law requires the RS Government to transfer certain powers to municipalities in order to facilitate easier citizen access to public administration. To this end, some of these powers are devolved directly to the municipalities, depending on the circumstances of each individual municipality.¹⁷ Authority is also exercised through the establishment of ministerial branches (*odsjek Ministarstva*) in a municipality. Branches of a ministry are responsible directly to their Minister. In regard to practices and procedures, RS still uses the old 1986 Yugoslav Law on General Administrative Procedure.¹⁸

The two main bodies of municipal government in the RS are the Municipal Assembly and the Assembly's Executive Board. The Municipal Assembly is the legislative branch, comprising between 25 and 70 elected councillors.¹⁹ Each Municipal Assembly has a

¹³ "Zasto sam trazio smjenu Vijeca Ministara," interview with Zlatko Lagumdžija, President of SDPBiH, *Dnevni Avaz*, 15 October, 1999, pg. 5.

¹⁴ Defence, Interior, Justice, Finance, Reconstruction and Development, Transport and Communications, Education, Science and Culture, Trade, Industry, Agriculture, Health, Labour and Social Protection, Refugees and Displaced Persons, Information, Combatants and War Victims, Urbanisation and Housing, Foreign Trade, Religion, Sports. There are a further 20 directorates and entity-level departments that cover areas from meteorology to protection of cultural heritage.

¹⁵ Zakon o teritorijalnoj organizaciji i lokalnoj samoupravi, *Sluzbeni glasnik RS*, 11/1994.

¹⁶ Zakon o teritorijalnoj organizaciji i lokalnoj samoupravi (with latest amendments in *Sluzbeni glasnik RS*, 6/97), Article 11. Up until mid-1999, the international community refused to recognise two municipalities, Milici and Skelani. The Provisional Election Commission has decided that municipal elections can take place in Milici under PEC Rules and Regulations in April 2000, thereby legitimising Milici. Skelani was formally abolished by a decision of the High Representative on 10 December, 1999, and the territory of the former Skelani is to be re-integrated back under the authority of Srebrenica, *Network Bosnia Daily*, Issue 1.61, 10 December, 1999.

¹⁷ Zakon o teritorijalnoj organizaciji i lokalnoj samoupravi, Article 16.

¹⁸ Zakon o opstem upravnom postupku, *Sluzbeni list SFRJ*, 47/86.

¹⁹ Zakon o teritorijalnoj organizaciji i lokalnoj samoupravi, Article 28. The draft OSCE/OHR BiH Election Law has proposed regulating the numbers of councillors which can be elected to Municipal Assemblies and Federation Municipal Councils on the basis of how many registered voters exist for that municipality.

President and at least one Vice-president.²⁰ The President of the Assembly is often described by international community officials in BiH as the "Mayor" of the municipality. Yet this is incorrect. RS municipalities do not have Mayors. Many of the powers associated with Mayors in western countries, and indeed in the Federation, lie in the hands of the President of the Executive Board of the Municipal Assembly.²¹

The Executive Board is the executive arm of the municipal government, which "monitors the work of the local administration in the municipality, [and] annuls or revokes documents of the local administration in the municipality which are in contravention to the law or the municipal decisions."²² Although the Assembly has the authority to dismiss the Executive Board,²³ the real power in an RS municipality depends more on the power and influence the President of the Executive Board or the President of the Assembly hold in the ruling political party. In Modrica, for example, Municipal Assembly President Novak Gojkovic is also the President of the local SDS branch, and is unquestionably the leading figure in the municipality, answering directly to SDS national HQ. The President of the Executive Board works for Gojkovic. Next door in Doboj, the roles are reversed, with Municipal Assembly President Mirko Stojcinovic subservient to Executive Board President Boro Paravac, who in turn is the executor for Doboj SDS President Milan Ninkovic.²⁴

Municipalities are allowed to specify, in their individual Statutes, how many members and how many portfolios the Executive Board will have. This can vary anywhere from five to fifteen members, including voluntary members without portfolios. However, the typical Executive Board will include portfolios for Finance, Social Affairs and Industry. Following the 1997 municipal elections, many Executive Boards increased in size in an effort to implement stringent OSCE-backed Provisional Election Commission Rules and Regulations, which required proportional representation of ethnic minorities and opposition political parties.²⁵

The real link between the Municipal Assembly and the Executive Board is the Municipal Secretary, who is "responsible for his work and the work of the local administration to the Municipal Assembly, the President of the Municipal Assembly and the Executive Board."²⁶ Although nominally the most powerful executive officer in the municipality, in reality the Municipal Secretary, who is both Secretary of the Assembly and of the local administration in the municipality, plays a subservient role to both the Presidents of the

²⁰ Zakon o teritorijalnoj organizaciji i lokalnoj samoupravi, Article 29. Many RS municipalities have changed their Municipal Statutes to create extra Vice-presidential positions, often for ethnic minorities, in line with PEC Rules and Regulations of the 1997 municipal elections. An analysis of the effectiveness or otherwise of these minority officials is presented in *Is Dayton Failing?*, pg. 13.

²¹ Zakon o teritorijalnoj organizaciji i lokalnoj samoupravi, Article 34.

²² *Ibid.* The Executive Board also is tasked with "carrying out rulings and other documents of the municipality."

²³ *Ibid.*, Article 27.

²⁴ See "Bauk fantonskog filma kruzi Dobojem, novinar snima, gradonacelnik samara: "Glavne uloge" u filmu "Korupcija u Doboju" igraju Ninkovici, Stojcinovic, Paravac, Vasiljevic, Krulj..." *Nezavisne Novine*, 1 December, 1999, pg. 26.

²⁵ Article 235.5(b).4 of the 1997 PEC Rules and Regulations mandated "minority parties" to be represented in levels of the municipal government. In the above mentioned example of Doboj, the three positions on the Executive Board which were reserved for representatives of Republican ministries in Doboj were removed from the Municipal Statute by the SDS-controlled Municipal Assembly in March 1998. This followed the rise to power of the new SPRS/SNS/SNSD government in RS, and a subsequent purge of SDS officials in the Republican ministries. SDS added a new portfolio of "Secretary for Inter-Entity Economic Co-operation" to the Executive Board for the Bosniak KCD BiH, whose votes ensured both the change in the Statute and the election of the new Executive Board. To make room for the Bosniak KCD BiH coalition, Modrica's Executive Board currently has *three* Vice-Presidents.

²⁶ Zakon o teritorijalnoj organizaciji i lokalnoj samoupravi, Article 37.

Executive Board and the Assembly.²⁷ Municipalities are allowed, pursuant to provisions laid out in their Municipal Statutes, to regulate the number of local communities (*mjesne zajednice*) in the municipality, which represent the lowest form of government in RS. The local communities fulfil a number of functions for the municipal administration, particularly with regards to maintenance of population records, and distribution of aid to displaced persons.²⁸

C. The Federation

The Constitution of the Federation endorses decentralisation as the means by which Croats and Bosniaks can live together. This decentralisation is embodied through the cantonal system, where each ethnic group controls a number of cantons, and where two ethnically mixed cantons, Middle-Bosnia (6) and Herzegovina-Neretva (7) have cantonal constitutions that contain veto structures to prevent one side from dominating the other.²⁹ The result of this decentralisation is that illegal parallel institutions – evidenced most graphically by national emblems, flags and letterheads of the war-time political structures – thrive throughout both cantons.

The Law on Administration in the Federation³⁰ creates the organisational and functional structure of public administration in the entity. According to this law, public administration is distributed among different levels: federal, cantonal and municipal. In many respects cantons act as "states within a state," with broad powers.³¹ The general rule, laid down in the Constitution of the Federation, stipulates that cantons have all responsibilities that are not expressly granted to the Federal Government.³² However, the Constitution entrusts cantons explicitly with responsibility for policing, education, housing policy, land usage and social welfare.³³

The post-war constitutional shake-up required the establishment of countless new ministries, new premises, engagement of new employees and the acquisition of additional equipment. As a result, today's Federation Government consists of 12 ministries³⁴ and, as in RS, numerous other directorates and departments attached to corresponding ministries.³⁵ All cantonal constitutions elaborate on cantonal jurisdiction and are – in theory – in accordance with the Federation Constitution. Some invoke the GFAP in their

²⁷ Intense multi-party negotiations on the distribution of local government positions followed the 1997 municipal elections in Teslic. It was made clear to OSCE mediators, by the SDS/SRS block, that although they were not against the SPRS taking positions in the local government, the position of Municipal Secretary was non-negotiable, and would go to the SRS. SPRS wished only for the Municipal Secretary position.

²⁸ Zakon o teritorijalnoj organizaciji i lokalnoj samoupravi, Articles 23, 24.

²⁹ Rulings that concern the "vital interests" of any of the constituent peoples need the approval of the majority of both the Bosniac and Croat Delegates of the Federation House of Peoples. This provision may be invoked by a majority vote of either the Bosniac or the Croat Delegates, Constitution of the Federation of BiH, IV:4 Decision of the legislature, Article 18. If the majority of the remaining Delegates oppose invoking this provision, a Joint Commission of Bosniac and Croat delegates will decide, within one week, how to resolve the issue. Failing progress, the question shall be determined by the Federation Constitutional Court. Similar provisions are in place in both the Constitutions of Canton 6 (Middle-Bosnia), Articles 38 and 39, and Canton 7 (Herzegovina-Neretva), Articles 37 and 38.

³⁰ Zakon o upravi Federacije BiH, *Sluzbene novine Federacije BiH*, 28/97.

³¹ *Rule over Law*, ICG Balkans Report No. 72, 5 July, 1999, pg. 2-5.

³² Constitution of the Federation of BiH, Article 4.

³³ Ibid.

³⁴ Defence, Interior, Justice, Finance, Energy and Industry, Transport and Communications, Refugees and Displaced Persons, Health, Education-Science-Culture-Sports, Trade, Environment, Agriculture and Forestry.

³⁵ They deal with statistics, war veterans' issues, taxes and customs, measures and trademarks, etc.

human rights chapter,³⁶ others just mention monitoring mechanisms from the BiH Constitution,³⁷ while yet others simply ignore the Constitution of BiH and its human rights provisions altogether.³⁸

The principle of local self-government in the Federation has been proclaimed in the Law on the Basis of Local Self Government.³⁹ The Law states that the individual cantons also have the right to formulate a law on local self-government befitting each canton,⁴⁰ and, as in RS, the Federation law spells out the role of the municipalities,⁴¹ which is essentially the same as in RS. The main difference between the authority of the municipalities in RS and the Federation is that the Federation municipalities answer first and foremost to the canton.

The Federation Constitution guarantees self-rule on local matters to the municipalities.⁴² The Constitution further provides for each municipality to have a statute which shall be consistent with the Constitution, the constitution of its Canton, and which will conform to relevant cantonal legislation.⁴³ Consequently laws and regulations are passed at all levels, creating a vast body of law that is published in municipal, cantonal or federal official gazettes. Due to the lack of funds to effectively publish and distribute these materials, they are often inaccessible, which directly affects administrative efficiency.

In the Federation, a two-tiered legal and administrative system applies. The Supreme Court of the Federation acts as the court of highest appeal only in the Bosniak-majority cantons (Cantons 1, 3, 4, 5 and 9), while the Croat-majority cantons (Cantons 2, 8 and 10) refuse to recognise the authority and jurisdiction of the Federation Supreme Court. This means that in these Croat majority cantons there is no appeal beyond the cantonal level, either for administrative or judicial matters. The cantonal-level institutions are *de facto* the organs of highest appeal. A consistent administrative approach would allow the interested parties to file suite against administrative decisions before a higher appeals court beyond the cantonal level.

Internally, municipalities in the Federation are organised differently from those in RS. As already pointed out, power in RS is somewhat diluted between the President of the Municipal Assembly, the President of the Executive Board and the Municipal Secretary. Although cantonal laws on local self-government in the Federation "regulate...the organs of a unit of self-government,"⁴⁴ the internal municipal structures in all Federation municipalities are almost identical. Throughout the Federation, municipal Mayors have more authority than either the RS Municipal Assembly President or the President of the Executive Board, as they nominate their own "Mayor's Council" or "Mayor's Cabinet" without having to seek the approval of the Municipal Council. The Mayor's council or cabinet fulfils a similar function to the RS Municipal Executive Board. Although the Municipal Council appoints and can dismiss the Mayor and his/her cabinet, both the Chairman of the Municipal Assembly and the Municipal Secretary concern themselves strictly with the workings of the Council. They do not organise the work of the municipal administration bodies in the same manner as the Municipal Secretary in RS. This is the prerogative of the Mayor.

³⁶ Constitution of Tuzla-Podrinje Canton, Article 9.

³⁷ Constitution of Unsko-Sanski Canton, Article 5; Constitution of Zenica-Doboj Canton, Article 14.

³⁸ In the same way as the RS Constitution was never amended to include the Dayton constitutional framework and human rights structure.

³⁹ Zakon o osnovama lokalne samouprave, *Sluzbene novine Federacije BiH*, 6/1995, with amendments in 14/1997.

⁴⁰ Ibid, Article 18.

⁴¹ Ibid, Article 8.

⁴² Constitution of the FBiH, IV, 2(1)

⁴³ Constitution of the FBiH, IV, 2(2)

⁴⁴ Zakon o osnovama lokalne samouprave, *Sluzbene novine Federacije BiH*, 6/1995, with amendments in 14/1997, Article 18.

D. Civil Service in Theory and Practice

In the pre-war Socialist Republic of Bosnia and Herzegovina, the Law on State Administration regulated the issue of appointment to the civil service.⁴⁵ According to this Law, one had to meet specific criteria to be recruited by a state administrative organ. Requirements were both general and specific. These included:

- Citizenship of the Socialist Federal Republic of Yugoslavia;
- Age of at least 18 years;
- State of health suitable for performance of specific tasks;
- No criminal proceedings instituted against the applicant, which would constitute an obstacle to employment.

In addition to these general requirements, other, more specific requirements existed for particular positions, all of which were determined by law, depending on the position to be filled.⁴⁶ Examples of required qualifications are:

- For high-level positions — a university degree, passing the state civil service exam, at least one year of work experience;
- For medium-level positions — a two year college education,⁴⁷ passing the state civil service exam, and at least one year of work experience;
- For low-level positions — completion of secondary school, passing the state civil service exam, and according to needs, work experience.⁴⁸

Persons holding graduate degrees (M.A., Ph.D., etc.), or other recognised experts did not need to pass the state civil service exam prior to the commencement of employment, but were given one year to pass it. If an employee did not pass the exam within the allotted time frame, he was fired.⁴⁹

A person sentenced to not less than one year's imprisonment for a criminal offence against the constitutional system and the security of SFRY, or for criminal offences against state officials, could not be recruited by an administrative organ. A person convicted for a pre-meditated criminal offence that was sentenced to prison for not less than three years faced the same prohibition.⁵⁰ Job performance evaluation was performed on an annual basis by the Head of the administrative organ, who evaluated the employee's job performance, effort, discipline, etc.⁵¹

⁴⁵ Zakon o drzavnoj upravi, *Sluzbene novine*, SR BiH, 8/90.

⁴⁶ Zakon o drzavnoj upravi, *Sluzbene novine*, SR BiH, 8/90, Article 237.

⁴⁷ In former Yugoslavia and in present-day BiH, children attend 8 years of primary school, usually from the ages of 7-15, after which they attend four years of secondary school. Upon entering secondary school, students can decide whether to follow a general course of education, or to specialise in areas for which special secondary schools exist, e.g. for medical nurses, engineering, etc. Following this period, students can attend universities, where they can attend courses for two years (*Visa skola*), after which they receive "associate degrees" (*visе strucna sprema*) in their specialised field, or attend four year universities, after which they receive full university degrees. Both types of higher education are dependent on the successful completion of all exams. In the case referred to in this example, *visе strucna sprema* is the qualification necessary, the equivalent of a two year college Associate Degree.

⁴⁸ Zakon o drzavnoj upravi, *Sluzbene novine*, SR BiH, 8/90, Article 260.

⁴⁹ *Ibid.*, Article 262.

⁵⁰ *Ibid.*, Article 238.

⁵¹ *Ibid.*, Article 280.

During the war, the Law on State Administration of the Republic of Bosnia and Herzegovina regulated the civil service in the areas controlled by the Army of the Republic of BiH.⁵² The requirements for hiring and job performance evaluation were regulated in the same fashion as the old SFRY Law on State Administration. Republika Srpska adopted a Law on State Administration and a Law on Labour Relations in the State Organs in 1994.⁵³ Until then, the former SFRY Law on State Administration applied. The devastation of the state institutions and the fragmentation of BiH led to chaos and arbitrariness in administration. Often, state administration was controlled by local army commanders or self-styled regional rulers and power-brokers.⁵⁴

Since the war, the Federation of Bosnia and Herzegovina has adopted a Law on Labour Relations and Salaries of Civil Servants in the Federation of BiH.⁵⁵ Similar to the old Yugoslav law, the general requirements for employment in a public administration are as follows:⁵⁶

- At least 18 years of age;
- State of health suitable for performance of specific jobs;
- Appropriate educational background needed for the specific post;
- Citizenship of BiH;
- Passing the civil service exam;
- No outstanding criminal proceedings, which would constitute an obstacle to employment within the administrative organ, can be pending against the applicant.

Further regulations relating to background, work experience, duration of service and special health conditions may also apply.⁵⁷ To be hired as a civil servant a person has to have appropriate education, professional exam and work experience prescribed by law.⁵⁸ Persons holding graduate MA degrees, Ph.D.s, and those who have passed the bar exam are not required to pass the professional exam.⁵⁹ There is a mandatory probation period of three months. If an employee does not perform in a satisfactory manner, he or she can be released.⁶⁰

As before the war, the government may hire a person who has not passed the civil service exam if s/he has work experience related to the position. In such a case, that person is given one year to pass the exam. If an employee does not pass it within the one-year deadline, employment ceases.⁶¹

Job performance evaluation is done on an annual basis either by the immediate supervisor or the head of the administrative organ directly. Employees are evaluated either as "non-satisfactory, satisfactory, successful or particularly successful."⁶² If an employee receives a negative evaluation, then (s)he cannot be promoted for one year

⁵² Zakon o drzavnoj upravi, *Sluzbene novine, Republike Bosne i Hercegovine*, 26/93.

⁵³ Zakon o drzavnoj upravi, *Sluzbeni glasnik RS*, 11/94, and Zakon o radnim odnosima u drzavnim organima, *Sluzbeni glasnik RS*, 11/94, 3/96, 6/97.

⁵⁴ For example, Fikret Abdic in his "Autonomous Region of Western Bosnia."

⁵⁵ Zakon o radnim odnosima i o placama sluzbenika organa uprave u Federaciji Bosne i Hercegovine, *Sluzbene novine Federacije BiH*, 13/98.

⁵⁶ The specific qualifications required for positions are prescribed by the *Pravilnik o unutrašnjoj organizaciji organa uprave i sluzbe za upravu*, or the Rulebook of Internal organisation of the administrative body in question.

⁵⁷ *Ibid.*, Article 8.

⁵⁸ *Ibid.*, Article 27.

⁵⁹ *Ibid.*, Article 28.

⁶⁰ *Ibid.*, Article 16.

⁶¹ *Ibid.*, Article 44.

⁶² *Ibid.*, Article 50.

following the negative evaluation. If an employee receives three negative evaluations, then (s)he can be released.

In theory, at least, a professional, civil service exists in Bosnia and Herzegovina, controlled on the local level and operating in a fashion regulated and proscribed by law. Yet, in spite of the *de jure* existence of a civil service, its actions and those of public administration as a whole are often found wanting.

The level of professional training for clerks in public administration is generally rather low. It is estimated that approximately 20% of staff have some degree of legal or administrative education, while 80% have other professional backgrounds.⁶³ This partial or inappropriate training creates irregularities in the administrative procedure. Advertisements for job openings describe the necessary requirements for each position. However, inconsistencies and irregularities pervade the appointment of officials. Most appointments are made by the ruling political parties, which disregard employee qualifications and job requirements.⁶⁴ Often government workers lack basic training on how to handle complaints and claims in accordance with the law.

- In Travnik the municipal administration has 161 employees, of whom 30 have university degrees, 19 have associate degrees, 72 have high school degrees and 40 have only primary education. Out of the total number of employees, only 12 have law degrees. Interestingly enough, the Travnik municipality does not have a lawyer to represent the municipality in cases where applicants take the municipality to court. Conveniently for the municipality, this results in those cases being thrown out of court.
- Before the war Zenica municipality had approximately 270 employees. Today it has approximately 400. The increase in numbers came due to the establishment of new departments that deal with refugees and displaced persons, war veterans, etc. As in some other cities, many highly qualified employees left the municipality during the war. This forced the employment of unqualified people who do not meet the conditions set out in employment regulations. Although most employees have university or associate degrees, 60-70 have not taken the public service exam, as required by law. This includes six out of the seven department heads.⁶⁵ So too, the municipality lacks experienced lawyers and economists. Similar situations are common throughout Bosnia and Herzegovina.
- The municipalities under Croat control in Hercegovacko-neretvanski Canton (7), i.e. the three Croat-majority municipalities in Mostar, as well as Citluk, Capljina, Stolac, Neum, Ravno, "Rama" (Prozor) and the unrecognised municipalities of Jablanica-Doljani and Konjic-Drecelj, employ 510 people. Most of the employees have not passed the public service exam.

Cities such as Mostar, Banja Luka and Tuzla have a large pool of highly qualified and experienced potential employees. However, they are not employed because they do not belong to the "right" political party or ethnic group. Additionally, job openings in public administration are rarely advertised, although required by law.⁶⁶ Often a vacancy is

⁶³ Recent independent research conducted by a senior official in the pre-war public administration, who wishes to remain anonymous.

⁶⁴ For example, in Zenica municipality the Chief of the Department for Urbanism is an engineer of metallurgy, and the Chief of the Department for Economic Relations and Entrepreneurship is a civil engineer.

⁶⁵ In 1998 Zenica-Doboj Canton organised an exam for employees with a high school degree. A similar programme is planned this year.

⁶⁶ Zakon o radnim odnosima i placama sluzbenika organa uprave u Federaciji BiH, Article 11, *Sluzbene novine FBiH, 13/98* provides for the obligation to advertise vacancies in administrative organs. Meanwhile, Zakon o radnim odnosima u drzavnim organima Republike Srpske, *Sluzbeni*

advertised merely to satisfy legal requirements, while the "appropriate" candidate has already been selected behind closed doors.

E. Working with the Public

The quality and legality of administrative procedures is influenced heavily by the professional skills of officials. These officials work in poorly equipped buildings for very low pay, and without access to proper equipment. This builds frustration and creates poor morale among public officials. It also makes them heavily dependent on the whims of politicians for their budget. Then too, there is an attitude often evident in public officials, which treats citizens as an inconvenience. The lack of a centralised data base system is a significant obstacle to effective work, and is often used as an excuse to send people back and forth in an endless paper chase, even though many of the required documents are already on file in a separate department.

Under-equipped and un-equipped facilities are a common trait throughout Bosnia and Herzegovina, especially in new municipalities. Offices are often located in improvised premises, houses, schools or abandoned buildings. Lack of funds for public administration is very visible at the municipal level, where inappropriate rooms and buildings are often used.

In many municipalities, the various agencies maintain extremely restricted office hours for dealing with the public, often from 9am-12pm or 10am-12pm. Applicants are often treated rudely, as clerks with "attitude" deny applicants' rights, and often insult them.⁶⁷ "Come back tomorrow" is the mantra often used when applicants come in with a request. It is very difficult to make an appointment with an administrative official, let alone with a higher official, such as a Mayor. Claimants are usually told to submit their requests in writing. In spite of this, claimants almost never receive either a written answer or notification.

It is common that buildings do not have appropriate signs and announcement boards. So too, they lack organisational diagrams and instructions posted in visible and accessible places. Many offices operate without waiting rooms, tables or chairs. Few municipalities have counters or tellers that are easily accessible to citizens. This further impedes communication between citizens and government clerks. Poorly arranged reception and waiting rooms cause bad communication between citizens and officials. Often, applicants simply don't know where to go. However, a few exceptions are notable.

- The Sarajevo municipalities of "Centar," "Stari Grad" and "Novi Grad" recently reorganised their public halls and reception areas, which now appear to offer more modern and accessible services. Furthermore, the "Centar" municipality is installing a computerised data system. Tuzla has introduced the Lotus Note computer program and has computerised municipal documentation. Data entry is currently ongoing, and after the network is established, each authorised employee will have access to all data concerning ongoing administrative procedures. The municipality has also provided space with several counters where citizens may obtain birth certificates and documents of a similar nature, including information services.

In spite of these welcome changes, equipment in most offices is old. Old typewriters, pens and paper are common. Computers are rarely found at the municipal level. The

glasnik RS, 11/94, 3/96, 6/97, does not provide for advertising, but the relevant obligation can be drawn from the RS Law on Labour Relations, Article 6 *Sluzbeni glasnik RS*, 25/93.

⁶⁷ A.N. was told, in summer 1998, that she should "run off to OSCE and see what they will do for you!" by the Ministry of Refugees and Displaced Persons in Doboj when requesting her ID card for the fourth time.

lack of modern equipment seriously affects the already poor performance of public administration when it comes to serving citizens. Notable examples are:

- The municipal Birth Registry in "Rama" (Prozor) uses an old typewriter with a few missing letters. It is left to the clerk in the Registry to try to persuade parents not to choose a child's name that cannot be typed into a birth certificate!
- The Ministry for Refugees and Displaced Persons in Banja Luka, has two employees who deal with claimants, collect data manually, and enter it into a book. This makes it very difficult to enquire about who has placed claims. The offices are equipped with typewriters that do not have the Cyrillic script. There are no computers in the department. The files and archives are poorly organised due to a lack of space and funds. A lack of funds prevents the Ministry from sending official documents via registered mail, as required by law.⁶⁸ In one case a claimant, A.K., never received a certified copy of his claim for apartment return in accordance with the Law on the Cessation of the Application of the Law on the Use of Abandoned Property.⁶⁹ AK was told that the Ministry does not have the money to pay for registered mail, and that it was unknown when and how the applicant would receive the certified copy of the claim, which, according to the Law, the Ministry is obliged to send to claimants. There are literally hundreds, if not thousands, of claimants in a similar position.⁷⁰

II. CONFUSION AND DISCRIMINATION IN A POST-COMMUNIST BUREAUCRACY

In today's Bosnia and Herzegovina, public officials often breach administrative procedural guidelines. The reasons for this are many, and include unfamiliarity with administrative procedures, as well as political pressure from local politicians. The level of irregularity is best seen in the number of cases overturned on appeal by higher jurisdiction organs. In BiH approximately 40% of all appeals result in the initial ruling being overturned. This may be due in part to a lack of familiarity with law by municipal officials. It may also be due to ethnic and political manipulation.

When a higher jurisdiction body overturns a lower jurisdiction ruling, it will typically refuse to issue a ruling of its own. Rather, it will simply overturn the original ruling, and return it to the organ of primary jurisdiction. This practice – although common in both entities – violates the principles formulated in entity laws on administrative procedure. The most frequently cited reasons for violating administrative procedure are: insufficient facts; inability to establish factual evidence or incorrect interpretation of available facts. Also, a breach of the procedural requirement to grant a hearing to the concerned party is viewed as a valid reason for stepping outside the bounds of administrative procedure.

⁶⁸ Zakon o opstem upravnom postupku, *Sluzbeni list SFRJ*, 47/86, Article 81.

⁶⁹ Zakon o prestanku primene Zakona o koristenju napustene imovine, Article 12, *Sluzbeni glasnik RS*, 38/98. The request was sent on 15 June, 1999.

⁷⁰ There are over 7,000 applications (5000 for apartments and 2,478 for private houses) for property return, either on the basis of tenants right or private ownership, filed by Bosniaks in Banja Luka in Banja Luka. "Otvoriti povratak u RS," *Dnevni avaz*, 27 July, 1999, pg. 4. International mediator for BiH, Dr. Christian Schwarz-Schilling, expressed his disappointment in Banja Luka on 9 December, 1999, that only 1% of all property applications in Banja Luka are resolved since the adoption of legislation revoking war-time abandoned property legislation in RS in December 1998. See "Rijesen samo jedan posto zahtjeva za povrat imovine," *Dnevni Avaz*, 10 December, 1999, pg. 3.

Frequently, an administrative organ will avoid issuing a formal ruling. Under current Bosnian law, citizens have the right to appeal negative rulings by local municipal bodies.⁷¹ Appeals go to Cantonal Ministries in the Federation, and to the Republic Ministry in RS. When an administrative organ avoids issuing a formal ruling, citizens find themselves unable to proceed with an appeals process at the next level of jurisdiction. This practice of not handing down a ruling is known as "administrative silence."

A. The "State Wall of Silence"

"Administrative silence" is a provision in administrative law⁷² that allegedly protects claimants against inertia and long delays in the administrative procedure. It allows the claimant the right to appeal to a higher jurisdiction body in cases where a state organ has not issued a ruling after a certain period of time set by law. The law spells out deadlines of 30 and 60 days from the date the request was filed, for administrative organs to issue a ruling.⁷³ 60 days is the common deadline in the administrative procedure at the level of primary jurisdiction.⁷⁴ In the appeals process, a standard deadline of 30 days must be observed. According to the respective entity laws on administrative disputes, an administrative organ, which fails to act or acts negatively on an appeal, can be sued in the relevant court.⁷⁵

However, what was intended as a mechanism to force public administration to take responsibility for its own slowness has become a rule. "Failure to respond" seems to have become a common approach of many public administrative bodies. It is especially evident in dealings with ethnic minorities. The very existence of this "administrative silence" leads administrative organs to shirk their duty and wait for it to be invoked. If many claimants are subject to the same treatment, then there are many more court procedures to be initiated. An overloaded court will take far longer to hand down a ruling than the administrative organ in question. As a result, the whole procedure of "administrative silence" has become a weapon of, and not a check on, public administration.

Although there are some positive examples, it appears the number of "administrative silence" cases is increasing progressively. The "state wall of silence" has become normal in the daily work of public administration at all levels. Public administration officials justify it due to the huge number of cases they receive, even though this backlog is often caused by systemic dysfunction, coupled with political, ethnic or other discrimination against citizens. Appeals to higher jurisdiction bodies are often obstructed due to the lack of co-operation and co-ordination between different levels of administrative bodies.

⁷¹ Zakon o upravnom postupku Federacije BiH, Articles 221-245, *Sluzbene novine FBiH*, 2/98; Zakon o opstem upravnom postupku, *Sluzbeni list SFRJ*, 47/86 (old ex-Yugoslav law, still in force in Republika Srpska).

⁷² Also known as administrative "nonfeasance," a phrase still in use in American legal practice.

⁷³ For "sutnja uprave" in the Federation, see the Law on Administrative Procedure (Zakon o upravnom postupku Federacije BiH, *Sl. Novine Federacije BiH*, 2/98), Articles 216 and 244. For Republika Srpska, see the Law on General Administrative Procedure (Zakon o opstem upravnom postupku, an old Yugoslav SFRJ law, still in force in RS, *Sluzbene novine SFRJ*, 47/1986), Article 218. Both laws provide that if the responsible body does not issue a ruling and deliver it to a party within the prescribed deadline, such "administrative silence" will be a lawful ground for appealing to a higher jurisdiction body.

⁷⁴ In the domestic legal jargon, the "first jurisdiction" is the phrase used to describe the body, which has the initial jurisdiction to decide on a matter. If a higher body exists to which an appeal can be sent, then this body is known as the "higher jurisdiction" body, etc.

⁷⁵ For "administrative dispute," see the Federation Law on Administrative Disputes (Zakon o upravnim sporovima Federacije BiH, *Sluzbene novine FBiH*, 2/98-84), Article 22 (on administrative silence). In Republika Srpska, see the Law on Administrative Disputes (Zakon o upravnim sporovima RS, *Sluzbeni glasnik RS*, 12/1994), Article 25 (on administrative silence).

- In the four month period of May-July 1999, non-governmental organisations that provide *pro bono* legal assistance in the Zenica area received 400 cases where public administrative bodies ignored their requests for property return, refusing to hand down any ruling;
- On one day alone, 24 August, 1999, 8 citizens appealed to the Ministry for Urbanism in Zenica-Doboj (Ze-Do) Canton, as the second jurisdiction body, due to the silence of the administration in Zepce. Rulings of the second jurisdiction bodies in Ze-Do Canton are ignored in Zepce, as Zepce municipality is only "formally" part of Ze-Do Canton.⁷⁶
- Three individuals, V.Lj., S.P. and B.E., filed separate requests for the return of their expropriated land to the responsible municipal body in Citluk.⁷⁷ After receiving no answer from the municipal administration within the 60-day deadline,⁷⁸ they appealed on the grounds of administrative silence to the higher jurisdiction authority (cantonal level), but they never received any response. V.Lj. and S.P., using the facility provided by the Law on Administrative Disputes,⁷⁹ initiated a procedure before the High Court in Mostar (west), but, over one year after the initial requests were filed, the process has not yet begun.
- C.J. – a Serb – was allocated an apartment in Brcko.⁸⁰ He was transferred to Bijeljina on 16 February, 1994. C.J.'s apartment was given to L.L. for temporary use. When returning to Brcko on 7 March, 1996, C.J. made a written request to the Brcko Department of Housing to have his apartment returned.⁸¹ The Department of Housing has yet to issue a ruling. Lacking a ruling, C.J. filed a suit in court, but the case has never been decided. In February 1999 he also requested that the Ministry of Refugees in Brcko intervene. His request was never decided and he is still deprived his right to return to his apartment.

In spite of the fact that all rulings should be rendered within the respective legal deadlines, receiving a delayed ruling is better than receiving no ruling at all.

- The Department for General Administration and Housing of Zenica municipality received 5,161 requests for apartment returns by mid-September 1999 under the Law of Cessation of the Application of the Law on Abandoned Apartments.⁸² Five employees work exclusively on implementing property laws, including court rulings, evictions, and appeals concerning the silence of administration. The average time period for a ruling to be issued after a citizen files a request is six to seven months, far beyond the deadline prescribed by the Law on Administrative Procedure.

Often, local politicians pressure administrative bodies to ignore citizens' requests.

⁷⁶ See section on parallel institutions.

⁷⁷ On 1 September 1998 V.Lj. filed his complaint, case number 07-473-1/98. S.P. filed on 14 September, 1998, case number 07-473-2/98. BE filed on 7 January 1999, case number 07-473-1/2-99.

⁷⁸ "The responsible organ is supposed to make a ruling ("rjesenje") and deliver it to the claimant as soon as possible, or within 60 days at the latest. If the responsible organ fails to make a ruling...within the deadline, the claimant is entitled to the right of appeal as if the claim was refused," Zakon o upravnom postupku Federacije BiH, Article 216.

⁷⁹ "If the appellate administrative organ fails to make a ruling upon an appeal within a month, nor within a further seven days when required to in writing, the appellant can initiate an administrative dispute [before the courts]," Zakon o upravnim sporovima Federacije BiH, *Sluzbene novine FBiH* 2/98-84, Article 22.

⁸⁰ Ruling number 10386/89.

⁸¹ 3-37-372-381/96.

⁸² Zakon o prestanku primjene zakona o napustenim stanovima, *Sluzbene novine FBiH*, 11/98, with changes in 6/98, 7/99 and 10/99.

- Between April 1998 and September 1999, Capljina municipality received approximately 1,500 requests concerning real property and apartment returns under the Federation laws to repeal the wartime abandoned property legislation. The municipality never responded. The only exceptions were the Bosniak members of the Municipal Council whose requests, they were informed, did not contain all the necessary documentation, although all the "necessary documentation" was readily available in existing public records. According to some Municipal Council members, a few Bosniak citizens tried to obtain the necessary documents from the public records office in Capljina, but their requests were refused. In spite of the fact that there was no fighting in Capljina, they were told that the public records had burned during the war. The same council members claim that the Mayor of Capljina gave an order to the municipal bodies not to issue any documents to Bosniaks. Allegedly, municipal bodies are also changing the dates on contracts dealing with land allocations that were registered earlier, but whose validity was disputed.⁸³

B. Parallel Institutions

Federation institutions function poorly, if at all, in areas of the former "Herzeg-Bosna." This is because "Herzeg-Bosna" still functions as an illegal third entity – denials of senior Croat officials to the contrary.⁸⁴ In such regions, parallel institutions exist not only in administration but also in public corporations, pension funds, payment bureaux, and health insurance funds, which discriminate against citizens on the basis of where they reside.⁸⁵ Following the adoption of the Washington Agreement,⁸⁶ the Republic of Herzeg-Bosna was supposed to be dismantled and integrated into a Federation with the territory under the control of Armija BiH. In reality, Herzeg-Bosna has remained as those cantons with a Croat majority.⁸⁷ In the Croat municipalities of the "mixed" cantons with a "special regime,"⁸⁸ Herzeg-Bosna obstructs the functioning of the Federation institutions. Canton 7 Croats act as their Canton 8 and 10 brethren, and ignore most directives coming from Bosniak officials in Federation ministries. Canton 6 Croats are attempting to "Mostarise" Travnik, by suggesting the formation of 6 mini-municipalities and a city council as a means to protect Croat "interests." In a large number of Croat-majority municipalities in BiH, Herzeg-Bosna insignia, flags and stationery abound.⁸⁹

The expulsion of ethnic populations from certain areas throughout BiH has resulted in the establishment of "municipalities in exile".⁹⁰ There are also "ghost municipalities," which administer territory through illegal institutions.

- A report by the Canton 6 Ministry of Justice examined the extent of parallel institutions in that canton.⁹¹ Violations were found in the organisation of local self government in

⁸³ Local sources in Capljina. See also "Diskriminatorско dijeljenje drustvenog zemljištva," *Dnevni Avaz*, 25 July, 1999, pg.6. See also OHR press release on 9 December 1999, which details the findings of a special Federation Ombudsmen report on non-implementation of property legislation in Stolac and Capljina, as well as the issue of the reallocation of misappropriated land.

⁸⁴ "I have already emphasised that parallel institutions do not exist," Ante Jelavic, President of HDZ BiH and Chairperson of the BiH Presidency: "Herceg Bosne nema tamo gdje su Hrvati vecina," *Oslobodjenje*, 27 September, 1999, pp. 4-5.

⁸⁵ See *Falling through the Cracks: The Bosnian Pension System and its Current Problems*, OSCE Mission to Bosnia and Herzegovina Human Rights Department, Sarajevo, March 1999.

⁸⁶ Signed on 29 February, 1994.

⁸⁷ Cantons 2 (Posavina), 8 (West Herzegovina), and 10 (unofficially – and illegally – known as "Herzeg-Bosna" to Croats in the Canton).

⁸⁸ Cantons 6 (Middle-Bosnia) and 7 (Herzegovina-Neretva).

⁸⁹ See "Is Dayton Failing?" Annex 4: pg. 23.

⁹⁰ For example, Bosanski Brod, based in Slavonski Brod, and all the eastern RS municipalities with sizeable Bosniak displaced populations, such as Rogatica, Han Pijesak and Rudo, all of whom have offices in Sarajevo, albeit without any territory to exert influence over, nor with any legal status.

accordance with the Law of Administration of Canton 6,⁹² the Law on Local Self-government,⁹³ the use of the official stamp in accordance with the Law on the Stamp of Middle-Bosnia Canton,⁹⁴ and the application of the Law on Administrative Taxes.⁹⁵ Violations were also discovered in the application of the Ruling on Use of Business Space.⁹⁶ The same report indicates that there are 129 workers employed in the "ghost municipalities," which begs the question from which sources those institutions are financed.⁹⁷ The use of illegal state symbols and stationary, including those of "Herceg Bosna" and "Republika BiH" is widespread. Illegal institutions are also evident in Canton 7, in particular in Mostar.⁹⁸

The continuing existence of derivatives of Herzeg-Bosna and the application of its laws lead to discrepancies and inconsistencies in the application of law in the Federation.⁹⁹ Yet there is no regulation at the Federation level that would finally dismantle the remains of Herzeg-Bosna and standardise the rule of law throughout the Federation. In a variety of cases, different legislative solutions are provided for the same issues. Citizens' rights from one part of the Federation are not recognised in the other part. Whether this practice is purposeful or a product of legislative mixture and confusion, the principle of legality and the whole concept of rule of law is compromised.¹⁰⁰

The current political establishments tolerate and indirectly support the existence of parallel institutions/municipalities, and efforts of the international community to gradually eliminate them have not been very fruitful. As there is little political will to resolve this issue, parallel municipalities provide fertile ground for local powerbrokers to rise above the law, deciding on basic issues of daily life.

- The "Herzeg-Bosna Commission for Grahovo" acts as a parallel authority in Bosansko Grahovo, following the defeat of the HDZ by the Serb DP movement "Zavicaaj" in the 1997 municipal elections. The HDZ's Zlatan Civcija, the Deputy Mayor of Bosansko Grahovo, acts as head of the parallel institution, which employees

⁹¹ Report by the Ministry of Justice of the Middle-Bosnia Canton, 04-05-95/99, 16 June, 1999, Travnik. According to the report, a managerial/administrative inspection which took place between 22 April and 22 June, 1999 discovered that Donji Vakuf and Dobretici are the only municipalities in Middle-Bosnia Canton which do not have parallel, "ghost" municipalities/institutions. The municipalities of Novi Travnik, Travnik and Busovaca do not have parallel municipalities, yet there exist separate Croat and Bosniak institutions for civil defence, the fire brigade service and the department of defence. The following municipalities have parallel institutions: Gornji Vakuf (Uskoplje), Kresevo (Tarcin), Jajce (Vinac), Kiseljak (Bilalovac), Vitez (Stari Vitez), Fojnica (Kiseljak) and Bugojno (Livno). The President of the Uskoplje "municipality" is also the President of Gornji Vakuf Municipal Council. He, and other appointed Croats in the public administration of Gornji Vakuf, have never reported for work. Uskoplje "municipality" still uses the Herzeg-Bosna stamp, while Gornji Vakuf still uses the old, illegal stamp of Republika BiH.

⁹² *Sluzbene novine Srednjo-Bosanskog (Middle-Bosnia) kantona, 1/98.*

⁹³ *Sluzbene novine Srednjo-Bosanskog kantona, 5/98.*

⁹⁴ *Sluzbene novine Srednjo-Bosanskog kantona, 2/97.*

⁹⁵ *Sluzbene novine Srednjo-Bosanskog kantona, 5/97.*

⁹⁶ *Sluzbene novine Federacije BiH, 20/98.*

⁹⁷ Local sources suggest that it is likely that all ghost municipalities are financed from the cantonal budgets through the three separate payment bureaux.

⁹⁸ "Opcinske nacelnike Marica i Dugonju vojnici SFOR-a su zatvorili u WC, pretresli ih i slikali?" *Slobodna Bosna*, 16 October, 1999.

⁹⁹ In Zenica-Doboj Canton, Federation laws are not being implemented in the municipalities with Croat majorities, Zepce and Usora. Croats boycotted the beginning of classes this school year in Zepce, Usora and Vares. They do not accept the plans and programs agreed at the Federation level, but insist instead on education plans and programs from west Mostar, which themselves come from the Republic of Croatia.

¹⁰⁰ See *Falling through the Cracks: the Bosnian Pension System and its Current Problems*, OSCE Mission to Bosnia and Herzegovina, Human Rights Department, Sarajevo, March 1999.

three people. He controls the budget, issues permits for land use, construction, and other certificates.

- The goal of most of the "ghost" municipalities is to receive official recognition – as was Usora – by the Federation Parliament. Part of the negotiating tactics used in HDZ/SDA discussions regarding recognition of "ghost" municipalities is to offer certain changes to municipal boundaries to create ethnically pure municipalities.¹⁰¹ The ongoing discussions over Zepce are a prime example of this.

C. Contacts: Who You Know, Not What the Law Says

Political patronage, private interests and nepotism dominate BiH public administration. A sophisticated network of *veze i protekcije* (connections and protections) pervades BiH society, which is almost taken for granted in dealing with authorities. Almost every segment of administrative procedure is based on a grid of connections, from "non-profit" friendships to those of a political and often criminal nature. This threatens to become the only way for a claimant to protect his or her lawful rights. This practice is particularly common in obtaining permission to build a house, a house extension, or engaging in certain business activities. It is also necessary to gain access to state-owned land, gain occupancy of vacated apartments, receive tax exemptions, and to get a telephone installed. *Veze* were used during the war, and are still used today, to "legalise" illegal construction, black-marketing, the counterfeiting of time served in the army, tenants rights, and contributions to pension funds.

Connections and nepotism were always present in the former Yugoslavia. However, these problems were not as serious as they are now. Today bribery is a systemic means for poorly paid or corrupt public officials to supplement their income. Many BiH citizens know of cases where lawyers have advised clients to pay an extra 20%-30% to be passed on to local officials, which will often swing a case in their favour. Such cases are hard to prove, as all parties typically keep silent. Officials do so because of their criminal behaviour, and the claimant because of the fear of losing illegal gains. However, the consequences of such a behaviour are visible everywhere, from illegal construction to timber exploitation and to the sale of contraband cigarettes.

During and after the war, many individuals rose to powerful positions in BiH government. It appears that illegal financial transactions and criminal business activities sometimes strengthened their positions. Often, former military commanders cashed-in on their battlefield fame. In such a climate, politically powerful friends create an untouchable ring around such individuals, and law and due process disappear. A classic example is the disgraced former Mayor of Sanski Most, Mehmed Alagic.¹⁰² Often, such people maintain direct control over municipal institutions, including the judiciary and public administration. Their personal interests and favours to their obedient servants are their first priority. Misuse of official positions is present at all levels, and there are rarely any sanctions imposed unless the international community intervenes.¹⁰³

- In Tuzla, the former Cantonal governor Hazim Vikalo, the President of the Government of Tuzla Canton, the Deputy President, five ministers and several high

¹⁰¹ Croats in Zepce are involved in an ongoing saga to have their municipal boundaries redrawn to incorporate Croat parts of Maglaj and Zavidovici. Although local SDA officials have agreed to such boundary changes, cantonal SDA officials appear to be acting on the orders of SDA HQ to scuttle any deal on Zepce. See OHR Press Release, 24 June, 1999.

¹⁰² It appears that Alagic may have taken as much as 15 million DM from municipal coffers. "Pronevjera od 25 miliona maraka," *Dani*, 29 October, 1999, pg. 26-27.

¹⁰³ "Pljacka u ime stranke," *Dani*, 13 August, 1999.

cantonal officials are all implicated in such activities.¹⁰⁴ The charges include the accusation that the former President of the Tuzla Cantonal Government arbitrarily granted loans to private companies that were never paid back, and that private companies were paid goods that they never delivered, e.g. tombstones for exhumed victims from Srebrenica. The Cantonal Minister of Justice allegedly arbitrarily selected individuals eligible for social, humanitarian and other kind of aid without making his criteria transparent. Various goods, for example automobiles, were allegedly bought by the Cantonal Government without going through the tendering process, and the prices paid were allegedly higher than the market price.

- In Kladanj 20 saw mills currently operate without permits. In 1998 only 50 misdemeanour charges and 57 criminal charges were filed for illegal timber cutting and wood sales. The total monetary value of the wood in question was 32,000 DM, the equivalent of four truckloads of wood. The average value of each charge represented only 300 DM per claim, or 1,600 DM per firm. In the overall context of lumber cut and milled in the Kladanj region, these figures are altogether insignificant and represent an attempt by local officials to create the appearance of complying with the law, while permitting ongoing illegal activities.
- Two nightclubs in Karakaj and Josanici near Zvornik still hold operating licences, although prostitution is the mainstay of both. Attempts at inspection have failed, mainly because former policemen – all of whom maintain strong links with present police officials – run those businesses.

Contacts and favouritism are easy to recognise in illegal construction. In these cases, construction begins without the appropriate building permits. In populated areas construction is strictly regulated. If regulations are violated and responsible municipal bodies fail to take action, then it is due to the tacit consent of political powerbrokers. Illegal construction usually gets "officially" discovered quite late. This creates difficulties in administrative procedures and causes expensive court cases, which often lead to demolition. This also provides fertile ground for corruption and bribery. It is difficult to obtain figures concerning illegal construction because local administrations keep their records and activities far from the public gaze. However, some examples have come to ICG's attention.

- In Zvornik, 20 weekend cottages were illegally built in a protected area alongside the river Drina, close to Hotel "Vidikovac," in 1998 and 1999. The RS Inspector for Water Source Management, Mr. Goran Soskic, according to the Law of Water Resources,¹⁰⁵ issued orders demanding the owners of the cottages stop all further works at the cottages, to destroy the objects built so far, and to bring the lakeside back to its previous condition. Yet the orders have never been enforced, fines have never been imposed, and the illegal construction continues, in spite of the inspector's actions.¹⁰⁶
- In Sarajevo's Ilidza Municipality numerous buildings were erected under suspicious circumstances. These included: the construction of tennis courts and a restaurant next to the so-called "Roman Bridge," a protected cultural site; the construction of numerous homes in a water protection zone which feeds Sarajevo's aquifers and

¹⁰⁴ "Odbrana trazi da postupak vodi Sud u Mostaru," *Oslobodenje*, 2 November, 1999, p.7. Cases KT-86/99, KT-225/99, KT-140/99, KT-46/99, KT-87/99, KT-22/99 and KT-64/99 are all being processed before the Tuzla courts, relying heavily on documentation obtained from the financial police.

¹⁰⁵ Zakon o vodama, *Sluzbeni glasnik RS 10/98*. Article 115 gives an inspector the responsibility to establish irregularities and to order appropriate measures with deadlines for their enforcement. Article 122 stipulates fines to be imposed with immediate effect.

¹⁰⁶ Orders on suspension of constructions were all issued between 13-23 July, 1999, relating to 20 individuals. Orders are marked by the same administrative number (07-338-2498) followed by 1-20/99, respectively for each case.

wells; and the construction of a café/restaurant in the middle of the Vrelo Bosne natural spring at the foot of Mt. Igman. All buildings have been demolished, following intense public outcry and scrutiny. However, there were well-publicised charges that municipal officials had illegally issued building permits, following the payment of bribes.

- The Department for Inspections and the Department of Urbanism, Utilities and Ecology of Zenica Municipality produced an "Analysis of Illegal Construction in the Territory of Zenica" from 1994 to 1997. According to this report, the responsible bodies issued a ruling to stop all illegal construction that had taken place on socially owned land. Under this ruling, 44 facilities, mostly garages and kiosks, were destroyed after the owners failed to present the necessary documentation. The consequent administrative procedure resulted in rulings for demolition. Out of these, 13 cases are still ongoing. Of these, four will be legalised, while the remainder will probably be destroyed.
- In May 1995, "Kalen" began construction of a large facility in Zenica, without the necessary documentation and permission.¹⁰⁷ The municipal Inspector for Urbanism and Civil Engineering issued an order (dated 2 June, 1995) for demolition. However, Kasim Krehic, manager of "Kalen," produced the appropriate documentation issued by the urbanisation authorities of the municipality.¹⁰⁸ In spite of this, the demolition order was upheld by the higher administrative jurisdiction (at the time, the District Secretariat for Economy) on 19 August, 1995, following an unsuccessful appeal by "Kalen." However, the contractor received permits from the Federation bodies responsible for the appropriate area of business, i.e. the Federation Ministry for Transport and Communications and the Federation Ministry for Agriculture, Water Management and Forestry. At any given point in the seesaw battle between "Kalen" and Zenica municipality, the documentation presented by the "Kalen" was never complete. The company would use its connections to obtain permissions for one area of business, while inspectors would close another area for lack of documentation. In the process, inspectors brought seven charges in Zenica between 3 September, 1996 and 22 February, 1999.¹⁰⁹ The only process completed to date is a charge for a minor offence, tried before the Municipal Court for Minor Offences in Zenica on 7 September, 1996, which fined "Kalen" 8,000 DM and Mr Krehic 400 DM. Both appealed and the Higher Court for Minor Offences lowered the amounts.¹¹⁰ In the meantime, "Kalen" remains partly open for business, in spite of pending requests for complete documentation by municipal and cantonal inspections.
- "Metaloplast," owned by Ferhat Ganibegovic, constructed housing/business premises in the centre of Zenica in 1995, in spite of a ruling refusing permission to build.¹¹¹ Consequently, a ruling for its demolition was issued,¹¹² but the enforcement was delayed and avoided, with the excuse that no professional demolition company could be found to do the job. The case has dragged on until the present time. In spite of one criminal charge against the owner on 31 May, 1996, the procedure for enforcement was stopped, the building has been completed and put into partial operation.

¹⁰⁷The case was filed under number 05-362-93/95 and has been updated under the same number. PP "Kalen" is a large car service site, which includes a car show room, a service centre, a parts shop, a gas station, etc.

¹⁰⁸ Permissions Nos. 07-24-364-827/95 (27.02.95), 07-354-432/95 (18.05.95) and 07-22-364-577/95 (9 August, 1995).

¹⁰⁹ Recorded under the same number, as the case is filed by the inspection: 05-362-111/96.

¹¹⁰ To 5,000 and 100 KM respectively (court ruling of 5 July, 1998, number PZ-III-1065/97).

¹¹¹ Decision number 05-362-172/95, issued by the municipal Inspector for urbanism and civil engineering in Zenica on 25 October, 1995.

¹¹² The same file number, dated 8 November, 1995.

As many of the buildings in the above cited cases were legalised or at least partly brought into compliance with the law, the question arises as to how the investors could not obtain the necessary permits prior to beginning construction. Such *ad hoc* solutions clearly encourage further illegal construction, as investors are confident they will find ways to obtain the necessary permits sooner or later, regardless of initial refusal by authorities. In Zenica, the Department for Urbanism had 3,500 requests for construction during 1998. In 1999, 800 permits had been issued as of mid-September. Assuming the same number of permit requests was filed in 1999 as in 1998, it appears that approximately 70% of all building permit applications are turned down. This may be due to non-transparent regulations, bureaucratic obfuscation, or lack of clarity in building regulations. Whatever the exact nature of the problem, the difficulty in obtaining permits and the ability of local officials to hide behind obtuse and stifling regulations creates fertile ground for corruption and violation of due process.

D. Non-enforcement

Confusion is first and foremost due to the conflict between ruling party directives and the law.

- Z.L. filed a claim for the return of his apartment with the Housing Administration of Sarajevo Canton in February 1999. As a result, Sarajevo Canton issued a ruling which granted Z.L. the right to repossess the apartment, and cancelled the tenancy right of the temporary occupant. The Housing Administration gave the temporary occupant 90 days to vacate the apartment. This is in keeping with the Law on Cessation of Application of the Law on Abandoned Apartments.¹¹³ However the Housing Administration confused the issue by stating that "the temporary occupant has a right to accommodation in accordance with the Law on Housing."¹¹⁴

The ruling fails to mention that the temporary occupant cannot be evicted from the apartment until alternative accommodation has been found.¹¹⁵ Confusion reigns as no competent authority has been able to give precedence to one of these two rights: the right to reclaim one's pre-war housing, or the right to accommodation for displaced persons. As a result, officials are able to act by inaction. The 90-day deadline has long since expired, and a number of requests for eviction orders have been submitted to Sarajevo Canton Housing Administration. Although a number of eviction orders have been issued in the above case, no eviction has taken place. OHR sources estimate that up to 22,000 apartments cannot be re-occupied at the current time because of the issuing of similar rulings in Sarajevo Canton alone.

- The High Representative imposed the Law on Amending the Law on the Sale of Apartments for Which Occupancy Rights Exist,¹¹⁶ in order to establish the right of a tenant to buy his apartment. The new law permits a tenant to purchase his apartment (which was proclaimed abandoned by the housing authorities) two years after repossessing it. This law also regulates ownership of former Yugoslav National Army (JNA) apartments that had been purchased by their occupants before 6 April, 1992. In order to obstruct this new law, the Federation Ministry of Defence interpreted Article 39a in a manner, which obstructs the registration of contracts in the land registry and prevents tenants obtaining the title of ownership.

¹¹³ Zakon o prestanku primjene Zakona o napustenim stanovima, *Sluzbene novine Federacije BiH*, 11/98, articles 4 and 6-7.

¹¹⁴ Issued under number 23/1-372-2178/98, dated 28 June, 1999.

¹¹⁵ Zakon o stambenim odnosima, *Sluzbeni List SR BiH* 14/84.

¹¹⁶ Zakon o izmjenama i dopunama Zakona o prodaji stanova na kojima postoji stanarsko pravo, *Sluzbene novine FBiH*, 27/99.

The Defence Ministry insists that the pre-war owners physically reside in their apartments for at least two years before they can receive final title. Yet, the pre-war owners are unable to enter their apartments due to the presence of temporary occupants. They cannot evict the temporary occupants without documentation from the Defence Ministry proving they own the apartment. And the Defence Ministry refuses to provide this documentation without proof of two years residency. This creates a "Catch-22" situation with no way for the legal owner either to enter or claim his property. The Ministry of Defence's Attorney, Brigadier Nura Pinjo, and Assistant-Minister for Legal Affairs Lutvo Mehonic, signed an instruction based on this interpretation.¹¹⁷ The instruction also contradicts the Ministry of Defence's promise to implement the 160 rulings of the Human Rights Chamber on the issue of former JNA apartments.¹¹⁸

The proper inspection and supervision of administrative organs is vitally important in post-war BiH. The BiH laws on the organisation of administration strictly define the role of inspections and the scope of their work at all levels.¹¹⁹ Proper inspections ensure that laws are being obeyed and applied by municipal governments. Due to the principle of self-rule, inspections by the authorities vary from place to place, with differing results.

The municipalities in Tuzla canton have no criteria for organising municipal inspections. Some municipalities have hardly any inspectors, while Tuzla municipality has 40 inspectors organised in nine municipal inspection departments.¹²⁰ In some areas, inspection agencies are still being established, while in other areas, inspections of vital importance are being neglected, or have never been established. In the agricultural area of Sapna, it appears that no agriculture, veterinary or forestry inspections take place.

Weak inspections further encourage non-enforcement of judicial and administrative rulings. It appears there are numerous cases where municipal officials violate or ignore laws and regulations. The lack of strong inspection means that municipal officials operate without oversight. Rather, they often satisfy inspection requirements by simply filing a report to the relevant administrative body. In the instances where inspections do occur, municipal officials often ignore findings and orders of inspectors. This creates an atmosphere in which the credibility of state institutions is undermined and illegality is tolerated.

E. The Mix Of Laws

The complex constitutional structure of Bosnia and Herzegovina, as well as the conditions created by the pre-war and post-war legislation, have created a contradictory mix of laws at all levels. The vast majority of today's laws are taken from pre-war Yugoslav statutes. Much of the wartime legislation was written under extenuating circumstances that have no rationale in a peacetime environment. Post-war legislation was created largely in response to demands imposed by the Dayton Peace Accords and the international community. In the rush to create and impose new post-war legislation, little care is paid

¹¹⁷ Federal Ministry of Defence, Attorney Office, Re: Handling instruction ("Instrukcija za postupanje"); number VP-198/99, 9 July, 1999.

¹¹⁸ "The Federation Ministry of Defence has agreed to implement the Ruling of the Human Rights Chamber and recognise the contracts concluded with the JNA in 1991/92." OHR Press Release, 2 July, 1999.

¹¹⁹ The standard pattern can be seen in the *Zakon o kantonalnoj upravi* (Law on Cantonal Administration) in Sarajevo, Articles 24-33. *Sluzbene novine Kantona Sarajevo*, 14/97. Inspection procedures and specific responsibilities are elaborated in appropriate laws covering areas like trade, health, transport, etc. See, for example, *Zakon o trzisnoj inspekciji* (Law on Market Inspection), *Sluzbene novine Federacije BiH*, 2/95.

¹²⁰ communal, sanitary, veterinarian, for urbanism and construction, for water management, forestry and hunting, agriculture and fishing, for electro-energetic, thermo-energetic.

to harmonising new laws with existing ones. As a result, many areas are either unregulated, over-regulated or subject to mutually conflicting regulatory requirements.

Newly enacted legislation is usually published in state, entity, cantonal and municipal gazettes. However, publication is often late. Distribution of official gazettes to public agencies is poor. Due to a consequent lack of familiarity with new legislation, implementation of laws is often delayed, including those laws and regulations imposed by the High Representative. Laws are often interpreted and applied as it suits the various bodies responsible for their implementation. This creates discrepancies in legal and administrative procedures, as well as arbitrariness and confusion that result in violations of basic citizens' rights. Furthermore, the majority of new legislation is enacted via emergency procedures, and lack detailed instructions. There is a problem with confusing terminology in certain laws, or weak terminology, which allows authorities to ignore laws they don't like.

- The Law on the Cessation of the Application of the Law on Abandoned Apartments¹²¹ provided that tenancy rights and the return of apartments is directly related to wartime abandonment. This law used the terminology "zone of war." There was no definition or instruction as to who should interpret the meaning of "zone of war." For this reason, the Department of General Administration and Housing in Zenica issued several rulings denying requests for apartment return because the abandonment "was not related to war activities," as Zenica was not "under high war risks." Although this inconsistency was neutralised by new legislation enacted by the High Representative, it is not certain how local officials will interpret it.¹²²
- In 1997 D.B. was transferred from the Ministry of the Interior in Mostar to the Federation Ministry of Interior in Sarajevo. After a year the Ministry issued a ruling for retirement, since D.B. had fulfilled the necessary conditions for retirement according to the Pension Invalid Fund (PIO) and the Law of Internal Affairs. D.B. then applied for his pension to PIO Sarajevo. After several months, during which D.B. was requested to submit various documents, D.B.'s request was denied. The explanation was that D.B. did not fulfil the terms and conditions for retirement, since his years of service recognised by the west Mostar pension fund (MIO) were not recognised by the PIO. In the same ruling, PIO referred to the Federation Law¹²³ about the PIO, although this law was not enacted at the time the request for retirement was made. Interpretation of the Law in this particular case ignores the fact that PIO Sarajevo and MIO Mostar have concluded an agreement on mutual recognition of years spent employed.¹²⁴ Yet in this case they denied the existence of such an agreement. D.B. appealed to the PIO, but the PIO Director refused the appeal and confirmed the lower jurisdiction ruling. D.B. initiated an administrative procedure before the Federation Supreme Court that has been pending for over a year, leaving D.B. without any income.

Municipalities in the Federation, although organised as self-rule territorial units, often misuse their authority by overstepping the constitutional and legal framework, turning themselves into centres of power whose officials impinge on citizens rights. The more centralised organisational structure in RS, however, is no better. Executive functions in

¹²¹ Zakon o prestanku primjene Zakona o napustenim stanovima, *Sluzbene novine FBiH*, 11/98. Later changes/amendments were published in the same gazette, number 38/98, and number 27/99.

¹²² For example, ruling 03-372-45/99 of the Department for General Administration and Housing in Zenica Municipality. M.J., now living in Bijeljina, received a negative request for the return of his pre-war apartment with an explanation that there was no high war risks in Zenica and that he and his family voluntarily left Zenica.

¹²³ Zakon o penzijskom i invalidskom osiguranju, *Sluzbene novine Federacije BiH*, 29/98.

¹²⁴ Sporazum o ostvarivanju prava iz penzijskog i invalidskog osiguranja u Federaciji BiH, *Sluzbene novine Federacije BiH*, 39/99.

each municipality are in the hands of the Municipal Executive Board, which often "misinterprets" the constitutional provision that the municipality "take care of meeting the specific needs of citizens in the areas of culture, education, health and social welfare, physical culture, public information."¹²⁵ Yet they also often do not consider citizens' request concerning the above-mentioned needs, claiming them to be outside of municipal jurisdiction.

- Considering the difficult economic and social situation in RS, the implementation of the Law on Social Care¹²⁶ should be a priority. But Municipalities claim a lack of money and therefore rarely implement the law.¹²⁷ In Bijeljina municipality, for example, 3,904 people are registered either as socially jeopardised or with a working disability. The procedure prescribed by the Law on Social Care for realising social rights is not being used at all in Bijeljina municipality. For this reason, the real number of socially jeopardised individuals and families is unknown. Because the procedure is not being performed at the primary level of jurisdiction, citizens are deprived of their right to appeal to the relevant higher jurisdiction body, the Ministry of Health and Social Care.
- The Livno Municipal department responsible for property return issued a ruling on 2 July, 1999 on a request by a citizen for the return of his property.¹²⁸ The citizen appealed to the higher jurisdiction Cantonal Ministry and received a letter on 19 September, 1999 from the Ministry of Justice and Administration, informing the party that the ministry responsible to deal with the appeal has not yet been established. The letter also stated that the Ministry of Justice and Administration does not have the jurisdiction to decide the case.¹²⁹

Due to the confusion between old and new legislation, inadvertent deregulation sometimes occurs. During the war, municipal governments in the RS had borne the responsibility of accommodating refugees and displaced persons. In the process, non-Serb families were evicted from their homes. At the beginning of 1996,¹³⁰ the Ministry for Refugees took over responsibilities in this area by establishing its offices in municipalities throughout RS. Consequently, while municipal administration was excluded from providing the necessary legal procedure for accommodating refugees, the Ministry failed to re-validate all previous rulings about evictions and regulate the new procedure. As a result, after the law on the use of abandoned property in the RS was repealed in 1998,¹³¹ evicted non-Serbs were left without legal remedies in seeking temporary housing, because the Ministry for Refugees did not, in due course, issue the appropriate documentation establishing their legal status.

- S.H. and family were forcefully evicted from their apartment in Bijeljina in 1994. In 1995 S.H. requested¹³² the return of his socially owned apartment from the Bijeljina

¹²⁵ The Constitution of Republika Srpska, article 102, paragraph 5.

¹²⁶ Zakon o socijalnom staranju, *Sluzbeni glasnik RS*, 5/93.

¹²⁷ The Law on Social Care provides that if a municipality supplies funds at the level of the Republic average, it is entitled to a supplement from the Republic Government budget up to the maximum limit that may be used for social care as prescribed by law. However the Law on Refugees and Displaced Persons (Zakon o izbjeglicama i raseljenim licima Republike Srpske), *Sluzbeni glasnik RS* 26/95, equalised the social status of the domicile population and displaced persons, especially in terms of social care and employment.

¹²⁸ 05-47-41/98.

¹²⁹ 04-1-367/99.

¹³⁰ Following the adoption of the Law on the use of abandoned property in Republika Srpska (Zakon o koriscenju napustene imovine), *Sluzbeni glasnik RS*, 3/96.

¹³¹ On 2 December, 1998, by passing the High Representative's draft in the RS National Assembly and adopting the Law on the Cessation of Application of the Law on the Use of Abandoned Property. Zakon o prestanku primene Zakona o koriscenju napustene imovine, *Sluzbeni glasnik RS*, 38/98.

¹³² 014/03-372-24/95.

Department for Housing and Utilities. The Department issued a ruling¹³³ refusing S.H.'s request, claiming it had no jurisdiction over the case, as there existed two contracts for the use of the apartment, one for S.H. from 4 October, 1988 and the other for D.G. from 7 June, 1995. The Department advised the parties to go to court. S.H. then filed a suit in the Basic Court in Bijeljina, but the case has yet to be decided.

F. Political Cronyism

Although the lower levels of administration still have large numbers of experienced professional staff, high-ranking officials are appointed by the ruling political parties; professional skills and qualifications often seem irrelevant.

- In Zenica, department heads are appointed by the Mayor, not the Municipal Council.¹³⁴ These appointments are made at the initiative of the political parties. In practice, this means that the parties do not turn down positions allocated to them, even when they lack the necessary experienced personnel to fill those positions.¹³⁵ As a result, parties usually appoint individuals whose only qualification is party loyalty.¹³⁶ For example, the head of the Department of Urbanism is an engineer of metallurgy. The Chief of the Department for Economic Relations and Entrepreneurship is a civil engineer.

Numerous administration officials in the Banja Luka region are displaced persons from the Federation. Many of these were appointed to the Ministry of Refugees and Displaced Persons in Banja Luka. Getting a position in the administration provides benefits such as housing. Because these officials occupy the homes and apartments of other displaced persons and refugees, it is in their interest to obstruct return. A similar situation exists at the Republic level. Many officials who actually dictate and instruct lower jurisdiction bodies live in the properties of expelled persons, including former RS President Biljana Plavsic, former RS President Nikola Poplasen, RS Minister of Justice Milan Trbojevic and many others.

In the Federation the situation is greatly complicated by the additional level of cantonal government. In spite of this, appointment procedures do not differ significantly from RS.

- In Tuzlansko-podrinjski Canton, the Cantonal Ministers are appointed by the Cantonal Assembly. Deputies and assistants to the Ministers and Secretaries of the Ministries are appointed by the cantonal government.¹³⁷ In the 1996-1998 government, appointees were exclusively from SDA and HDZ, with no appointees of Serb nationality. Following the 1998 elections, the SDA-led CD Coalition, together with the HDZ appointed one Serb and two Croats to the cantonal administration, and the remaining appointees were Bosniaks (Prime Minister, two government presidents and 12 ministers). A majority of these Ministers and Deputy Ministers have not passed the public administration exam.¹³⁸ Three Deputy Ministers are Croats, all from the

¹³³ 014/03-372-24/95.

¹³⁴ Odluka o organizaciji opstinske uprave, Article 16, *Sluzbene novine Opstine Zenica*, 2/99.

¹³⁵ Article 235.5.4(b) of the Provisional Election Commission's Rules and Regulations for the 1997 Municipal Elections in Bosnia and Herzegovina states that "minority" parties must be represented in bodies of the Municipal Council or Assembly. Without this minority representation, municipalities can not receive the Final Certification of the PEC from the Head of the OSCE Mission to BiH.

¹³⁶ In a situation when political parties cannot reach an agreement, positions remain open, which again affects the functioning of respective departments and their services.

¹³⁷ For example, *Zakon o Vladi Tuzlanskog kantona*, *Sluzbene novine Tuzlanskog kantona*, 2/94, 4/95, 9/96.

¹³⁸ The Public Administration Service exam is necessary for workers in public administration, according to Article 27 of the Law of Employment Relations and Salaries of Public Administration

HDZ. There are no Serbs, either among the Deputy Ministers or Secretaries to the Ministries. This agreement between the SDA and HDZ is based on reciprocity, which guarantees the SDA similar representation in the Posavina Canton. Although many of the Tuzla cantonal employees worked in the pre-war Tuzla district administration, most of the post-1992 employees were hired without public notification and competition for the vacancies.

Public competitions are common only for those vacancies where there is a shortage of available, qualified staff. Typically these include positions for English language teachers and more rarely for lawyers, doctors or economists.

G. Ethnic Prejudice

Since 1992, the ethnic background of a claimant has played a crucial role in obtaining justice in BiH.

- The Municipal Court in Zvornik issued a ruling stating that the Court did not have jurisdiction in the lawsuit of D.M. (ethnic minority) versus M.G. The plaintiff, D.M., had filed suit to regain possession of her husband's business premises in Zvornik.¹³⁹ D.M. then appealed to the Executive Board of the Zvornik Municipal Assembly, and the public company responsible for administering and managing abandoned business premises. Each of those bodies told D.M. verbally that they had no jurisdiction. Meanwhile M.G. continues to use – with full support of local authorities – D.M.'s business premises.
- M.J., an ethnic minority, returned to Travnik soon after Dayton and filed a request for repossession of her apartment. While waiting for the procedure to be completed, the police evicted the temporary occupant from M.J.'s apartment. The apartment was not returned to M.J., but allocated instead to the commander of the Police Station in Travnik. In spite of numerous appeals, the case has dragged on for more than 3 years. M.J. has still not returned to her apartment.

Authorities sometimes condone illegal construction on land owned by ethnic minorities who were expelled during the war, viewing this as a way to cement ethnic cleansing. According to old Yugoslav law, a person whose property is expropriated must be given just compensation, either financially or with another piece of property.¹⁴⁰ In spite of this law, which is still on the books of RS and the Federation, enforcement does not occur.

- B.B., a Bosniak from Celinac, had a large plot of arable land expropriated, so that a Serb could build a private sawmill.¹⁴¹ During the compensation procedure, B.B. was offered compensation that was insufficient to acquire a new piece of land.¹⁴²
- On 3 March, 1997, the Islamic Community in Banja Luka submitted a request to build fences around seven destroyed mosques and graveyards, which are currently used as parking lots and refuse dumps. Their petition also included a request to begin reconstruction of the mosques. The local authorities have yet to respond to the request. On 27 March, 1999, the Banja Luka Municipal Assembly changed an earlier ruling dated 18 February, 1994, and forbade construction on any of the

Employees in the Federation of BiH, Article 128 of the Law of the Federation of BiH Administration, and Article 125 of the Law of Cantonal Administration of Tuzla-Podrinja Canton.

¹³⁹ P-180/98.

¹⁴⁰ Zakon o eksproprijaciji, *Sluzbeni list SRBIH* 12/87, with amendments in *Sluzbeni list R BiH* 15/94. See, Chapter VII on compensations for expropriated property.

¹⁴¹ Ruling No. 01-475-68/97 of 30 July, 1997.

¹⁴² Information from a few law offices show that it is difficult to establish correct compensation figures, but all agree that they are arbitrary determined and always at the lowest possible level.

aforementioned locations. The Islamic Community appealed to the Human Rights Chamber, which ordered the local authorities to allow the Islamic Community to build and maintain fences. The Human Rights Chamber order also forbade any illegal construction at these locations and ordered the Municipal Assembly to quickly issue permits for reconstructing the mosques.¹⁴³ To date, the Banja Luka Municipal Assembly has ignored the Chamber's ruling.¹⁴⁴

- D.S., a Bosniak, applied to the Department of Construction and Urbanism of Livno Municipality to obtain a permit to change his garage into a business premises. His request was refused by the Department, which stated that the garage was located in an area, which was intended to be turned into apartment houses.¹⁴⁵ D.S. then appealed to the Ministry of Urbanism, Construction and Environmental Protection in west Mostar, although the same Ministry exists for Livno canton. The Ministry of Construction and Urbanism acted as the higher jurisdiction body and annulled the lower jurisdiction ruling, emphasizing that D.S. was wrongly instructed. In a renewed process, D.S.'s request was refused, under the authority of the Decree on Urbanism and Land Use, which was in force on the territory of HR Herceg-Bosna during the war. D.S. appealed the ruling to the responsible Livno Cantonal Ministry, which confirmed the ruling. D.S. initiated an administrative dispute procedure before the Municipal court in Livno on 10 December, 1997. The court claimed non-jurisdiction and transferred the case to the Cantonal Court of Canton 10, although according to the Law on Courts of Canton 10, municipal courts are given jurisdiction to consider cases concerning administrative disputes.¹⁴⁶ This case contrasts with that of B.G., a Croat, who made a similar request concerning a similar location under identical circumstances. His request was approved on 12 September, 1996.
- The Tomislavgrad Municipality expropriated land owned by D.I. and L.B. for the purpose of building a livestock market and veterinarian station. D.I. and L.B. were offered symbolic compensation. Neither D.I. nor L.B. participated in the actual expropriation procedure and they were not informed about it. In spite of this, construction work started immediately. D.I. and L.B. requested that construction stop immediately, until their case was heard and reasonable compensation. The municipality ignored their requests, causing them to initiate an administrative dispute procedure before the Municipal Court in Livno on 23 December, 1997. They have never received any response.

Personal identification numbers are required to obtain personal documents and to determine citizenship.¹⁴⁷ A certificate of citizenship is necessary to obtain a passport. This means that an individual without a personal identification number cannot obtain a passport. Following the dissolution of former Yugoslavia, many persons born in other republics of the former Yugoslavia remained on the territory of BiH. These individuals cannot receive citizenship until they obtain a document from the birth registry (*matičar*) of their place of birth. Even though these data is available in other BiH government agencies, only documentation from the original jurisdiction is accepted. This provides opportunities for ethnic discrimination.

¹⁴³ see Ruling on the Admissibility and Merits delivered on 11 June, 1999 by The Human Rights Chamber, case CH/96/29 The Islamic Community against Republika Srpska.

¹⁴⁴ According to Article XI, Annex 6 of the Dayton Peace Agreement, Human Rights Chamber rulings are to be implemented fully. Refusal of the Banja Luka authorities to implement the Chamber's decision was one of the main reasons why High Representative Petric removed Banja Luka Municipal Assembly President Dorde Umicevic from his position on 29 November, 1999. See "Petric i Beri smijenili dvadeset dvoje protivnika Dejtonskog sporazuma," *Oslobodenje*, 30 November, 1999, pg. 3.

¹⁴⁵ ruling 03/II-364-102/96 on 21 April, 1997.

¹⁴⁶ "Municipal courts have jurisdiction over actions against administrative rulings." Zakon o sudovima Herceg-bosanske zupanije, Article 22, *Narodne novine HB zupanije*, 1/97.

¹⁴⁷ Zakon o drzavljanstvu, *Sluzbeni glasnik BiH* 4/97.

- S.M. and D.M., citizens of Montenegro and Macedonia respectively, requested the Federation Ministry of the Interior to issue a certificate confirming their BiH citizenship. The Ministry issued a certificate of citizenship. S.M. and D.M. then submitted the certificate to the Ministry of the Interior in Livno and requested registration. The Livno MUP refused to carry out registration, because they claimed they lack jurisdiction. According to the Law of Public Registries, the MUP is responsible for subsequent citizenship registration.¹⁴⁸ S.M. and D.M., who have been trying to resolve their citizenship since 1994, started an administrative dispute procedure at the municipal court in Livno. Because their case has not yet been resolved, they have not been able to obtain personal documents such as a passport. On the other hand, R.S., who was born in Croatia and who resided in Livno for the same period of time as S.M. and D.M., received her citizenship documents on the basis of a verbal request.
- According to the RS Law on Personal Identification Cards, the old ID card, a photograph, the request form for the new card and a receipt that the fee has been paid are the necessary documents to obtain a new ID card.¹⁴⁹ Contrary to the law, clerks who work on ID cards will issue ID cards to non-Serbs only if they present two certified statements given by Serbs stating that the non-Serb did not leave his place of residence during the war. Even if a non-Serb can provide these statements, obtaining an ID card is not certain. H.K. from Banja Luka refused to follow this discriminatory procedure and appealed to the head of the department. As H.K. was determined not to have Serbs give statements, the department head instructed him to present pension cheques as proof of residency in order to get his ID card.

H. Overburdening the Citizen – Official Obstructionism

It is very common for administrative services to require claimants to present evidence (birth certificates, ID, receipts, etc.) to support facts that are already contained in public records. In order for a claimant to exercise his rights he must supply these documents. As a result, individuals are forced to waste time and money supplying the state with papers that are already on file as public documents in other government departments. Often, officials require documents that are unnecessary to process a claimant's request. Fees seem to be charged, often without justification or explanation, and petitioning parties are sometimes kept in the dark as to actual fee levels. Administrative bodies sometimes base their rulings on outdated and overturned laws. Forged affidavits and illegal forms are often used for official correspondence (stationary, official seals, names of institutions).

Applicants must pay various fees for documents issued by the municipal administration. These fees are determined by law.¹⁵⁰ To buy an apartment in Mostar, one must pay the following fees:

1. APF form for buying the apartment	6 KM
2. PS form (category of the apartment, owner, etc.)	10 KM
3. Contract certification fee in the public attorney's office	10 KM
4. Contract certification fee in the municipal court	85 KM
5. Tax-free certificate from the revenue department	20 KM
6. Registry fee from the catastrophe office	10 KM
7. Certification of transcripts of the documents necessary to buy the apartment	20 KM
8. Fee for real property registration	45 KM

Total: 206 KM

¹⁴⁸ Zakon o maticnim knjigama, *Sluzbeni list RBiH* 20/92.

¹⁴⁹ Zakon o licnim kartama Republike Srpske, *Sluzbeni glasnik RS* 14/92.

¹⁵⁰ The Municipal Council makes a ruling about fees on the basis of the cantonal law on administrative fees which determines maximal and minimal fees.

Federation law places the responsibility to collect documentation on the administrative body handling the case.¹⁵¹ Government agencies regularly ignore this law, creating additional expense for claimants, delaying procedures and violating statutory deadlines.

- A representative of a foreign company intended to open a business in Mostar. According to the Law on Policy of Direct Foreign Investments in Bosnia and Herzegovina,¹⁵² a founder of a company in the Federation has to apply to the Ministry of Foreign Trade, both in the Federation and on the BiH state level, to obtain approval to found the company.¹⁵³ The same Law provides that prior to obtaining permission for business in fields where foreign investment is restricted (weapons and media), the responsible entity organ has to be consulted and its authorisation obtained.¹⁵⁴ After submitting the request to the Ministry of Foreign Trade, including the founding contract and copies of the registration from the court registry, the representative was told to submit a certificate from the Ministry of Defence in Mostar that the location was not in a banned zone. The foreign representative appealed to the Ministry of Foreign Trade, citing the Law of Administrative Procedure, which obliges the Ministry to provide this information.¹⁵⁵ His appeal was rejected and he was informed that his company could not complete the registration process without documentation from the Ministry of Defence. He then applied to the relevant department in the Ministry of Defence, and obtained the necessary documentation, which he forwarded to the Ministry of Defence for a ruling. The Ministry of Defence requested him to submit a copy of the founding contract, which he had already submitted to the Ministry of Foreign Trade. In addition, he was required to provide a certificate from the Department of Urbanism that no military objects were to be built in this location. The requested location is in the city centre of Mostar, an unlikely location for a military installation. After applying to the municipal Department of Urbanism, the foreign representative obtained the certificate at the cost of 30 KM. After receiving the certificate from the Ministry of Defence, the Ministry of Foreign Trade proved unable to process the paperwork. The foreign representative managed to get final approval only after intervening with the chief of cabinet of the Deputy-Mayor of Mostar, Safet Orucevic.
- Zenica-Doboj Canton issued a recent ruling about compensation during maternity leave.¹⁵⁶ According to the ruling, a mother is obliged to collect seven different documents and enclose them with her request in order to obtain compensation during maternity leave. In order to collect these documents she must go to numerous institutions, such as the company where she works, the centre for social work, the police administration, the doctor, etc, and pay about 30 KM for all the documents.

A unified database that would contain all the information necessary for the effective and productive work of the administration would contribute greatly to increased efficiency and would reduce the possibility for authorities to place demands on citizens to provide documentation that the authorities themselves are obliged to provide. Sometimes an agency will request information, which the very agency already possesses.

- Personal identification numbers, personal identification cards and driving licenses are typically issued by the police. When citizens throughout BiH apply to the police to

¹⁵¹ See a standard provision for this rule, in Zakon o upravnom postupku Federacije BiH, Article 166.

¹⁵² Zakon o politici direktnih stranih ulaganja u BiH, *Sluzbeni glasnik BiH*, 17/98.

¹⁵³ Articles 4 and 5.

¹⁵⁴ Article 4(a, b).

¹⁵⁵ Zakon o upravno postupku FBiH, Article 134.

¹⁵⁶ Odluka o pravu na naknadu place zeni-majci u radnom odnosu za vrijeme porodiljskog odsustva, effective as of 1 July, 1999, *Sluzbene novine ZE-DO kantona* 14/99.

have an identification card issued, they are requested to submit a certificate of residence, even though the police maintain the registry of residence.

During the war, many public records offices were destroyed. Some officials use this as justification for not meeting citizens' requests, claiming the relevant documents were destroyed. In spite of the Law of Public Registries, which allows for the reconstruction of records that were destroyed,¹⁵⁷ reconstruction has not occurred in many municipalities, such as Modrica. In order to obtain a personal ID card, one has to submit both a birth certificate and a citizenship certificate. Displaced persons are especially affected by this because they cannot obtain either birth or citizenship certificates from their pre-war place of residence, as municipal officials housing these records were destroyed.

- After the war, the Department for Economic Relations and Entrepreneurship¹⁵⁸ in Zenica received several appeals concerning the cancellation of businesses. Because many citizens left Zenica in haste during the war, they did not de-register their businesses. Many have now returned and wish to settle their labour record cards for those businesses. However, the PIO requires a business cancellation certificate. The citizens cannot receive these certificates retroactive to the date when they actually stopped doing business. These certificates are valid only from the date the request was filed. This requires citizens to pay retroactive pension fund contributions, even though their businesses were inactive and they themselves were unemployed. Because the higher jurisdiction body upheld the lower jurisdiction rulings, many citizens initiated administrative dispute procedures. In all cases these appeals were rejected.

I. Public Companies' Dictatorship Over Customers

In BiH a number of public companies exercise monopoly power over citizens in a variety of fields. These include the Electric companies, the Water companies, and the Telephone companies. All three set arbitrary prices, engage in non-transparent practices, and follow the guidelines of local politicians. All three are subject to political abuse and present a formidable tool in preventing minority refugee return. The public telecommunications corporations (PTT) in BiH operate from a monopoly position. On the level of interaction with the local citizenry, the PTTs often act arbitrarily.

- R.A. made a contract with PTT Banja Luka for telephone line services immediately prior to the war, for which he paid 2,400 DM. R.A. took refuge abroad during the war. The PTT never installed the line, and never returned R.A.'s money. R.A. sent a copy of the contract, receipt of the payment and a request for reimbursement. PTT never responded to his request. R.A. has been forced to bring the case to court.
- A.D. had three telephone lines before the war. During the war, PTT Banja Luka disconnected the lines. In July 1999, A.D. submitted a written request to reconnect the lines, to which PTT has not yet responded.
- Throughout both RS and the Federation, numerous cases exist where returnees are forced to pay the telephone bills of previous users, under threat of disconnection. This includes cases where displaced persons and refugees used the telephone lines and then left the property without paying the bill. In some instances, these telephone bills total tens of thousands of Convertible Marks.
- Many citizens who were expelled during the war put their telephone lines on stand by with the PTT. As they now return to their homes, they find that their telephone lines

¹⁵⁷ Zakon o maticnim knjigama, *Sluzbeni list RBiH* 20/92.

¹⁵⁸ "Sekretarijat za privredu i poduzetnistvo."

were never disconnected, and that the PTT is demanding as much as 400 KM to reconnect their telephone lines.

The three electric companies also enjoy a monopoly position in BiH. During the war, refugees and displaced persons did not have to pay their electricity bills. Since the war, the electric companies have begun trying to collect past due payments, threatening disconnection to those who will not pay. So too, returnees are often required to pay all outstanding bills that were incurred by the wartime occupant of their property. Refusal to pay these bills often sees a returnee's electricity disconnected.

- S.S., a refugee who returned to her property in Banja Luka after three years, received a bill from the water company "Vodovod," asking her to pay the debt of the wartime occupant of her property. When S.S. objected to this, she received a letter from "Vodovod" on 2 August, 1999, stating that her objection was without basis.¹⁵⁹ She was instructed to initiate a court procedure against the person who had resided in her house. The debt remains unpaid and the threat of disconnection looms.
- The Sarajevo-based Elektrodistribucija and Radio Television BiH arbitrarily announced that TV subscriptions would be paid via the electricity bill. Citizens who object to paying this television subscription risk disconnection of their electricity if they refuse to pay for the television.
- The public heating company in Zenica (Grijanje) sent out notices in September 1999, demanding payment for old debts. Grijanje initiated 2,000 law suits in the Municipal Court against customers who had not paid their bills. It appears that similar to the telephone, electric and water debts, some of these bills may have been incurred by wartime residents who have since vacated the properties.

III. CONCLUSION

Public administration in BiH needs an overhaul. As is the case with most former communist societies in transition, the administration inherited from the communist system was grossly overstuffed, resource and labour intensive, inefficient, with a role meant more to control than to serve. Wartime anarchy brought chaos to an already inefficient system, as it operated haphazardly, often under the arbitrary orders of military commanders or political party officials. The lack of rule of law in post-war BiH protects political party control over the public administration organs, and violates numerous regulations.¹⁶⁰ Lack of enforcement of administrative rulings, or selective enforcement against vulnerable groups in BiH society, such as ethnic minorities, means that public administration is a weapon of, and not a check on, the ruling nationalist political structures in BiH.

The goal of the international community and those Bosnian leaders who wish to see BiH develop as a truly democratic and open society must be twofold. Public administration officials must be encouraged to implement all laws efficiently and correctly without the fear of retribution from ruling political parties. Although it is correct and proper that ruling political parties should have the authority to make wide-ranging changes in how the public administration functions, this should occur within a strong legislative framework and respect existing laws. The actions of the ruling party in interfering with the internal workings of a public administrative body should be placed under intense scrutiny. No party should be able to pressure administrative organs to either selectively implement, over-implement, or disregard existing laws.

¹⁵⁹ 04-03-1082/1-99.

¹⁶⁰ "Neizbjezni novi sukobi na Balkanu," pesimisticka prognoza Zaka Klajna, izaslanika UN u BiH" *Oslobodenje*, 6 December 1999, pg. 2.

The work of public officials must be transparent, with strict enforcement of regulations in the field of administrative practice and procedure. In the field of public administration, BiH must reduce its bureaucracy and enhance its democracy. Transparency, openness, and respect for the rule of law must replace the ad hoc arbitrariness of today's Bosnian administration. Strict penalties need to be imposed against agencies or officials that discriminate and disregard the law.

The development of an efficient, functioning, independent public administration serving the Bosnian public will only be truly realised when the culture of rule of law has replaced the culture of rule of nationalism.

IV. RECOMMENDATIONS

Much of what is wrong with current system can be fixed if Bosnian authorities respect the civil service laws that are already in force. Very little new legislation need be adopted. In order to increase the efficiency of public administration, the International Crisis Group recommends the Bosnian authorities and the international community, working together, undertake the following actions.

1. Create an effective civil service that is able to operate outside the influence of political parties. Steps include:
 - a) Apply objective, standardised criteria in both entities for financing and budgeting municipal and cantonal administration by adopting a fixed percentage point (with a window of three percentage points each side of the fixed amount) of municipal/cantonal income that should be allocated for the civil service;
 - b) Establish an appointments commission for senior posts to de-link the public administrative bodies from the political parties;
 - c) Appoint a professional "manager" of the municipal administration for a five-year renewable term in both entities. This would be equivalent to the pre-war *generalni sekretar opštine* (General Secretary of the Municipality), to organise and supervise all municipal civil servants and report to the municipal council/executive board. This position would allow the elected, political party-nominated Municipal Assembly/Council Secretary in both RS and the Federation to engage himself primarily with the effective functioning of the Municipal Council/Assembly;
 - d) Enforce current legal requirements for civil service hiring, i.e., employees must pass a civil service examination prior to being hired;
 - e) Fire all administrative personnel unable to meet civil service criteria;
 - f) Ensure that all job vacancies in public administration are advertised as required by law;
 - g) Impose sanctions on municipal and cantonal officials for hiring outside proper channels or hiring unqualified personnel.
2. Make public administration more user-friendly by:
 - a) Educating and training officials to accept and apply contemporary European criteria in public service;
 - b) Imposing and enforcing penalties for municipalities that treat claimants inappropriately;
 - c) Insisting on modernising municipal public halls and reception areas in order to provide better and more efficient services; displaying all instructions for claims and appeals in an appropriate way and making them available in written form for free;
 - d) Making higher municipal and cantonal officials available to appellants for complaints and advice, for at least 2 hours per day, 3 days per week;
 - e) Ensuring that administrative officials keep claimants informed about the progress of their case.

3. Institute gradual changes in order to rationalise the system of public administration:
 - a) Amend relevant laws so as to minimise the required number of supporting documents claimants/applicants have to submit;
 - b) Reduce the number of administrative staff throughout the public administration system, taking into account the population density in the particular municipality/canton.
4. Restructure inspections throughout both the Federation and Republika Srpska;
 - a) In the Federation centralise inspections on the Cantonal level;
 - b) In Republika Srpska centralise inspections on the Republic level;
 - c) Initiate a system of rotating outside inspectors in both entities;
 - d) Ensure that inspectors follow up on their findings and reports;
 - e) Ensure inspectors do not act outside the boundaries of their jurisdiction;
 - f) Enforce rigid inspection of inspectors;
 - g) Ensure good salaries for inspectors.
5. Strengthen the appeals process:
 - a) The Croat-majority cantons must make the necessary constitutional and legal provisions to recognise the jurisdiction of the Federation Supreme Court;
 - b) In the Federation petitioners should be able to appeal beyond the Cantonal level to the Federation organs;
 - c) Require higher jurisdiction bodies not only to overturn rulings, but also to hand down precedent-setting rulings under their own authority.
6. Increase public access to records and documents
 - a) Initiate reconstruction of all destroyed public registries on the national and local levels;
 - b) Resolve the issue of subsequent registration in the birth registries of persons who were in 1992 residents of BiH, but had been born in other republics of the former Yugoslavia. These persons should be entered in the citizenship registry;
 - c) Wherever possible, computerised systems should be installed to facilitate access to public registries and to reduce the paperwork claimants need to file.
7. Establish multiethnic civil services throughout BiH:
 - a) Require entities, cantons and municipalities to hire multiethnic administrative staff on the basis of the 1991 census;
 - b) Create and enforce penalties for top municipal and cantonal officials for using stationary, stamps and symbols of now-defunct wartime political entities.
8. Strengthen enforcement mechanisms:
 - a) UNMiBH should actively monitor (under the JSAP program) all administrative bodies with the power to issue quasi-judicial "rulings." These bodies should be treated similar to the court system.
 - b) JSAP should actively monitor cases of administrative silence, using information provided by the Federation Ombudsmen, OSCE and other international organisations, and press for sanctions against administrative organs that do not respect and implement the regulations regarding administrative silence;
 - c) JSAP should propose sanctions against administrative bodies that fail to streamline the paper chase. Priority should go to reducing the paperwork demanded of citizens, particularly when documentation is already on file with another government agency;
 - d) Using its authority under Annex 11, Article III:a of the General Framework Agreement for Peace, JSAP should take on the role of "the IPTF for the Courts," which would include developing "non-compliance" sanctioning mechanisms for public administrative organs as well as for the judiciary.