

# in Bosnia and Herzegovina

**DRAFT**

**Judicial System Assessment Programme  
(JSAP)**

**THEMATIC REPORT 2:  
INSPECTION OF THE MUNICIPAL PUBLIC PROSECUTOR'S  
OFFICE IN LIVNO, CANTON 10, DURING 5-16 JULY 1999**

**EXECUTIVE SUMMARY**

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**UNITED NATIONS**

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## ***INTRODUCTION***

UNMIBH has conducted an in-depth study of the functioning of the Livno Municipal Prosecutor's Office (MPO), which covers Drvar as well as Livno. It follows continuing serious professional concern about the performance of that office, not least in relation to the double homicide of an elderly Serb returnee couple in Drvar in April in 1998 and the "Drvar riot" of 24 April 1998.

During the period 5-16 July 1999 UNMIBH carried out an inspection of the Livno MPO. Five Teams, consisting of a Judicial System Officer (JSO), one or two IPTF Officers and language assistants, went through the files at the MPO as well as related documents held by the police and the Livno and Drvar Municipal Courts. Photocopies were made of a large number of files.

During the inspection period a total of 101 case-files, of which 42 were followed through the system from the police to the court, were assembled for further analysis which took place during the following weeks.

## ***FINDINGS***

The Study has determined that the criminal justice system has consistently failed to apply fundamental judicial principles in both minority related cases and other cases. Delays were detected at every stage. The system is unable to handle repeat offenders and notorious suspects. There were also poor communications, record-keeping and supervision as well as a pattern of discrimination. There was significant evidence of neglect of the European Convention on Human Rights despite its special position in the legal system of Bosnia and Herzegovina.

### Delay

The most prominent irregularity found was the delay in criminal procedure. The prosecutor claimed that serious cases were handled without delay, but analysis of case-files on violent crimes revealed that not even this was the case.

Delays were found at every stage of the process. The police in some instances delayed the submission of the criminal report to the Prosecutor after its completion. It was frequently found that the Prosecutor kept files for lengthy periods without taking action. The deadline set in Article 166(2) of the Law on Criminal Procedure of the Federation (LCP) for the submission of an indictment, a motion for additional inquiry or a declaration of withdrawal was not often adhered to by the Prosecutor. There were also delays in informing the injured party of a decision not to prosecute a suspect for a crime. The investigating judge on receipt of a request to open an investigation frequently seriously delayed or failed to do so at all. The requirement of Article 261(1) of the LCP that the indictment should be served without delay on an accused person who is at liberty was often not observed and there was a failure on the part of the President of the panel of judges to schedule hearings no later than two months from the receipt of the indictment at the court, contrary to Article 274(2) of the LCP.

### Failure of the prosecutor to be proactive

The Municipal as well as the Cantonal Prosecutors in the Canton have failed in a serious way to fulfil their duty to “take the necessary steps.... to guide the preliminary criminal proceedings and supervise the activities of the organs of internal affairs pertaining to the identification of crimes and their perpetrators”<sup>1</sup>. This was especially pronounced in the cases of the double homicide of the Serb couple in Drvar in April 1998 and the Drvar riots. In the latter there was no indication of any written communication between the prosecutor and the police other than the submission of the criminal report. Although in March 1999 the international community informed the prosecutor of significant evidence held by the police, he did not make a written request for it, nor did he request the complete police file. The investigating judge in this case was also found not to have taken sufficient initiative. In spite of the evidence that the Mayor of Drvar suffered serious injuries and that numerous other people were injured during the riots, the investigating judge made no attempt to exercise her power to expand the investigation beyond what had been requested by the prosecutor.

The passivity of prosecutors in trial hearings which has been observed elsewhere in Bosnia and Herzegovina was also apparent in this study. In virtually all cases the prosecutor asked very few questions and rarely, if at all, seriously challenged the testimony of the witnesses and the Accused. In the majority of the hearings at Livno Municipal Court he did not even appear.

### Special categories of cases

After examining the justifications given for dismissing cases it can be concluded that “notorious criminals” are to some extent protected from the judicial system. Of the thirteen cases involving “notorious suspects”, nine concerned violent crime. Undue delays were found in most of these cases and in only has a court verdict been imposed. There were examples of charges against such persons being dropped on dubious grounds.

At least 26 cases concerned repeat-offenders. The offences in the majority of these were not very serious, with theft being the most common. None of them had been properly handled. The files held by the local police were disorganised. Documents were missing. Statements lacked detail and material was assembled on the same suspects without any system.

### Discrimination

The Inspection team found extensive discriminatory practice against minorities in the judicial procedure, as well as police practice in Canton 10. The criminal justice system responded sluggishly to offences against Serbs. This is evident in the double homicide and Drvar riot cases, but it was also apparent in the numerous arson cases against Serb property in Drvar. It is symptomatic that the Inspection Team found no criminal action brought against officials who refused to carry out evictions and that despite intimidation, harassment, looting and arson directed in Drvar at Serb returnees, no Croat perpetrators of such crimes have been brought to justice.

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<sup>1</sup> Article 41/2/1 of the LCP.

## Communication and information

Failures in the chain of communication connecting the police, investigating judge and prosecutor emerged again and again. The fact that responsibility for the pretrial stage of the criminal process is divided has already been identified as a problem elsewhere in Bosnia and Herzegovina. The absence of well-established lines of communication contributes to the failure to take crucial steps at this stage. There is a clear need to set up routines to make sure that all documents necessary to conduct an investigation are forwarded from the police to the prosecutor and the investigating judge. It should not be left up to the police to decide what should be sent.

These shortcomings in communications are exacerbated by deficiencies in filing systems and the failure of the prosecutor to exercise his supervisory powers.

The system, or lack of system, of filing at the MPO means that the prosecutor has to rely on the court to keep accurate track of the progress of a case. There is no office docket system which enables him to prove what he has sent from his office. The only reliable proof is contained in the books which keep track of what is delivered to court. At the Livno Municipal Court there is a book in which judges and court employees record documents they receive. There is no such system at the Drvar Municipal Court.

The failure of the prosecutor to guide the police has already been mentioned. The prosecutor shows little understanding of his supervisory role. The general attitude seems to be that he does not have an important role during the investigation phase.

## The Cantonal Prosecutor

Under the Law on the Public Prosecutor's Office of Canton 10, the Cantonal Prosecutor supervises the work of the Municipal Public Prosecutors' Offices. Article 26 provides that the Cantonal Prosecutor may issue mandatory instructions to the Municipal Public Prosecutors regarding their work. In addition, "the Cantonal Public Prosecutor may directly exercise any right of the Municipal Prosecutor, if a special law does not stipulate otherwise".

It hardly needs to be said that the Inspection of the Livno MPO revealed a whole host of defects in its operation, including low standards of maintenance of case-files and innumerable breaches of the LCP in the processing of minor as well as serious cases. In spite of this, the Cantonal Prosecutor stated in his 1998 Annual Report that "the work of the municipal public prosecutors can be assessed as high quality, good, efficient and lawful". This points to a failure on the part of the Cantonal Prosecutor to exercise his power of supervision over the Livno MPO. This failure was evident in Drvar riot case.

## ***KEY RECOMMENDATIONS***

### Canton 10

Due to the systematic nature of the shortcomings identified in this study, the Inspection

Team recommends the following:

1. JSAP will issue a non-compliance report against the Prosecutor in Livno municipality to be submitted to OHR.
2. JSAP asks that OHR immediately pressure the Canton 10 authorities to appoint a qualified prosecutor for Drvar and Bosansko Grahovo, as one is urgently needed.
3. The Livno/Drvar MPO will be subject to a probation period during which its shortcomings will be addressed. This arrangement should have the following features:-
  - 3.1. An international lawyer with prosecutorial experience should be appointed to collocate with the Prosecutor in the Livno MPO to monitor the work of the office and assess the causes of the deficiencies identified in this Study and, where appropriate, give advice.
  - 3.2. Because of the connections which *should* exist between the Livno MPO and the Municipal Courts at Livno and Drvar and between the MPO and the Cantonal Prosecutor's Office, the international lawyer will also closely scrutinise these other institutions.
  - 3.3. During the probation period, the international lawyer will monitor not only breaches of the LCP, but also to the creation of adequate filing systems and of accountable communication procedures with the police and the courts.
4. In view of the pattern of discrimination, JSAP urges Canton 10 officials to increase representation of minorities in the judicial and prosecutorial system in the Canton and asks for OHR and other international support for this change.
5. Particularly in the light of problems in the processing of "notorious" suspects, JSAP urges the authorities to improve security in the courts and to set up a Judicial Police in the Canton and asks that OHR and other international organisations support this.

#### Implications which go beyond Canton 10

1. This Study has underlined the need for the establishment of effective sanctions for Prosecutors and Judges in Bosnia and Herzegovina who fail to implement the law.
2. The present allocation of responsibilities to the police, the prosecutor and the investigating judge in the pretrial stage of criminal procedure makes for fragmentation of responsibilities and buck-passing. The Study provides further evidence of the need for reform of these institutional roles with the prosecutor being given the main responsibility for the conduct of the case before trial.

