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# **United Nations Mission in Bosnia and Herzegovina**

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**Judicial System Assessment Programme  
(JSAP)**

## **THEMATIC REPORT IV**

### **A Case Study in Economic Reform**

#### **INSPECTION OF THE REGISTRY FOR COMPANIES AND PUBLIC INSTITUTIONS IN BIHAC, UNA-SANA CANTON**

**6 – 13 December 1999**



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## **0. EXECUTIVE SUMMARY**

### **0.1 Background**

A healthy economy is a vital component of democratic society. Progress in Bosnia and Herzegovina towards achieving this requires reform aiming at establishing public trust in the functions carried out by public authorities in the economic sphere. With regard to the application of the laws on registration of companies and public institutions such reform must aim at greater public access both by law and in practice to the information submitted to the registry court. This is imperative to the protection of creditors of companies.

For the above reasons the scrutiny of the handling of company registries by the courts was on the agenda of JSAP at an early stage of its assessment of the judicial system. A basic inquiry was made in several cantons during the first quarter of 1999, including the Una-Sana Canton. The findings of that inquiry, together with ample allegations of irregularities related to the registration of companies, was at the root of the subsequent proposal to carry out an inspection of the registry for companies and public institutions at the Cantonal Court in Bihac ('sudski registar').

### **0.2 Findings**

In respect of the institutional dimension of the inspection, it was found that the registry was well equipped both in terms of physical, technical and human resources. The office had been allotted three computers that were, however, all used only as word processors. At the same time the judge in charge evoked the need for computerization of the registry.

With regard to public access, the law stipulates that the court register and the registry books shall be public. It is however arguable whether this includes direct access to the information on the basis of which the decision to register an entity in the court registry is made. In practice such access is not given. Instead the person seeking information submits a request for information on the basis of which an 'excerpt', or in the case of historic data a 'certificate' from the file is drafted. The judge in charge of the registry then signs the document, in order to guarantee the authenticity of the information.

In view of the high level of discrepancies between the public record and the underlying information submitted by the applicant, it is the view of JSAP that the applied procedure does not offer a sufficient level of transparency. Since the nature of the information submitted does not justify confidentiality, direct access to all information submitted by the applicant could therefore be explicitly stipulated by law. This would provide the general public with a means for controlling the information. It would also indirectly serve to reduce the pressure on judges to approve applications that are not properly documented.

Serious irregularities were found in 20 out of 49 cases scrutinized. In addition, and most seriously, it was noted that, according to the registry books, all cases had been registered and decided the same day, which was contradicted by information in the files. The responsible judge did not convincingly justify the discrepancy between the files and the registry books.

In view of the high level of basic irregularities, it must be questioned whether the registry is at all fulfilling its purpose of generating public trust in the general lawfulness of businesses and other entities registered in the Canton.

Amongst the files scrutinized were six cases regarding firms owned by ‘notorious suspects’<sup>1</sup>. Their status as ‘untouchables’ was confirmed by the findings of the JSAP team. Irregularities found indicated a clear lack of commitment to verify information submitted by the applicants. A similar lack of commitment was found with regard to the registration of two companies that were found to have been registered in false names and a third company registered by a foreign citizen that lacked sufficient documentation regarding the identity of the founder.

A particularly serious case reviewed regarded the company ‘Polietilenka’. Grave irregularities were found regarding the re-registration of that and three socially owned companies in connection with their merger with the Sarajevo based ‘Energoinvest’. While the procedure applied pertaining to the merger as such would merit further scrutiny, this would fall outside of the scope of the inspection of the court registry and should rather be dealt with in the context of the privatization process. Irregularities with regard to the registration of the company should be corrected in the context of a more complete scrutiny of the court registry.

## **1. INTRODUCTION**

### **1.1 Background**

Legislative reform in the economic field has been ongoing in Bosnia and Herzegovina for some time. Since the country is in transition between a socialist, a war time and a capitalist economy in a democratic society, at the time of the inspection, at least three sets of laws were applicable with regard to most of the cases scrutinized, depending on what year the entity was registered in the court registry. A temporary side effect of the transition and the ongoing reforms is that the current legal situation with regard to registration of companies is all but transparent.

The registration of companies and other entities was at the time of the inspection regulated mainly by the following laws:

- Law on Registration Procedure Applicable to Court Registry Books (Official Gazette of the Federation of BiH, No. 6/95)<sup>2</sup>;
- Decree on Registration of Companies and Other Legal Persons Performing Economic Activities in the Court Registry Books (Official Gazette of the Federation of BiH, Nos. 10/96, and 10/98);
- Rule Book on Forms and Procedure for Registration of Companies and Other Legal Persons Performing Economic Activities (Official Gazette of the Federation of BiH, No. 17/98); and
- Law on Economic Companies (Official Gazette of the Federation of BiH, No. 23/99)<sup>3</sup>;

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<sup>1</sup> On the definition of the term ‘notorious suspect’, see 3.5.3 ‘Firms registered in the names of ‘notorious suspects’.

<sup>2</sup> This law was replaced by the law on Registration of Legal Persons in the Court Registry (Official Gazette of the Federation of BiH No. 4/00)

<sup>3</sup> This law replaced the Law on Enterprises (Official Gazette of the Federation of BiH No. 2/95, 2/96, 8/96 and 14/97).

Particular provisions for foreign companies were found in the Federal Law on Trade, and in the Law on Foreign Investment, both published in the Official Gazette of the Federation BiH, No. 2/95.

Progress towards a higher level of economic growth and a better distribution of that growth in Bosnia and Herzegovina requires reform aiming at establishing a higher degree of public trust in the functions carried out by public authorities in the economic sphere. With regard to the application of the laws regarding registration of companies and public institutions such reform must aim at greater public access, both by law and in practice, to the information submitted to the registry court.

Malpractice and inefficiency in the processing of applications for registration of companies will inevitably lead to lack of protection of creditors and other persons dealing with the company, as well as loss of tax revenue. Shortcomings in the former case may also in turn result in loss of foreign investment in the region. In addition, lack of public scrutiny of the registry may encourage corrupt practices.

Assessment of the handling of company registries by the courts was for the above reasons on the agenda of JSAP already at an early stage of its initial scrutiny of the judicial system in BiH. A basic inquiry was made in several cantons during the first quarter of 1999, including the Una-Sana Canton. The findings of that inquiry, together with ample allegations of irregularities related to the registration of companies, was at the root of the subsequent proposal to carry out an inspection of the registry for companies and public institutions ('sudski registar', hereinafter 'the registry') at the Cantonal Court in Bihac.

Although indications of possible malpractice by the judge in charge of the registry were at hand prior to the inspection, the registry at the Cantonal Court in Bihac was not chosen to specifically target that registry and that court, but rather to produce a study that could be applied at a broader, country-wide level. No reason has been found to justify that the irregularities found during this study are unique to the Registry in the Una-Sana Canton. On the contrary, it is obvious that the underlying causes for much of the irregularities encountered are of a general nature and may be attributed to the war and the post-war circumstances in Bosnia and Herzegovina as well as to the transition from socialist to democratic governance. A country-wide application of the recommendations made would serve to generate increased public trust in the objectivity, quality and integrity of the work of the courts responsible for maintaining court registries. It must all the same be noted that, due to the limited scope of the inspection, the report does not per se include any comparative analysis with similar registries in Bosnia and Herzegovina.

## **1.2 Methodology**

The implementation of the inspection was carried out in three phases consisting of preparations, information gathering, and drafting of the report.

During the preparatory phase, which was initiated in mid-November 1999, relevant laws were located and studied, a form for information gathering was created, and the scope of the project was determined. It was decided that the inspection should be implemented as a low key project, and that the number of staff involved should be limited to the members of the Bihac Region team, with background assistance from JSAP MHQ.

The information gathering phase was conducted from 6 - 13 December 1999. During that period 49 files, randomly selected from the registry books and provided by the court

registry clerk, were scrutinized. The selected cases included 45 companies and four public institutions. In addition the registry books as such were examined. The information gathering was concluded by a meeting with the President of the Cantonal Court, who is responsible for maintaining the registry, at which additional information was given on the conditions for public access and the procedure for issuing excerpts on information from the files.

A meeting was also held with the Deputy Ombudsman of the Federation of BiH, Mr. Branislav Versic. In addition, further clarification was sought at the Cantonal Court in Sarajevo, in particular on the issue of public access to the information kept at the court registry.

## **2. INSTITUTIONAL DIMENSION**

### **2.1 Background**

The registry for companies and public institutions is divided into three separate registries, the company registry, the registry of public institutions, and the registry of other entities. The registry books in turn consist of three different registers. The Reference Book lists the entities by name in chronological order. In the Register Book applications are kept in accordance with the date of receipt. This book is opened at the beginning and closed at the end of each year. In the final registry the individual case files are kept from the time of the establishment of the registry.

Historically, the Labor Court in Bihac was in charge of the registry for companies and public institutions. On the abolition of that court the registry was transferred to the Higher Court in Bihac. As a result of the establishment of the Federation of Bosnia and Herzegovina, the registry in turn became the responsibility of the Cantonal Court of the Una-Sana Canton. The President of that court, Judge Hasan Pjanic, took the responsibility to maintain the registry himself.

According to Judge Pjanic, around 1700 files were transferred from the Labor Court to the Higher Court. No formal hand over was made at that time. At the subsequent hand over to the Cantonal Court, Judge Pjanic stated, the files were scattered all over the court, and his first priority was to put them all in order. At the start of December 1999, the company registry had 4296<sup>4</sup> companies registered. Out of this number, 295 were registered in 1999, 53 were deleted and 697 re-registered.

### **2.2 Physical resources**

The registry is placed in the courthouse in Bihac, where it occupies three well-furnished offices. One of them is the reception office, where a registry clerk receives applicants and people requesting information. The case files are kept in the other two offices in large filing cabinets. These two offices also provide working space for two typists who assist the registry clerk. Judge Pjanic complained about lack of space for keeping the files.

Although the President of the Court claimed that the current manual system works pretty fast, the system has its limitations. Companies are registered chronologically by their names. Consequently, a request for information on a specific company requires that the clerk go through the registry manually. When the team asked how many companies were registered,

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<sup>4</sup> This number includes all the registered companies, as well as the deleted ones.

it therefore took a while to get the answer. Thus, the way in which the registration of companies was set up did not facilitate research into specific issues.

In terms of office automation the registry was well equipped. There were three computers, one copy machine, one fax machine, and one phone line with extensions in each office. The computers, however, were used only as word-processors. The President of the Court, in fact, spoke of the need for computerization of the registry. He was of the view that the registries throughout the Federation should be computerized with the same specialized software<sup>5</sup>.

### **2.3 Human resources**

In addition to the Judge responsible for maintaining the files<sup>6</sup>, the company registry has three employees. A qualified registry clerk<sup>7</sup> is in charge of receiving the applicants, ensuring that all the needed documents are attached and that the forms are properly filled out. When the file is completed, the clerk forwards it to the judge, who will decide upon the registration. In addition there are two typists employed to prepare the application forms.

There was some concern regarding the lack of personnel to process the foreseen influx of applications for re-registration of companies in accordance with Article 382 of the new Law on Economic Companies. Only 280 companies had requested re-registration at the time of the inspection. It was expected that most of the companies would apply at the last moment before expiration of the deadline, 28 February 2000.

## **3. TECHNICAL DIMENSION**

### **3.1 Procedure for registration**

The Law on Registration Procedure Applicable to the Court Registry Books regulates the registration of companies. It briefly includes the following procedural steps:

- (1) The founder, or a person authorized to represent the company, submits an application with all documents attached as required by the law<sup>8</sup>.
- (2) The registry clerk informs the applicant about any need for additional information and makes sure that the applicant pays the registration fee<sup>9</sup>.
- (3) The file for registration is forwarded to the judge. The court verifies if the company is under its jurisdiction.

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<sup>5</sup> Preparations for computerization had been made in that the data in the files has been registered on a set of forms that will eventually facilitate the establishment of a database.

<sup>6</sup> The Law on the Registration Procedure Applicable to Court Registry Books stipulates that an individual judge shall be in charge of the registration of companies.

<sup>7</sup> According to the Book of Internal Organization of the Cantonal Court, the registry for companies and public institutions should employ one official with a completed first degree from the Law Faculty or Higher Administrative School.

<sup>8</sup> It was found that the majority of the applicants deliver their files directly to the Court Registry. Only a small number of applicants living outside of the Canton send their applications by mail.

<sup>9</sup> Basic elements for registration are found in Art 55 to 58 of Law on Economic Companies.

- (4) Should the conditions for registration not be met, the court may summon the applicant to the court or return the application for necessary completion. A deadline no longer than 15 days will then be set for re-submission of the application.
- (5) In addition, the court may set a deadline of 30 days for the applicant to submit additional information if the application does not include all necessary information<sup>10</sup>.
- (6) The application shall be considered withdrawn if not returned to the court before the deadline<sup>11</sup>.
- (7) After verification that all conditions are met, the court registry will register the new company by giving it a specific registration number<sup>12</sup>.
- (8) The court then requests that the registration be published in the Official Gazette of the Federation;
- (9) If the court rejects an application it must justify its decision<sup>13</sup>.

### **3.2 Legal capacity**

Legal capacity is gained on the date of registration in the court registry book, before which date the company cannot perform any lawful activities<sup>14</sup>.

### **3.3 Deletion of unfounded registration**

The court registry shall delete a company from the registry upon the request of a person with a legal interest, or ex officio<sup>15</sup> if:

- (a) the registration did not include the stipulated documentation;
- (b) if the conditions for running the business have changed; or
- (c) in other cases when the registration was considered, or had become, inadmissible.

Such a request must be submitted within 8 days of finding out about the registration, but no later than 30 days from the day of registration. Deletion ex-officio may be initiated within one year of the day of registration<sup>16</sup>.

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<sup>10</sup> Articles 32 and 33 of the Law on Registration Procedure Applicable to Court Registry Books (Official Gazette of the Federation No. 4/00). The corresponding Articles 34 and 35 of the law in force at the time of the inspection stipulated a 60 days deadline. It was found that the 60 days deadline was rarely applied. The rule appear to have been that applicants were orally informed of any need to submit additional data.

<sup>11</sup> Art. 32 of the new Law on Registration Procedure Applicable to Court Registry Book for Companies, and Article 34 in the replaced law.

<sup>12</sup> In the registry book the entities are registered as follows: 1) for the economic companies (e.g. 1- 267- 00); 2) for public institutions (e.g. 2 - 765 - 00); and 3) for others (e.g. 3 -999 - 00).

<sup>13</sup> In accordance with Art 60 of the Law on Economic Companies, the Court may refuse to register a company in the following cases: a) if the founding act is null and void; b) if deposits were not paid in accordance with the founding act; c) if the activity of the company is not in compliance with the law; d) if the founder of the company is a major share owner in a company with due outstanding debts or unpaid taxes.

<sup>14</sup> Art 5 of the Law on Economic Companies.

<sup>15</sup> Art 49 and 50 of the Law on Registration Procedure Applicable to Court Registry Books (Books (Official Gazette of the Federation No. 4/00) and Articles 61 and 62 of the replaced law. The deadlines are shortened in the new law.

<sup>16</sup> The deadlines at the time of the inspection were 15 days, 60 days and 2 years respectively.



Nullification may also be requested if:

- (a) the registration of the company was based on a false document or untrue information;
- (b) if the procedure for issuing the document was conducted in an unlawful manner;
- (c) if the activity for which registration is applied for is illegal; or
- (d) if there are other lawful reasons for it.

Such a claim must be filed within 15 days from the day the claimant found out about the reason for nullification and not later 2 years from the day of registration<sup>17</sup>. It should be noted here that the expiration of the 2 year deadline does not preclude that criminal charges be submitted at a later stage in accordance with the provisions of the Criminal Code and the Code of Criminal Procedure.

In addition, the Law on Economic Companies, in its transitional provisions, stipulates that companies whose form (type), firm, basic stock capital, founding document and statute do not correspond with the provisions of the new law, shall be harmonized with it no later than six months from the day of its entry into force. Companies that fail to do so shall be terminated. The decisions of the court on termination of companies shall be published in the Official Gazette of the Federation of Bosnia and Herzegovina<sup>18</sup>.

### **3.4 Public access**

The President of the Cantonal Court emphasized that the Court Registry Book is public and that it is open to everybody without need to justify the request for access. He also stated that all information included in the specific files is available without restrictions.

While JSAP was unable to verify the latter statement, Article 2 of the new Law on Registration of legal persons in the Court Registry Books provides that the Court Registry book is public. Paragraph two of that Article further details that information entered into that book is open to the public and that anybody may inspect and transcribe such information and request a certificate from the court registry book.

It is arguable all the same whether direct access to the information on the basis of which the company has been registered is permitted by law. The law does not explicitly mention it, and such access is not given in practice.

Both the Cantonal Courts in Bihac and in Sarajevo informed that no such requests had been received. Information is instead in virtually all cases given in the form of an ‘excerpt’ from the registry book, issued on the basis of a request submitted by the person asking for the information. Such ‘excerpts’ shall, in accordance with Article 52 of the Federation Decree on Registration of Companies and other Legal Persons Performing Economic Activity in the Court Registry, only include information registered in the registry sheets from the active part of the registry file. The ‘Excerpts’ are signed by the judge responsible for the registry, which is meant to guarantee the authenticity of the information<sup>19</sup>. JSAP was informed that all other judges at the Cantonal Court are mandated to sign the ‘excerpts’ in the absence of the judge in charge of the registry.

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<sup>17</sup> The deadlines in the replaced law were 30 days and 3 years respectively.

<sup>18</sup> Articles 382 and 385.

<sup>19</sup> According to the President of the Cantonal Court, if the court registry fails to deliver the information requested it may also be requested through the Ombudsman’s Office.

Article 52 of the above decree also stipulates the issuance of a ‘certificate’ regarding data in the ‘passive part of the registry file’, i.e. on historical data on the registration of a company. In practice, although the Article in question does not limit the right to such information, it seems that it is only given to a person with a justified interest. Furthermore, in accordance with information gained from the Cantonal Court in Sarajevo, it generally does not include direct access to the underlying applications or requests for amendments to the registration.

Both ‘excerpts’ and ‘certificates’ are issued on specific forms. The forms include the names of the person or company that requested the information. In accordance with the judges interviewed at the Cantonal Court in Sarajevo, however, this information is not mandatory and will be left blank on the request of the person requesting the information. It is questionable all the same whether there is any practical reason for entering that information on the document.

While the need for issuing ‘excerpts’ and ‘certificates’ as such is justified, the present procedure lacks in transparency. In view of the large amount of irregularities noted in the files in the registry in the Una-Sana Canton, direct access to the underlying information, on the basis of which the registration, or amendment to the registration is made should be explicitly stipulated in the law. This would considerably decrease the level of basic irregularities found in the files. The nature of the information kept in the individual files does not, in the view of JSAP, justify confidentiality with regard to the information requests from the ‘passive file’. In fact, confidentiality is contrary to the purpose of the registry and will serve to encourage pressure on the responsible judge to approve incomplete or untruthful applications. Once approved, with no direct access to the documents on the basis of which the approval was made, the possibility of challenging the wrongful registration of the company is significantly limited. Direct access to the individual files would considerably reduce the likelihood that applications lacking basic information required are approved.

In view of the above, JSAP therefore recommends that Article 2 of the new Law on Registration of legal persons in the Court Registry Books be amended to specifically prescribe such public access. It should further be added to the same Article that a person that requests information from the court registry shall not be asked to give his name, or to identify himself. In addition, the forms for issuance of ‘excerpts’ or ‘certificates’ from the registry book or the files should be amended to exclude the entry of the name of the person requesting the information.

It should be noted here that the court may, in accordance with Article 40 of the new Law on Registration of legal persons in the Court Registry Books, prior to making its decision, and as an exception to the rule, schedule a hearing for clarifying or determining the facts in the case. It is believed, however, that this measure is in itself not likely to have a considerable influence on the underlying causes of the larger part of the irregularities found. Greater public access could have that effect.

### **3.5 Irregularities found in the reviewed files**

#### **3.5.1 Improper registration of reception of application**

In accordance with Article 29 of the Book of Rules on Forms and Procedure for Registration of Companies and Other Legal Persons Performing Economic Activities, the court is to register the date of receipt of the application in the registry book. In practice, however, it was found that the date of receipt in all cases reviewed was the same as the date of

issuing the decision on registration. It was at the same time obvious that there were cases where the court had made its decision several months or even one year after the reception of the application, e.g. in cases where applications were refused<sup>20</sup>.

It should also be noted here that Article 6 of the Law on Registration Procedure Applicable to the Court Registry Books, in force at the time of the inspection stated that the registration procedure is urgent and that the court is obliged to process the cases chronologically in accordance with the date of receipt of the applications. In this regard the practice of the court was not only contrary to the law, but it also displayed a serious lack of accountability<sup>21</sup>.

### 3.5.2 Insufficient authentication of documents in files

The Team found in several reviewed cases that applications and attachments were not signed by the applicants, which is contrary to Article 4 of the Book of Rules on Forms and Procedure for Registration of Companies and Other Legal Persons Performing Economic Activities<sup>22</sup>.

An explicit right to public access to the documentation on the basis of which the decision to register the company was made would significantly reduce the level of such basic irregularities in the files. The prevalence of such irregularities also suggest a need for a complete audit of the registry, in order to rectify the existing faults and to weed out companies that should not be granted public recognition as far as they do not fulfil the lawful conditions for registration as companies.

### 3.5.3 Firms registered in the names of ‘notorious suspects’<sup>23</sup>

JSAP found the following six firms registered in the names of ‘notorious suspects’ amongst the 49 randomly selected files:

- “Im-ex”, d.o.o. (limited liability company), registered 3 July 1996<sup>24</sup>;
- “DFS BiH”, d.o.o. (limited liability company), registered 21 October 1997;
- “Zelena dolina”, d.o.o. (limited liability company), registered 11 May 1998;
- “UNO-FREE”, d.j.l. (sole trader), registered 12 August 1998;
- “Uno-Petrol”, d.o.o. (limited liability company), registered on 15 June 1999;
- “Cardak na Uni ”, d.o.o. (limited liability company), registered on 13 July 1999.

The following irregularities were found:

- (1) The applications for registration of “Im-ex” (“Galaksija”) and “Zelena dolina” were not signed, which raises doubt as to their authenticity.

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<sup>20</sup> See files U/I 677/98 and U/I 887/90.

<sup>21</sup> The Article in question has been deleted in the new Of the new Law on Registration of legal persons in the Court Registry Books.

<sup>22</sup> See the cases U/I 453/98, U/I 1152/96, U/I 13/98

<sup>23</sup> A notorious suspect is defined as a person who in the post Dayton period has repeatedly figured as the suspect of serious high profile crimes, but is not seen to be prosecuted, or against whom the courts have been unable to conclude a case. This is commonly understood to be due to the powerful position of the suspect. The problem is widespread in BiH, to the extent that JSAP would be in error not to mention it. It must, however, be emphasized that the use of the term does not imply any foregone conclusion regarding the guilt of the suspect.

<sup>24</sup> Name changed into “Galaksija” on 13 June 1997.

- (2) Additionally, in the case of “UNO – FREE”, the founder stated before the Bihac Municipal Administration Office that he was neither the founder nor the manager of any other company and did not have any shares in other companies. Information in the registry contradicts this statement. At the approval of the registration of “UNO – FREE”, on 11 August 1998, he was a founder of at least three other companies<sup>25</sup>.
- (3) Further concerning “UNO – FREE”, certificates issued by the Tax Administration with respect to all companies where that applicant appears as a founder also show that his statement was incomplete<sup>26</sup>. These certificates are required as evidence in the registration procedure and their purpose is to confirm that previously registered companies involving the same founder do not have any outstanding tax liabilities.
- (4) With regard to “Uno-Petrol”, it was noted that it had been registered on the basis of incomplete information. The registration was approved three days prior to the submission of the required certificates from the Tax Administration Office concerning “Zelena Dolina”, “Uno-Free” and “DFS BiH”.

With regard to the registration of a company on the basis of an application without signature, such a procedural error should lead to de-registration of the company<sup>27</sup>. From a legal point of view in a case like this, while the company in question upon the entry in the registry may conduct its business, there is no evidence that the application was filed by the founder of the company. The legality of the company may thus be successfully challenged before the courts. There is also the additional risk for creditors, as well as for loss of tax-revenue, should the founder claim that he had no knowledge that the company was registered in his name, or should he deny that he submitted certain information contained in the application.

It should further be noted that the law stipulates criminal liability for submission of inaccurate or incomplete information with regard to irregularities noted under points (2) and (3) above. In addition, the same Article provides that “if the founder of the subject of registration fails to submit documents under paragraph 1 and 2 of this article, the court shall reject the registration”<sup>28</sup>. The judge in charge of the registry should have been aware of these shortcomings.

#### 3.5.4 Companies under investigation for tax evasion

JSAP was informed that the following companies were under investigation for tax evasion:

- “Comfort” (sole trader);
- “Minasko” (sole trader);
- “Raguz” (sole trader).

<sup>25</sup> “DFS” was registered 21 October 1997, “Zelena dolina” 11 May 1998, and “Im-ex” 3 July 1996. His shares in these companies were “DFS” 50 %, in Zelena dolina” 35% and “Im-ex” (Galaksija) 33%.

<sup>26</sup> These certificates are required as evidence in the registration procedure whose purpose is to confirm that previously registered companies involving the same founder do not have any outstanding debts-taxes.

<sup>27</sup> See also the heading 3.5.4 ‘Companies under investigation for tax evasion’, regarding deadlines for challenging the registration before the courts and for ex-officio action by the registry court.

<sup>28</sup> Article 3 of the Amendments and Supplements to the Decree on Registration of companies and Other Legal Persons Performing Economic Activity in the Court Registry (Official Gazette of the Federation of BiH No. 10/98).

- (1) “Comfort” was registered on 8 September 1997. Tax Administration officers revealed that the company was registered under a false name upon an application submitted by an unknown person, introducing himself as the former and producing an ID card issued in that persons name.
- (2) In addition, the application for registration was initialed only, and the attachments were not signed. Furthermore, the registration documents were corrected by correction fluid (application, decision and attachments) with respect to the seat of the company, which is contrary to Article 20 of the Book of Rules on the Forms and Procedure for Registration of Companies and Other Legal Persons Performing Economic Activities.
- (3) “Minasko” was registered 6 June 1997 by an unknown person who introduced himself under a false name, and displayed a stolen passport issued in that name<sup>29</sup>. The signature of the applicant had been verified in the Municipal Administration Office in Bihac. The company was importing goods without paying taxes.
- (4) “Raguz” was registered 12 December 1995. Since the founder was a foreign citizen, proof establishing his identity should have been attached to the application<sup>30</sup>.

A letter was sent to the President of the Cantonal Court by the Cantonal Prosecutor on 13 January 1999, requesting the deletion of the mentioned companies from the registry. It was received two days later by the court. Deletion was not done. Instead the request was dismissed with reference to the fact that the requirements of Articles 60 to 64 of the Law on Registration Procedure Applicable to the Court Registry Books had not been met<sup>31</sup>. The legal justification for that decision is, in the view of JSAP, questionable.

Article 61 of the mentioned law provides that the registration court shall delete the unfounded registration upon the request of a person with legal interest, or *ex officio* in a case where the registration was or has become inadmissible. The procedure for deletion of the company may not be initiated later than two years from the day of registration of the company<sup>32</sup>. Article 62 of the same law gives further details with regard to the procedure to be followed by the court when taking *ex officio* action. Inter-alia, it shall ask the subject of registration to make a statement concerning the request. The Article further states that the court shall schedule a hearing for determining the facts in the case.

As the Companies “Minasko” and “Comfort” were registered in June and in September 1997, the responsible judge was informed about serious irregularities regarding the registration of these companies well before the expiration of the two year deadline within which he was obliged to take *ex officio* action.

Furthermore, the developments in the case of the company ‘Comfort’, following the refusal to take *ex-officio* action, confirm the general trend identified by JSAP with regard to sensitive cases of shifting the responsibility to take action to the aggrieved party. In the case

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<sup>29</sup> According to the Municipal Prosecutor in Bihac, the real bearer of the passport submitted a criminal report against an unknown perpetrator.

<sup>30</sup> As a result, the competent agencies, primarily the Financial Police and the Customs Office, were unable to establish what had happened to the goods imported through the company. A request for investigation was thus submitted against the founder for “Tax Evasion” in the amount of 1,300.000 KM.

<sup>31</sup> Apart from that the deadlines have been shortened, the corresponding Articles 48 – 52 in the new Law on Registration of legal persons in the Court Registry Books are identical with the replaced law.

<sup>32</sup> The mentioned deadline has subsequently been reduced to one year in Article 49 of the new Law on Registration of legal persons in the Court Registry Books.

in question, since the Tax Administration office had required him to pay close to 500,000 KM due for unpaid purchase taxes for the company, Sead Basic submitted a criminal report against an unknown perpetrator with the Municipal Prosecutor in Bihac on 7 October 1999. The procedure is ongoing and is suffering from the lack of decisive action by the judicial and investigative authorities charged with the case<sup>33</sup>.

At the time of the Inspection, the three companies still existed and were avoiding the payment of their taxes.

### 3.5.5 The re-registration of “Polietilenka” et. al

A further grave case of irregular registration of a company was the “Polietilenka case”. Given the limited scope of the inspection, the team was not in a position to study the full details of this case. The following concerns were, however, noted with regard to the registration procedure, following the merger of “Polietilenka” and four other socially owned companies from the Bihac region with the Sarajevo based “Energoinvest”:

#### (1) Background

- (a) Based on a decision by the Ministry for Energy and Industry of the Federation of Bosnia and Herzegovina, dated 5 July 1994, and a decision by the Higher Court Sarajevo, dated 7 September 1994, a number of companies throughout BiH were merged with “Energoinvest”. Among them were “Tvornica rastavljacka i kablovskih glava”, “Polietilenka” from Bihac, “Rudnici boksita” (Bauxite Mines) from Bos. Krupa, “Rudnik mangana” (Manganese Mines) from Buzim and “Bosnaplast” from Bosanski Petrovac.
- (b) “Polietilenka” was prior to the merger a stock holding company with mixed property, owned by the state and the employees of the company, and the companies “Manganese Mine” in Buzim, “Bauxite Mines” in Bos Krupa and “Bosnaplast” in Bosanski Petrovac were socially owned<sup>34</sup>.
- (c) “Energoinvest - Polietilenka d.j.l” was registered as a sole trader, 19 February 1998, with the Sarajevo based company “Energoinvest” as its founding company<sup>35</sup>.
- (d) On 30 October 1998, foreign trade was registered as an additional activity of “Energoinvest – Polietilenka” d.j.l..

#### (2) Irregularities found

- (a) The companies “Bosnaplast” and “Bauxite Mines”, registered as socially owned companies, should by law have been re-registered as companies with limited liability in 1995. This was not done<sup>36</sup>.

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<sup>33</sup> The prosecutor in charge of the case informed that the Cantonal Ministry of Interior had been requested on 13 October 1999 to inform about the investigation in the case. A reply was received on 26 January 2000 that all business transactions were going through a person from Grude (West Herzegovina Canton). A criminal report was submitted to the Municipal Prosecutor in Grude against the person in question on 17 December 1999, for Unauthorized use of another’s trade mark and tax evasion (Articles 264 and 272 of the Criminal Code of the Federation of BiH).

<sup>34</sup> The data about the Company “Tvornica rastavljacka i kablovskih glava” Bihac were not available, since the registration was done in Sarajevo.

<sup>35</sup> The registration was based on a founding act of 22 December 1996 by the Steering Board of “Energoinvest”.

- (b) In accordance with the Law on Enterprises, the highest managing bodies of the enterprises, or the founders, should have made a decision on change of status<sup>37</sup>. No evidence was found in the files that this had been done.
- (c) Since the four companies were dissolved as a result of the merger<sup>38</sup>, they should have been deleted from the company registry<sup>39</sup>. It was found, however, that two of the four remained registered<sup>40</sup>.

The Deputy of the Ombudsman in Bihac, on 27 April 1999, wrote to the President of the Cantonal Court in Bihac, and requested him to cite the laws on which the registration was based and to state if the decision on registration was done in accordance with a government decision. A reply was received, 29 April 1999, stating, without detailed explanation, that the registration was in accordance with the Law. As detailed above, the findings of the inspection did not corroborate the latter statement.

In addition to irregularities related to the registration procedure, it was found that, although the employees own shares in the assets of the company, they were deprived of their right to participate in the decision-making. The decision to register the company as a sole trader was agreed on in a meeting between representatives of “Energoinvest”, the Prime Minister, The Minister of Industry and Energy and the Secretary of the Government of the Una-Sana Canton, 14 January 1998. At that meeting it was also decided that the companies should be privatized at the cantonal level.

#### 3.5.6 Other irregularities found

- (1) Applications and attachments were not signed by the applicants with regard to the cases “Arhitektonsko-gradevinski inzinjering-consulting” and the Law Faculty of Bihac. The file of the former company in addition revealed that the court decision and the attachments were not stamped.
- (2) The decision and attachments were not filled out in the case of registration of “Univerzal Bank”.
- (3) The socially owned company “Sipad Kljuc” was re-registered as a company with limited liability, without indicating the founders.
- (4) A discrepancy was noted between the amount of original capital indicated in the founding act of the company “Eurocar”, in Bihac “ and the amount given in the attachment to the decision on registration<sup>41</sup>.
- (5) The file on the Public Institution “Elementary School Gata Ilidza – Vrsta” revealed a discrepancy between the documents attached to the application concerning the dates of the appointment of the members of the School Board.

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<sup>36</sup> Re-registration was required under the Law on Enterprises (deadline of 3 months from the date of this law coming into effect – Art. 164).

<sup>37</sup> Article 145 of the Law on Enterprises.

<sup>38</sup> Article 152, paragraph 1, item 4 of the Law on Enterprises

<sup>39</sup> Art. 139 of the Law on Enterprises with reference to Art. 27 of the Decree on Registration of Companies and Other Legal Persons Performing Economic Activities

<sup>40</sup> “Polietilenka” was deleted on 19 February 1998 and “ Manganese Mines” was deleted on 20 May 1998. “Bauxite Mines” and “Bosnaplast” were not deleted.

<sup>41</sup> This was probably a typing error that should be rectified.

With regard to the “Sipad Kljuc” case, the judge in charge of the registry explained that the company was re-registered in accordance with Article 164 of the Law on Enterprises, which obliged all socially owned companies to re-register as companies with limited liability. A detailed analysis of the legal implications of the abolition of socially owned companies would fall outside of the scope of this study. Technically, however, the registration of the company without founders appears questionable.

Article 49 of the law in question defines a company with limited liability as an enterprise established by at least two founders<sup>42</sup>. Further clarification on this issue was given at the Cantonal Court in Sarajevo, where it was said that re-registration should not be seen as a new registration, but rather as a continuation of an existing company. Thus, since socially owned companies originally were registered without founders, they felt that the decision was legally acceptable. In response to concerns expressed by JSAP, it was stated that the solution did not entail any risks to the creditors of the companies and did not change the ownership. Further research would be needed to verify the latter statement, in particular with regard to the issue of the rights of the employees as part owners of the companies in question.

### 3.5.7 Rejected application for registration

The Inspection Team reviewed three out of four cases where the applications for registrations had been refused or rejected. Two of these regarded companies, and the third a public institution.

- (1) Concerning the sole trader “Kamen”, in Bihac, an application for registration of an increase in the capital stock of the firm was submitted on 21 October 1997. When close to a year later the court had not decided the case, the founder, Husein Kuduzovic requested the intervention of the Federation Ministry of Justice<sup>43</sup>. A decision was made the following day, 30 September 1998, by the Cantonal Court to reject the application, with the justification that the capital stock cannot be increased by the assets owned by the company, but only by investing the founder’s property<sup>44</sup>. There was no justification with regard to the delay in processing the case.
- (2) A request was submitted to register the Federal Ministry of Finance as a founder of “Bank PBS”, in Bihac, 13 May 1998. The request was refused by decision of the Cantonal Court, 22 July 1998<sup>45</sup>.

## **4. CONCLUSIONS AND RECOMMENDATIONS**

### **4.1 General**

- 4.1.1 The inspection of the court registry revealed irregularities related to 20 out of 49 of the files reviewed. The number and seriousness of the shortcomings were such that the professional responsibility of the judge in charge of the registry must be evoked. The recent resignation of Judge Hasan Pjanic from his post as President of the Cantonal Court is not sufficient in that respect. In order to re-generate public trust in the proper

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<sup>42</sup> Article 58 of the same law, however, adds that such a company may be established by one founder only.

<sup>43</sup> According to the Court Registry Book the application was received and decided the same day, i.e. on 30 September 1998.

<sup>44</sup> Federal Supreme Court rejected the appeal submitted by Kuduzovic Husein on 24 November 1998.

<sup>45</sup> This decision was confirmed by the Federal Supreme Court on 15 September 1998.



processing of court registry applications the responsibility for the registry must not be kept by Judge Pjanic, but should be transferred to another judge at the Cantonal Court.

- 4.1.2 A follow-up inspection should be made to verify the re-registration of companies in accordance with the Law on Economic Companies.
- 4.1.3 The Council of Europe, in its recommendation on “measures to prevent and reduce the excessive workload of the courts (R (86) 12)”, cites keeping of company registries as one of many ‘non-judicial tasks of which judges in some states could be relieved’. JSAP concurs with the Council of Europe recommendation.

## **4.2 Institutional Dimension**

- 4.2.1 While the Registry for Companies and Public Institutions was found to be sufficiently equipped with regard to technical equipment, the registry is kept manually. Computerization of the registry would promote efficiency and control, as well as facilitate research and public access.
- 4.2.2 The provisions of the law that stipulate public access to the information in the company registry are not sufficiently clear. While it is said that the court register and the registry books shall be public, it is arguable whether this includes direct access to the individual files. In practice such access is not given. It is the view of JSAP that confidentiality with regard to the information on the basis of which the registration is approved, is not justified, and that direct access to the individual files could be explicitly stipulated by law. It is therefore recommended:
  - (1) that Article 2 of the Law on Registration Procedure Applicable to the Court Registry Books be amended to specifically prescribe public access to the active as well as the passive file, including the information on the basis of which the decision to register the entity in the court registry was made;
  - (2) that it be added to the same Article that a person that requests information from the court registry shall not be asked to give his name, or to identify himself; and
  - (3) that the forms for issuance of ‘excerpts’ or ‘certificates’ from the registry book or the files should be amended to exclude the entry of the name of the person requesting the information.

## **4.3 Technical dimension**

- 4.3.1 The fact that the date of reception of the application for registration in the company registry and the actual date of registration were the same in all cases amount to a serious and systematic procedural error. The suggestion that all cases were decided on the day they were received is not credible and was indeed contradicted by other information in the files. That practice must stop with immediate effect.
- 4.3.2 Numerous applications as well as attachments lacked the proper signatures of the applicants. Inadmissible shortcomings were also registered with regard to registration of companies owned by ‘notorious suspects’ as well as companies under scrutiny for tax evasion. Such basic errors have led to lack of justice and the loss of considerable tax revenues. JSAP concludes that there is a need for a complete audit of the registry,

which should be followed by requests for complementary data in cases where a company or public institution is not properly registered.

- 4.3.3 No convincing justification was given for the decision not to take ex-officio action with regard to the three companies investigated for tax evasion. JSAP concludes that the refusal to take such action has lead to considerable delay in processing the cases. This has not only generated additional suffering for the aggrieved individuals, but it has also lead to continuous loss of tax revenues.
- 4.3.4 Serious irregularities were found with regard to the merger of “Polietilenka” and four other companies from the Bihac Region with the Sarajevo based company “Energoinvest”. Irregularities with regard to the registration of that merger should be corrected in the context of a more complete scrutiny of the court registry. Other irregularities pertaining to the case fall outside of the scope of the inspection and should be dealt with in the context of the privatization process.