United Nations Mission in Bosnia and Herzegovina

Judicial System Assessment Programme (JSAP)

THEMATIC REPORT V

ENFORCEMENT:

Execution of court judgements in civil cases

September 2000

UNITED NATIONS

CONTENTS

0	EXECUTIVE SUMMARY	3
1	INTRODUCTION	4
2	METHODOLGY	5
3	THE LEGAL FRAMEWORK FOR ENFORCEMENT	6
3.1	Background	6
3.2	General comments	7
3.2.1	*Commencing enforcement – service of the judgement*	7
3.2.2	*The effect of appeal and extra-ordinary remedies*	7
3.2.3	*Choice of remedy*	8
3.2.4	*Delays in general*	8
4	THE INSTITUTIONS INVOLVED IN ENFORCEMENT	10
4.1	Resource issues	10
4.2	The judicial staff in charge of enforcement	10
4.3	The role of the police	11
5	ENFORCEMENT OF PECUNIARY OBLIGATIONS	13
5.1	Initiating enforcement proceedings	13
5.2	Collection through the ZPP	13
5.3	Garnishing of wages	14
5.4	Gathering information on the debtor	14
5.5	The seizure and sale of property	15
6	ENFORCEMENT IN EVICTION CASES	17
6.1	Background	17
6.2	Problems identified	17
6.2.1	*Political pressure*	17
6.2.2	*The lack of alternative accommodation*	18
6.2.3	*Co-operation with the local police*	20
7	EMPLOYMENT CASES	22
8	GENERAL CONCLUSIONS AND RECOMMENDATIONS	24
	ANNEX Eviction cases at the Bijeljina Basic Court	26

0 EXECUTIVE SUMMARY

The rule of law requires not only the making of judicial decisions but also the ability to enforce those decisions. In the context of Bosnia and Herzegovina (BiH) it is also important, as part of the ongoing peace process, that people can reclaim their property and employment rights, and, as part of the transition to a market economy, that contracts can be enforced and so the conditions be laid for economic development.

JSAP's general concern with the extent to which court decisions were enforced led it to look into the matter more closely in late 1999 and this report is the result of that research. It focuses on three areas - enforcement of pecuniary judgements, eviction orders and re-instatement in employment.

There were some problems found that are common to these three areas, many of which are part of the endemic problems facing the BiH judiciary generally. The legislation governing enforcement of civil judgements is outdated in the sense that the balancing of rights between debtors and creditors in favour of the former is not appropriate in a market economy. Its procedures are in some cases too complex, giving substantial room for delays and exacerbated by repeated failures of parties and counsel to attend court or provide information required. Shortages of judges, support staff, space and equipment also lead to difficulties, usually of delay but also in a practical sense, for example when it comes to storing seized goods. As other legislation gives priority to particular types of cases, of which civil enforcement is not one, courts with few judges are often too busy to deal promptly with enforcement cases, effectively depriving judgement creditors of the ability to enforce their rights. Lack of co-operation between the police and the courts is something that affects enforcement of civil judgements generally. The incomplete development of the court police system in the Federation does not assist in this.

Enforcement of employment and eviction cases shows clearly the extent of political influence on the courts. This ranges from broader efforts, such as the passage of conclusions by legislative assemblies aimed at ameliorating the harsher effects of legislation and public statements by high-ranking politicians and officials discouraging courts from implementing the law, to those in individual cases, such as letters to the courts requesting postponement.

By and large, people who have attempted to prevent the courts from doing their work, such as by attacking or threatening judges and court staff performing evictions, have not been prosecuted. Neither are employers who refuse to re-employ workers whose reinstatement has been ordered by the court.

As usual, the solutions to these problems must be found at a variety of levels. The area of enforcement provides a good indication that the rule of law has not taken root in BiH, particularly in the minds of politicians, and will not be able to do so until the judiciary is provided with adequate tools to do its work, free from interference.

1 INTRODUCTION

It is a trite observation that the rule of law requires not only a court system that makes appropriate decisions but also one that can and does implement them. Enforcement of decisions in civil cases can be difficult and time-consuming in any jurisdiction, but particularly in a country recovering from both the effects of the war and the residue of communism. Since JSAP began its assessment of the judicial system in Bosnia and Herzegovina (BiH), it has become evident that there are legislative, political and practical difficulties facing the courts of both entities in the implementation of their decisions in civil cases.

There are several transitions that have been taking place in BiH and the enforcement of judgements is particularly important for two of these. One is the transition from war to peace. As part of this the international community has focussed much attention on the return of refugees and displaced persons (DPs). As people return to their original residence, implementation of property legislation requiring the return of their apartments and housing and so the eviction of illegal tenants is necessary. Anecdotal evidence suggests that there has been partial or total failure of the court system to implement eviction orders. A second incentive to return is the existence of employment. During the war, this was an area ripe for discrimination and many people who found themselves members of the wrong ethnic group or political party were dismissed from their jobs without other justification. The ability to achieve redress and the implementation of reinstatement decisions through the courts is an important part of the return process.

A second but no less important transition is from a largely command, state-owned economy to a more market-oriented, privately owned one. The ability of business owners to make and enforce contracts and to have a judicial remedy in the case of failure is crucial to the establishment of a viable economy for BiH. The existence of the rule of law is consistently identified as one of the key factors encouraging foreign investment in any economy. Otherwise, enforcement of contracts will devolve into a system of self-help remedies and organised crime.

JSAP began looking into the question of enforcement on a countrywide basis in the early stages of its operations but, given the importance of the issue, in mid to late 1999 two JSAP teams looked specifically into the issue. This report is the result of that research. A more detailed description of the process is given on the next page. While some of the research is geographically limited and some time has passed since it was undertaken, the conclusions can still be seen to apply throughout BiH. The report gives an overview of the legislative scheme, discusses some problems with enforcement common to all types of cases, and then deals specifically with the collection of pecuniary judgements and the enforcement of court decisions in eviction and employment cases. Conclusions on specific points under discussion are scattered throughout the report. Some of a more general nature can be found at the end, including various recommendations for further action.

2 METHODOLOGY

In early 1999, all JSAP teams began to collect information on enforcement of civil judgements as part of JSAP's initial assessment of the judiciary in BiH. At that time, this was of particular interest in the Mostar region, as that team was investigating the processing of civil claims by the courts, and in Bihac, where employment cases were under scrutiny.

Subsequently, in late 1999, two JSAP teams began a more in-depth assessment of two specific areas of enforcement, namely civil cases in the Banja Luka region and eviction cases in the Tuzla region. As part of this, the teams obtained information on the total number of cases handled in both categories, studied random case files and also talked to judges and court presidents about their work.

In conducting this study, JSAP Tuzla reviewed the enforcement of eviction cases in one court in each entity for the purpose of comparison. These were the Tuzla Municipal Court (Federation), where fifteen case files were reviewed and two actual evictions in sensitive cases were monitored, and the Bijeljina Basic Court (RS) where 26 case files were reviewed. The enforcement of pecuniary judgements was assessed in five basic courts in Republika Srpska (RS), namely Banja Luka, Gradiska, Kotor Vares, Prnjavor, and Srbac Basic Courts. In those courts, 32 case files were reviewed and others were more briefly assessed, complemented by a review of 54 cases in the Tuzla Municipal Court, including cases involving a range of types of enforcement.

In addition to these case specific assessments, in September 1999, a general review was made of the whole enforcement department of the Tuzla Municipal Court and data was collected on the activities and backlog of enforcement departments from all municipal courts in the Tuzlanski Canton up to 30 June 1999.

The information on enforcement of reinstatement decisions in employment cases was obtained during the early phase of JSAP activity, in late 1998 and early 1999. No further research on this topic was undertaken. However, the material does illustrate the difficulties in enforcing judgements of that type.

3 THE LEGAL FRAMEWORK FOR ENFORCEMENT

3.1 Background

Enforcement of court decisions in non-criminal cases in both entities is primarily regulated by the Law on Enforcement Procedure of 1986[1]. This law applies to the enforcement of decisions issued in civil proceedings as well as pecuniary obligations arising from minor offence and administrative proceedings. In addition, the laws on civil procedure, obligations, housing relations and the rate of default interest contain some relevant provisions.

Very briefly, the Law on Enforcement Procedure regulates the competence of the courts in enforcement matters, the requirements to initiate enforcement proceedings, choice of remedies and the securing of claims, describes the different phases of the procedure and different remedies for collection of pecuniary judgements and deals with some specific forms of enforcement such as injunctions, reinstatement in employment and eviction from real estate and appeal to the Supreme Court to delay execution.

Under article II 2 of the Constitution of BiH, the European Convention on Human Rights (ECHR) is directly applicable and takes priority over all other law.

Article 6 of the ECHR sets forth the right to a fair trial, providing that:

In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

The "right to a court" under article 6 is considered to be illusory and incompatible with the rule of law if the domestic legal system allows a final, binding judicial decision to remain inoperative to the detriment of one party.[2] The enforcement of court decisions in non-criminal cases must be regarded as an integral part of the trial. These principles have been applied by the BiH Human Rights Chamber.[3] The Strasbourg Court case law also indicates that both lack of enforcement of a court decision and unreasonably long trial proceedings may lead to breaches of the guaranteed substantive human rights such as the right to property or to family and private life.

The question of the adequacy of the legislation, mechanisms and practice on enforcement of judgements should therefore be considered in the context of the ECHR.

At the same time, it must be recognised that in any jurisdiction enforcement can be the most difficult part of civil proceedings, especially in the collection of debts. Failure to pay money owed is usually, to some extent, a reflection of the debtor's poor financial standing and also reflects the performance of the economy as a whole. A party having to sue in the first place indicates, of itself, that recovery will probably be limited. Thus, the fact that numbers of

[1] Official Gazette of SFRY 20/48, 6/82, 74/87, 57/89, 20/90, 27/90 & 35/91 and Official Gazette of RS 17/93 and 14/93. The Federation Parliament has recently passed a new law, modeled on the Croatian law. The different versions passed by each House are now being reconciled and it is expected to be completed before the end of 2000. At the time of writing, JSAP had not seen the new law and the comments given in this report refer to the current law.

[2] E.g. Hornsby v Greece, decision of 19 March 1997.

[3] E.g. CH/97/17 Mehmed Blentic v Republika Srpska, decision of 5 November 1997, and CH/99/1859 Ruza Jelicic v Republika Srpska, decision of February 2000.

civil debt collection cases are increasing or decreasing, successful or unsuccessful, cannot be used alone as a barometer of the efficiency and effectiveness of the court system and the usefulness of methods of enforcement provided by law cannot be judged solely by the amount of money recovered.

3.2 General comments

Any assessment of a law on enforcement must take cognisance of the distinction between the trial of the substantive matter and the validity of the judgement itself. In other words, giving a defendant in a civil claim the right to defend himself is a different proposition to giving him the right to challenge the enforcement of a valid and binding court judgement against him reached after a full hearing. Once a plaintiff has been awarded a judgement, he should be able to enforce that without relitigating the matter and without delay and prevarication.

It is not clear that the Law on Enforcement Procedure has struck the right balance in this regard and judgement debtors are given many ways in which to delay or evade enforcement. Some of these are described here, along with other practical problems facing the judgement creditor in obtaining payment. Others are referred to in the sections on particular aspects of enforcement later in the report.

3.2.1 Commencing enforcement – service of the judgement

One difficulty with enforcement is that it cannot begin until the debtor is served with a copy of the judgement. For many reasons, service of documents is a frequent problem in court proceedings generally and enforcement is no exception. Both individuals and businesses move frequently and, whether deliberate or not, are hard to serve. Some tightening of the rules may be desirable. For example, parties could be required at the outset to provide an address where they can be served by registered mail for all future documents, including judgements, regardless of whether or not they reside or carry on business at that address.

3.2.2 The effect of appeal and extra-ordinary remedies

Even though an appeal against the substantive decision on which enforcement is based does not automatically suspend the enforcement process, the court usually permits it to do so.

The law provides a list of situations in which postponement might be ordered on the proposal of the judgement debtor if he also proves that enforcement might cause him significant damage.[4] One is if the judgement debtor has filed a request for an extra-ordinary legal remedy. These are essentially an indirect way for the judgement debtor to appeal a second-instance decision to the Supreme Court in what are supposed to be exceptional circumstances. Even if the enforcement process has started, the judgement debtor frequently initiates a request for such a remedy against the decision to be executed. Like appeal, the filing of a request for an extra-ordinary remedy does not itself postpone execution, but if the court anticipates that enforcement of the decision would create problems, for example the

[4] JSAP has not found any case-law summary on what courts might consider to be significant damage. It does include both material and moral damage. A draft of the new Federation law on enforcement from late 1999 had replaced the concept with “irreparable or barely reparable damage” in order to strengthen the enforcement process.

decision might be revoked, there is a tendency to postpone execution until the decision of the Supreme Court.

The tendency of the courts to postpone enforcement until the appeal or request for extra-ordinary remedies is completed clearly encourages parties to use those actions, even if manifestly ill-founded, to delay or avoid payment. The effects of this could be ameliorated by additional measures, such as the debtor having to deposit the amount owing with the court while the appeal is being decided. In some countries, no extra-ordinary remedy can be requested on the merits until the judgement debtor has executed the court decision.

3.2.3 Choice of remedy

The judgement creditor is, in principle, free to elect both the method and the object of enforcement and the court can decide to make modifications only on the suggestion of the judgement debtor or at the request of the judgement creditor. In practice, debtors often influence the court to change the method from that proposed by a creditor. To the extent that this limits the amount or speed of recovery, courts should take a stronger stance in favour of the judgement creditor, who will take both the benefits and the risks of his own choice.

3.2.4 Delays in general

The propensity of the system for delays makes the process of enforcement slow. From the cases reviewed, it is clear that the courts neither do their work thoroughly nor do they use all the tools at their disposal to speed up proceedings either at the substantive or at the enforcement stage. Many cases are delayed for years because the court requests more information or because of objections by the debtor.

Courts are not in the habit of setting deadlines by which steps should be taken and exacerbate this by doing nothing if, for example, a judgement debtor fails to provide information required by the court. In particular, they rarely issue decisions against parties who repeatedly fail to attend hearings, deliver critical evidence, or otherwise obstruct the proceedings or dismiss enforcement cases where failure to co-operate is the fault of the creditor. For example, in the case of evictions where both parties have been advised of the date but fail to attend, the court will usually reschedule it rather than go ahead as it is entitled to do.[5] This is also the case when the parties do not pay for the successive steps of the proceedings.

Another reason used for delay is that the complexity of the law requires additional time for consideration by the judge. There is no doubt that the law is confusing and that paucity of particular types of enforcement cases means that judges may be unfamiliar with the working of its provisions. The enforced sale of real estate is one example of a complex and relatively unused area of enforcement. However, the fact that some courts have been able to carry out the process quickly and efficiently while others do nothing leads to the conclusion that this excuse is not entirely well founded.

However, delays cannot be attributed solely to the court. JSAP found enforcement cases pending for more than ten years without any action being taken by the creditor. In Doboj, cases for the enforcement of pecuniary obligations were pending for two to four years, due partly to intervening civil proceedings, but also because the creditor was asked to recalculate the claim (because of devaluation of the currency since the case started) and had not done so.

[5] See Annex.

It is impossible to make any assessment of the reasons why a creditor suddenly loses interest in pursuing a case at the enforcement stage. No information is available as to whether these cases are settled outside court, whether there is a discovery that the debtor is impecunious rendering the process not worthwhile, or whether creditors simply lose faith in the effectiveness of the judicial process at that point.

4 THE INSTITUTIONS INVOLVED IN ENFORCEMENT

4.1 Resource issues

In addition to consideration of the adequacy of the legal framework, application of any law by the courts relies on the resources available and any assessment must take account of those factors. The problems facing the BiH judiciary in general are reported in more detail elsewhere, but include shortages of staff, lack of relevant training, poor working conditions, low salaries[6] and lack of security.

Moreover, not surprisingly, enforcement of pecuniary judgements does not appear to be considered a priority, either by the courts or by the legislature. Legislation gives judicial priority to matters such as criminal cases where detention is involved and labour disputes. Given the shortages of personnel within courts, the net effect of this can be that ordinary civil cases are completely neglected.

4.2 The judicial staff in charge of enforcement

The Law on Enforcement Procedure describes the role of court officials in charge of the procedure but does not clearly separate the tasks to be performed by judges and the other court staff responsible for execution, referred to here as bailiffs. Basically, judges may either issue decisions or take part in the enforcement process on the spot, while bailiffs can only implement court decisions, largely mirroring European practice. In enforcement, as in other aspects of judicial activity in BiH, judges tend to be very involved in the practical details of cases, including undertaking what could be considered administrative tasks such as scheduling hearings.

There is considerable diversity in the way that enforcement departments are organised, staffed and function. For example, in 1999, the Tuzla Municipal Court, which has a backlog of thousands of enforcement cases and with between 1,000 and 2,000 incoming cases annually, had assigned only one judge for civil enforcement, the same number as in smaller courts in the region such as the Kalesijia Municipal Court with a backlog of around 200 cases and incoming at the rate of around 100 each year.[7] The Tuzla court does have two legal assistants and four administrative clerks, while the other courts have one or often none. In the Kladanj Municipal Court, on the other hand, all five judges deal with civil enforcement and other civil cases. Similar variations were noted in RS courts.

There are also differences in the length of experience of the judges chosen to take on this field. At the Tuzla Municipal Court, the one judge dealing with enforcement was young and he personally attended eviction cases. On the other hand, in the Gracanica Municipal Court the whole enforcement process is directly handled by the court president, an experienced judge whose authority is obviously recognised. Similarly, in the Prnjavor Basic Court, an experienced judge was assigned to handle all civil cases including enforcement. The combination of that experience along with the presence of a strong court president who requires judges to perform in excess of the requirements of the internal court rules are probably contributing factors to the impressive performance of that court in enforcement

[6] Although judicial salaries in both entities were significantly increased by legislation that came into force in mid-2000, salaries of court administrative staff remained the same. At the time of writing, payment of the higher salaries for judges was causing budget problems in many cantons of the Federation and in the RS.

[7] In 2000, two different judges have taken over the task of enforcement at the Tuzla Municipal Court.

generally, with more frequent hearings, cases completed relatively quickly and smaller backlogs of unsolved cases. By contrast, a shortage of judges at the Kotor Vares Basic Court has meant that the two current judges have their time taken up solely with urgent matters such as criminal cases and, despite their high output, are generally unable to find time for civil enforcement cases.

Advocates also stressed that the lack of experience and qualification of many judges dealing with enforcement can lead to unacceptable delays. In some cases, this can lead to the debtor having the opportunity to sell assets to the creditor's detriment while the court dithers.

Most courts appear to have one bailiff but worryingly, some do not have a bailiff at all. The reasons are not clear but probably relate to lack of funds.

4.3 The role of the police

An important obstacle to the enforcement of civil court decisions has been the lack of co-operation with local police, who frequently failed to carry out court orders. The impact of this general problem on eviction cases is discussed later in this report.

When facing or anticipating difficulties during the enforcement process, the judge may request assistance from the local police.[8] The police must assist and may use necessary physical force to carry out the enforcement. The level of co-operation still depends, however, on the personal relationship between the police and the court officer and, too often, from the political environment.

The general question of security for court officials is a very real one in the post-war period, with a direct impact upon the issue of enforcement of court decisions, and some judges have very justifiable concerns about it. In both entities, judges and other court staff have been threatened, assaulted and injured while carrying out their functions, especially during the enforcement process. For instance, seizure operations by their nature are risky for a bailiff and one judge in Mostar said that the court would not seize expensive cars because of the risk of violence and use of weapons. Evictions, due to their sensitive nature, also generate particular security concerns for the officials in charge and for judges themselves, if attending.

It has been rare for people who threaten or attack judicial officials to be prosecuted and it seems that prosecutors and judges as victims are often reluctant to lodge criminal charges. It must be stressed however, that when public prosecutor's offices and courts have a clear policy of processing these cases it has a deterrent effect.

The Gracanica Municipal Court has tried cases where persons have threatened or beaten court officials carrying out their duties. A person who gave death threats to a judge received a sentence of one month and fifteen days in prison. A three-month sentence was handed down to a person who was convicted of assaulting a bailiff while he was collecting court fees and a judgement debtor who refused to vacate premises was also sentenced. No serious incidents have taken place since then and the judges note that the attitude of the public towards the court and its officers has improved, with greater awareness of the respect due to the court.

Both enforcement of court decisions and the security of judges and other court officials should have been addressed in the Federation by the creation of the court police,

[8] Article 46, Law on Enforcement Procedure

whose mandate covers both of these matters. However, as adequate funding has not been provided by the Federation government, the court police still only operate in three cantons. Concern has been expressed over the adequacy of their training. Where they do exist, security plans for court and personal protection have not been properly developed. So far, only the court police of Tuzlanski Canton have developed an eviction security plan, upon a JSAP initiative.

As yet it is impossible to draw any conclusions on the effectiveness of the court police in enforcing judgements or to make any effective comparison with that system vis-à-vis the former system of using bailiffs and regular police. In Tuzlanski Canton, efficient co-operation between the regular and the court police could be seen in sensitive eviction cases. However, tensions were rising between the court police and the judges, perhaps because the salaries of the former were significantly higher. Although judicial salaries have recently been raised, this is thought unlikely to improve the situation, which began on the wrong footing with an uncertain chain of command. It is also clear that no conclusions can be drawn about the effectiveness of the court police generally from observations in one canton alone, as their practice seems to vary widely between the three cantons in which they operate.

5 ENFORCEMENT OF PECUNIARY OBLIGATIONS

5.1 Initiating enforcement proceedings

Most civil enforcement relates to execution of monetary claims. While this is primarily associated with debt collection resulting from business transactions, it can also arise from unpaid family obligations such as maintenance and alimony. In the RS, though not in the Federation, there was a huge drop in the number of civil enforcement cases after the war, some courts in 1999 receiving less than five per cent of the number of incoming enforcement cases in 1990. However, numbers of incoming cases are again increasing.

Once a plaintiff obtains a favourable and enforceable court decision**,** and if the decision is not voluntarily executed by the judgement debtor, he must initiate enforcement proceedings by lodging a petition containing a proposal for enforcement with the competent court, specifying the means of enforcement requested.

If the court considers that there are sufficient grounds for enforcement, the documents are stamped and signed and served on the debtor. At that point, he may choose to make a written submission to the court. Hearings are not usually mandatory for this type of proceeding and the judge usually decides on written submissions of both parties unless a hearing appears necessary or is required by law, e.g. for the sale of immovable property.

Pecuniary claims can be met by means of payment through the payment bureau, Zavod za Platni Promet (ZPP), or bank account of the debtor, garnishing of wages or other income, sale of movable or immovable property, and transfer of pecuniary claims or other property. The ZPP, SPP and ZAP are the three existing payment bureaux for the different parts of the country. [9]

Some of the more common or problematic methods of enforcement are briefly considered below.[10]

5.2 Collection through the ZPP

This is the most widely used method of enforcing pecuniary judgements. Judges report that it is used in up to 85% of such cases and JSAP research indicates that the percentage may be even higher. In fact, the use of other methods has not been common, although this is changing.

The ZPP is an institution unique to countries of the former SFRY. All business entities and individuals with permission to carry on business, as well as government bodies, should have an account with it, through which all financial transactions above a minimum amount are channelled. It is not, however, the same as a bank account. Once judgement is given against a ZPP account holder, the court sends a copy of the judgement to the ZPP, which then debits the judgement debtor's account and credits the judgement creditor. If the judgement debtor does not have enough money in its account, the ZPP blocks that account. Once an account is

[9] The ZPP operates in Bosniak controlled areas of the Federation, the ZAP in Croat controlled areas and the SPP in the RS. This report refers only to the ZPP.

[10] This report does not consider the use of bankruptcy procedures as a means of debt collection. Although this can be used as the ultimate remedy in the case of a business enterprise debtor, it is not, strictly speaking, a means of civil enforcement.

blocked, no money can be paid out of it and funds coming in are paid, in order of priority, first to unpaid taxes and next to court judgements.

While enforcement between business entities should thus be quickly and easily performed through the ZPP, the theory does not match the reality. Many business operators are skilled evaders of the system. It is relatively simple for accounts to be opened in other names, for example, or at other branches of the ZPP. This technique has also been employed recently by the RS Ministry of Defence in order to avoid payment of judgements related to war damages. The development of a substantial grey economy also means that many people carry on business without ever registering as a business enterprise. Their lack of a ZPP account has increased the demand for other forms of court enforcement, though due to the fact that these businesses usually operate on a cash-only basis with hidden, if any, assets and peripatetic directors, recovery continues to be a problem.

A further problem with this form of enforcement is the occasional lack of co-operation between the different payment bureaux.

There is no doubt that despite these problems and despite the debilitating effect the ZPP may have on business generally, for collection of pecuniary judgements it is an effective system. However, it is anticipated that the ZPP will be abolished by the end of 2000. This will give greater importance to other methods of enforcement, which should, in turn, focus attention on the need for legislative reform and also reliance on implementation of other reforms. In particular, access to full and reliable information on businesses will become crucial, e.g. through requirements for enterprises to file annual returns and for public access to them, compliance with international accounting standards, registration of pledges over movable property and full access to land registry records. Another development that might be expected would be the rise of credit-checking agencies.

Creditors may also discover the need to take better risk aversion measures. While this could lead to the development of better business practices, there is also a risk that it will lead to avoidance of doing business with strangers or securing debts by threats. The desire to avoid that outcome should heighten the need for effective and efficient court enforcement procedures.

5.3 Garnishing of wages

In the case of salary earners, judgements can be enforced against their wages by delivery of the judgement to their employer. This is remedy is useful in family cases, such as for collection of unpaid maintenance from separated spouses, but is also used in other situations against debtors as individuals. In the municipal courts of Tuzlanski Canton it was used in around 24% of all non-ZPP enforcement cases in 1999. There are various limitations set by law on what income and how much of it can be used for payment of judgement debts. High unemployment rates accompanied by the popularity of illegal work have rendered this method of enforcement less useful than it might be or probably once was.

5.4 Gathering information on the debtor

The law allows a judge to summon the judgement debtor and ask him to clarify his financial position but the judge has no specific means of investigation. In Tesanj, cases were pending mainly because the debtor had stated that he had no assets or because the only assets

owned were protected by law. However, the files often contained no information on the debtor's financial position, income, assets, etc. and the fact that the debtor had no assets had been established simply by the bailiff summoning him to his office for questioning or questioning him at his home. The record only showed that the debtor was contacted and stated that he had no assets and no other information on his financial or employment position was recorded.

Development of a more thorough method of examination would give the creditor the opportunity to make a more informed choice of remedy and for the court to make an affordable award, for example in the case of garnishing wages.

5.5 The seizure and sale of property

More complex methods of enforcement include the seizure and sale of goods. While the West Mostar Basic Court stated in early 1999 that it had carried out only around ten cases of this kind, such cases constitute a massive problem in Tuzla. Out of 6,702 pending enforcement cases at the Tuzla Municipal Court at the end of July 1999 (not including cases of enforcement through the ZPP), 6,120 (91%) requested the seizure and sale of goods. Three creditors (local companies for electricity, PTT and central heating) initiated more than 95% of those cases. The Tuzla Municipal Court seemed unable to handle such a large amount of cases and expected more.[11] Overall, in other courts in that canton this form of enforcement was used in around 70% of non-ZPP cases in first half of 1999.

Seizure exacerbates other problems for the courts, such as lack of space and lack of vehicles. The former East Mostar Basic Court required judgement creditors to keep the goods, at the debtor's expense and the creditor's risk, because of the space problem. Smaller items were kept in the court archives.

Prior to sale, the goods must be appraised. They are sold publicly by auction or tender. At the first attempt, they cannot be sold for less than the established value. At the second attempt, the goods may be sold for half of their fixed value and at the third attempt, one third. While this system is potentially slow and cumbersome compared with the quicker methods used in some countries, it does allow a certain protection for the debtor against unfair sales practices and market fluctuations. On the other hand, it may deny the creditor a faster solution. However, it seems that the public is reluctant to buy seized goods, possibly for fear of retribution by the debtor.

There also appears to be a problem with appraisal. This affects the sale of real estate as well as movable property. In general, where there is no developed market, appraisal will always present a challenge but in BiH appraisals and valuation seem to bear little relevance to the price goods can be expected to fetch and are usually highly inflated. Because of the three-sale system, this affects the ability of the creditor to realise his rights. It may not always work out to the benefit of the debtor either who is ultimately responsible for the costs of sale.

The fragmentation of the local court system also means that each court undertakes its own auctions. While this was not specifically mentioned as a problem, it is clearly inefficient. Development of a central auction system could assist in achieving quicker sales, removing the risks of retribution by geographically distancing buyers from debtors and possibly creating a market.

[11] By August 2000, that court had 10,656 outstanding enforcement cases. Of the cases registered in 2000, around 70-80% are public utility cases.

There are a lot of exceptions in the law to what can be seized and sold in the case of individuals, such as livestock, farming equipment and machinery.[12] These also serve to cushion a debtor from the consequences of poor business management or decision making. While presumably designed to ensure that a debtor has the means to carry on business and protect his family, they could deny the creditor the right to reap the benefit of his judgement.

Land may also be subject to enforced sale to pay judgement debts. As this procedure was not reviewed during the research for this report, it is not dealt with here. However, anecdotal evidence suggests that the procedure is cumbersome and that there are many problems with valuation of the property to be sold. The prospective development of a real property market will be of positive assistance to the process.

[12] Article 71, Law on Enforcement Procedure

6 ENFORCEMENT IN EVICTION CASES

6.1 Background

More than four years after the Dayton Peace Agreement (GFAP), hundreds of thousands of refugees and DPs still do not have access to their apartments, houses, business premises and land. The housing and property legislation in force in both entities aims to have applications processed quickly outside the court system through administrative organs and diverts enforcement of eviction decisions regarding apartments and houses declared abandoned from the judicial enforcement system. However, the courts in both entities remained competent for implementing eviction orders for repossession of accommodation not declared abandoned and whose repossession was sought by way of civil proceedings.

This report deals only with the question of eviction through the court system. The vast majority of evictions are currently carried out as part of the administrative process referred to above. Like court ordered evictions, there must first be a decision on the merits and, if it is not complied with, a forcible eviction may take place. The rate of initial decisions is increasing, though their implementation still lags behind. Although progress seems slow, in the first half of 2000, there were around 20,000 minority returns, a threefold increase over the same period in 1999.[13] There is also particular international community focus on ensuring the public officials, police officers and members of the judiciary comply with the law and do not need to be forcibly evicted. It is possible that this focus, along with improvement in the rate of administrative evictions and returns generally, has assisted the political climate in which court ordered evictions take place.

6.2 Problems identified

In considering the question of eviction through the courts system, JSAP identified three main problems.

6.2.1 Political Pressure

First of all, due to its sensitivity, the enforcement of evictions is clearly an area where political pressure is a likely. Throughout BiH, eviction cases have been the subject of attempts by authorities at various levels to influence the enforcement of court decisions, both at a general level and on an individual case basis.

In both entities, legislatures have adopted so-called conclusions that are intended to ameliorate the effects of legislation**.** Like legislation, they are published in the Official Gazettes. Conclusions are not legally binding and should not be used to amend or suspend the provisions of legislation, although that is nevertheless the net effect.

For example, in May 1998, the RS National Assembly adopted conclusions that all new and ongoing eviction proceedings should be stopped until the adoption of new regulations on the use of abandoned property and the status of refugees and displaced persons (DPs). Later, after the adoption of the Law on the Cessation of the Law on Abandoned Property, the Assembly concluded that, for the period between 15 November 1998 and 15 April 1999, unless alternative accommodation was provided, the eviction of refugees, DPs

[13] "The Economist", 19 August 2000.

and families of fallen soldiers and war invalids would be suspended.[14] These conclusions appear, by and large, to have been followed by the courts.

On 10 November 1999, the same Assembly adopted a conclusion that suspended evictions of certain categories of persons from 1 November 1999 to 1 April 2000. That conclusion was then annulled by a decision of the High Representative but, contrary to what had happened the previous year, evictions were not necessarily suspended. The judges in the Bijeljina Basic Court considered that the political and social context was more favourable to the enforcement of these decisions. For example, evictions of double occupants by administrative organs were moving forward under the scope of property commissions, in which representatives of administrative organs, courts and police officials as well as members of the international community were involved.

In the Federation, in March 1998, after passage of a set of housing laws, the Federation House of Representatives adopted a conclusion on their implementation, including a statement that there should be no forcible eviction unless the evictee was provided with alternative accommodation. The Minister of Justice of Sarajevo Canton wrote to the municipal courts under his jurisdiction urging them to comply with the conclusion. The Minister of Urban Planning and Housing also wrote to the courts urging delay in certain cases.

More recently, in early September 1999, BiH President Izetbegovic made public statements, later "clarified", suggesting that government officials and members of the judiciary should disregard the law and not issue eviction orders in certain cases concerning refugees.

Political influence is frequently also evident in individual cases. For example, in the case of the proposed eviction of an Orthodox priest in Bijeljina, the court received letters opposing the eviction from the RS Minister of Religion, the Office of the RS President, the Serb Orthodox Church, the Bijeljina Municipal Board and the RS Ministry for Refugees and DPs.[15]

These unacceptable influences are reflected in delays in court and failure to enforce court ordered evictions, which as such breach the rights guaranteed by the ECHR. If the plaintiffs are refugees or DPs, political influence is also inconsistent with the Office of the High Representative (OHR)-inspired legislation and GFAP, which both recognise the right of all refugees and DPs to freely return to their homes of origin and to have restored to them the property of which they were deprived in the course of hostilities since 1991.

6.2.2 The lack of alternative accommodation and its weight in the eviction process

Eviction cases can reveal a conflict of different rights: the right of the original occupant or owner to repossess his house or apartment and the right of the evictee to be provided with alternative accommodation. Sometimes both parties are refugees or DPs.

OHR decisions on property laws aimed to clarify, amongst other things, the right to alternative accommodation, by restricting it to those who are in genuine humanitarian need. But despite these decisions, some questions remain. For example, if the person to be evicted is a DP or refugee who has a decision from the administrative organ guaranteeing his entitlement to alternative accommodation and produces this at the court enforcement stage,

[14] Session of 9 December 1998, Official Gazette of the RS No 38/98
[15] See case 2 in Annex.

how does that affect that process? There is no clear answer. The courts can use this gap to delay or fail to enforce an eviction if the alternative accommodation has not actually been provided.

In fact, many judicial officials in either entity do not hide the fact that they apply, more or less strictly, a rule that has no legislative basis - that no person will be evicted by court process unless he has alternative accommodation. The addition of this condition precedent to any eviction action renders the process impotent in many cases. Plaintiffs are often forced to enter into informal agreements with the defendant-occupant to allow the former to move into the premises, ranging from delay in taking possession to cash payments. In most of these cases, the court decision is simply not enforced at all.

If the courts do act, multiple postponements have allowed defendants and responsible local authorities time to find alternative accommodation. In 1999, there were many cases in the Tuzla Municipal Court in which the eviction process had been going on for more than two years without any final enforcement anticipated. Many attempts were made before an eviction was successful, in one case nineteen.

However, even in this context, improvements were seen after JSAP focused upon evictions in Tuzla, reviewing all outstanding cases[16] and working together with the officials concerned. With JSAP support, the following strategy was adopted by the court.

Often alternative accommodation was not available or suitable and so the occupants did not want to move out. Previously, the administrative organs had ignored the court's requests for assistance. However, JSAP initiated contact between the institutions and relations improved with useful exchanges of information.

The court prioritised cases where illegal occupants refused to move out even though they had alternative accommodation and cases where persons to be evicted were not entitled to alternative accommodation. If there was a prospect of alternative accommodation, the judge sent a list of the cases concerned to the competent administrative organs, asking for clarification of the status of the persons to be evicted and alternative accommodation possibilities. This resulted in alternative accommodation being provided in a number of cases where the occupants were due to be evicted upon court order.

JSAP and the IPTF monitored a sensitive case of eviction pending since 1996, which eventually proved successful. The case also presented the opportunity to establish a security plan including regular and court police and strengthened the authority of the enforcement department. Investigations were undertaken at the request of the Municipal Prosecutor against persons suspected of obstructing the eviction process and indictments were finally laid against the adults concerned.

However, in a different case, JSAP monitored fourteen unsuccessful eviction attempts by the Tuzla Municipal Court and got the impression that all parties, including the judge and the police officers, were playing to a well-known score. Everybody knew that the eviction was unlikely to be performed. The case was later eventually enforced after the administrative organs provided alternative accommodation to the defendant-occupant. Both cases illustrate the difficulties and margins of action in this field.

Because of changing methods of keeping statistics and difficulties in interpreting them, it is impossible to give any definite figures, but it seems clear that there was a

[16] 75 at mid-1999.

significant improvement in the rate of successful evictions in the Tuzla Municipal Court over the period monitored by JSAP and that this continued in 2000. This might be attributable to a variety of factors, including the attention of JSAP, the allocation of an additional judge to the enforcement department and the improving political environment. The enforcement judges in that court now report that most evictions are carried out within three months of them receiving the case. Additionally, by mid-2000, the court had solved all cases pending from previous years.

By contrast to the humanitarian approach described above, some courts, at least officially, adopt a more legalistic approach, refusing to consider the lack of alternative accommodation as a reason for postponement and do not even contact the administrative organs for that purpose. One example is the Bijeljina Basic Court, although by 1999 that approach had not improved the number of evictions performed (only ten evictions carried out in 1999, an increase of only two from the eight performed in 1998). However, the judges stressed that the context in which evictions are performed has improved. They expected a significant improvement in 2000, although as only one had been carried out by August and ten new cases filed, this may have been optimistic.

One of the judges there considered that several factors now facilitate the court's activity in that field:

- the political context is more favourable due to influence of international organisations;
- the local police no longer refuse to assist the court;
- information given in the media focussing on the need to enforce court decisions and evictions has led to a reduced resistance from evictees and encourages them to find alternative solutions before a forcible eviction takes place.

Improvement may be seen there, as in the Tuzla Municipal Court, in the relative increase in the speed of the process. Out of the ten evictions carried out in that court in 1999, six were performed within less than six months and four in less than three. By contrast, two evictions performed in 1998 had taken three and four years. Although police assistance was requested in most of the cases in 1999, a lot of the eviction orders were implemented without use of force. It is also remarkable that JSAP found very few requests for postponements from administrative and other organs in 1999, although they had been frequent in previous years. The same judge agreed that this new context also allows and requires a significant improvement of the court efficiency in that field.

6.2.3 Co-operation with the local police

A second obstacle to enforcement of court ordered evictions has been the failure of the police to attend evictions on the spot or to execute court ordered evictions, often challenging the legality and authority of the court's decision. In Central Bosnia Canton, hundreds if not thousands of evictions have not been carried out because of lack of co-operation from the local police in the eviction process.

The judges in charge of evictions at the Bijeljina Basic Court said that obstruction by the police was frequent until 1998 but improved significantly in 1999. The judge in charge of evictions at the Tuzla Municipal Court in 1999 said that he did not face any obstruction from the police side, but there was clearly a need to co-ordinate when the court started to implement particularly difficult eviction cases.

Even where court police do exist, the special security concerns related to evictions may require the presence of specialised regular police officers to deal with issues of crowd control and general security.

7 EMPLOYMENT CASES

Dismissal of employees from their jobs was an important part of the cleansing that took place during the war and the resulting employment cases also constitute a critical area for political pressure and, sometimes, threats against judicial officials. Discrimination in this field within the judicial process has taken the form not only of deliberate delays in processing cases themselves, but also in the virtually total lack of enforcement of court orders in favour of the claimants, in particular reinstatement orders. [17]

By law, once a judgement ordering reinstatement in employment is made, no further court order is necessary to require compliance by the employer. However, in practice, even in less politically sensitive cases, employers refuse to comply.

Unlike the types of judgements described above, where compliance can be forced, such as by seizing and selling goods, in reinstatement cases if compliance is not voluntary, employers must be "persuaded," such as by means of criminal sanctions. Under the Law on Enforcement Procedure, failure to execute a reinstatement order may result in the imposition of a fine in an unspecified amount on the employer.[18] The fine is imposed on the enterprise. In addition, both the Federation and RS Criminal Codes provide that failure to carry out a decision on worker's reemployment can be punished with a sentence of imprisonment for between three months and three years.[19] By contrast, this penalty is exacted on the official or responsible person in the business enterprise or the independent businessperson. However, in practice, these remedies are rarely used.

Employment cases at the substantive stage show clearly the lack of enthusiasm of the courts for making decisions. In different parts of the country, JSAP has found that these cases bounce up and down between the first and second instance courts, so that plaintiffs rarely obtain enforceable judgements. If they do, there is still the risk of revision by the Supreme Court.

It seems that there has been a debate among judges regarding the need to postpone execution of re-instatement decisions if an application for revision by way of extraordinary remedy has been made against the decision to be implemented. Although the law does not require it, some judges consider that this is necessary in order to prevent the employee from the supposed duress of reimbursement proceedings, in case the employer succeeds in the revision process. However, in a positive development, in 1999, the Bijeljina District Court overruled a decision of the Zvornik Basic Court ordering postponement of the enforcement process until the end of the revision proceeding.[20]

---

[17] The new Labour Law has provided some resolution of this problem in the Federation by allowing laid-off workers, which term includes anyone employed on 31 December 1991 who has not accepted other employment since, to retain that status for six months under certain conditions and to obtain compensation and severance pay. (Official Gazette of the Federation, 43/99, article 143)

[18] Article 231.

[19] Federation Criminal Code article 211, RS Criminal Code article 78. At the time of writing, a new Criminal Code for the RS had been published in the Official Gazette (22/00) and will come into force on 1 October 2000. Article 78 of the existing Code was not carried over into the new code and instead article 359 contains rather broader provisions, providing for a fine or imprisonment up to three years be imposed on people who deliberately disobey court decisions. If this provision is used, it could provide a significantly incentive to voluntarily comply with all civil judgements, and so reduce the necessity for enforcement proceedings.

[20] Marko Vukosarevic v. Drina Transport Cie. Eventually, the revision process ended with a decision of the Supreme Court overruling both Basic Court and District Court decisions of re-instatement.

In some parts of the country, such as Una Sana Canton, if these cases do reach the stage of enforcement, refusal to implement decisions has been blatant and was acknowledged by many judges. An example is the case of Mr. Ibraga Topic, leader of the local Social Democratic Party, who, with seventeen of his supporters, was dismissed from the 25 May Brick Plant in Cazin during the war. The Cazin Municipal Court ordered his reinstatement and also ordered the payment of damages. The company manager refused to execute the court order but no indictment was issued against him for not doing so. Instead, the Deputy Municipal Prosecutor suggested that Topic be informed of the possibility of pressing charges against his former employer, although it must have been evident to the prosecutor's office that in failing to execute the judgement a crime had taken place.[21]

Another case from the same town gives a measure of the possible constraints undermining the enforcement process when sensitive cases are concerned. It concerns the dismissal of an alleged DNZ supporter, Muharem Begic, from the police force in 1993. A final decision ordering reinstatement and payment of compensation was ordered by the Cazin Municipal Court in 1995. Neither part of the decision was executed and Begic submitted a criminal report against the former Cantonal Minister of Interior, including various other accusations such as illegal entry into his home and threats. According to the Municipal Prosecutor, this case was not progressed because six key witnesses live abroad.

There is no indication that any pressure has been exercised against the Ministry of Interior for refusing to execute the reinstatement decision. Neither has the Prosecutor's Office has taken any action despite knowing about the situation. Instead, the plaintiff was asked to submit a criminal report against the current Minster of Interior.

On the other hand, JSAP observed encouraging progress corresponding to high pressure from the international community. In one case, international community members met the judge involved and expressed concerns about the lack of enforcement of the court ordered reinstatement of a teacher in Una Sana Canton who had been dismissed from her employment in a fairly blatant example of political discrimination. Eventually, the Municipal Prosecutor filed criminal charges against the former employer for refusing to obey the court order to reinstate the teacher. It should be noted that the Federation Ombudsmen's office played an important role in focusing attention on the abuses in this case.

[21] A similar reluctance to prosecute by the authorities has been noted by JSAP in instances where parents have failed to comply with child custody orders.

8 GENERAL CONCLUSIONS AND RECOMMENDATIONS

- The failure of decisions to be implemented is due to a variety of reasons that touch on the adequacy of legislation, the organisation and structure of the judiciary and the political climate.

- The combination of complicated procedural legislation and lax court practices makes the system of enforcement one that serves the interests of debtors rather than judgement creditors. In particular, the various factors that encourage or facilitate delaying tactics are not compatible with the courts' obligation under the ECHR to try cases within a reasonable time.

- The Law on Enforcement Procedure grants too many opportunities to debtors to avoid or delay enforcement, either through its specific provisions or because of the way they are applied in practice by the courts.

- The importance of enforcement as part of the rule of law and the emerging of a market based economy should lead legislators to reconsider the balance between the rights of creditors to obtain payment of judgements in their favour and the rights of debtors to retain some ability to make a living. This will become even more prominent with the abolition of the ZPP. The development of real estate and other markets along with others such as new corporate reporting requirements should be a positive force in this area. In general, creditors should be able to take both the benefits and the risks from their choice of remedy.

- In general, courts do not use the tools at their disposal to speed up proceedings or to create incentives for compliance with court orders, such as the imposition of costs on non-complying parties or striking out cases for want of action. Another means to strengthen the judiciary in enforcement procedures would be provision for civil sanctions against parties who blatantly fail to co-operate with the court. There may also be room for the imposition of criminal sanctions in some cases, such as where one parent refuses to pay child support or where one parent does not allow the other access to or custody of the child and other situations where enforcement cannot be done through assets.

- While we can draw no conclusions about the size of court enforcement departments relative to their effectiveness, the experience of judges and the focus of court seem to have impact. There is also a need for governments to ensure that appropriate funding is provided in the court budgets to allow for sufficient staff and to permit proper training, and for court presidents to ensure as part of their internal court management that a reasonable number of staff including judges of sufficient experience and seniority, are allocated for enforcement.

- The role of the judge in enforcement could be reduced to a more supervisory or "judicial" one, freeing judges to deal with judicial rather than logistical issues such as scheduling hearings.

- It is not possible to draw any conclusions on the relative effectiveness of court police as opposed to bailiffs supplemented by regular police in enforcing judgements. The institution of the court police in the Federation was given a legal basis in the Federation Constitution of 1994. Six years later, the court police only operate in three cantons. It

might be time to re-evaluate the policy of establishing this system and instead consider a return to the previous system, which is still in force in the RS.

- Some countries have introduced a system of private or part public/part private enforcement. We make no comment on that but note the possible benefits of some centralisation of systems such as those for storage of seized goods and for their sale. This would have benefits to all parties and would remove some of the current difficulties with markets and space. It could be combined with systems for sale of goods seized as part of criminal proceedings. [22]

- While the political climate regarding evictions is clearly changing and cases are beginning to proceed more quickly and without interference, these cases provide a good example of the ways in which political pressure is exercised on the courts and the ways in which the judges succumb to it.

- While it is clear that pressure from the international community or local institutions such as the Ombudsmen's office can produce results in sensitive cases, such as reinstatement and evictions, this is a sad indictment of the rule of law in BiH.

- By and large, the denial of rights to property through failure to enforce eviction decisions is probably a breach of the substantive rights guaranteed by the ECHR.

- The lack of interest of the judiciary in reaching final decisions in reinstatement cases is mirrored by the lack of interest of employers in enforcing any decisions that are made. This cannot be blamed solely on the state of the economy and, with no sanctions imposed for flouting court judgements, probably reflects more accurately the lack of respect of the public for the rule of law.

- While few prosecutions take place either against people who attack or threaten the judiciary or against people who flagrantly breach court orders, the rule of law cannot be expected to take root.

- The practice of the legislatures using conclusions to amend or ameliorate the effect of legislation is of dubious constitutional validity, is contrary to the concept of the rule of law and is probably in breach of the ECHR. It appears to be one way of exercising political influence over the judiciary. It should cease immediately.

[22] In Slovenia, after similar trouble, the courts established an independent agency to manage the assets seized from debtors, as well as confiscation relating to drug dealers and other organized crime figures.

ANNEX

Eviction cases at the Bijeljina Basic Court

In carrying out its research for this report, JSAP reviewed all the eviction files from 1998 and 1999 in the Bijeljina Basic Court. This review included both completed and pending files.

A brief outline of the relevant facts and dates that the different procedural steps were taken in a few of those cases is given here in order to illustrate some of the problems discussed in the main text of this report. Cases that did not present particular problems were not chosen for inclusion in this Annex.

1 Todorovic v. Novakovic, Govric and Antic I-9/95

In this case, all the parties are Bosnian Serbs. Many eviction attempts were unsuccessful because the debtors physically obstructed the eviction.

25 August 1994	Enforceable decision
10 February 1995	Proposal for eviction by plaintiff
29 March 1995	Decision by court accepting proposal
7 February 1996	Conclusion by court scheduling eviction
9 June 1997	Conclusion by court scheduling eviction
21 July 1997	Creditor's lawyer withdraws the proposal against Antic
23 October 1997	Agreement between parties to postpone the case until 29 October 1997
30 October 1997	Conclusion by court scheduling eviction
8 December 1998	Conclusion by court scheduling eviction
21 December 1997	Proposal by debtors to withdraw the case because they obtained new evidence
30 January 1998	Decision rejecting that proposal
7 August 1998	Conclusion by court scheduling eviction
25 September 1998	Conclusion by court scheduling eviction
23 October 1998	Debtors propose postponement
27 October 1998	Court rejects that proposal as not permitted
29 October 1998	The Fund to Help Families of Fallen Fighters, as a third party having a legal interest, lodges proposal to overrule the case
29 October 1998	Court rejects that proposal
30 October 1998	Eviction enforced

2 Videlkovic v. Tesic I 32/96

Both parties are Bosnian Serbs. The debtor is an Orthodox priest. The eviction was postponed many times, for different reasons (lack of assistance from the Police, absence of the debtor, interventions from different bodies). The President of the Court told the Cabinet of the RS Presidency that the court would act in accordance with the law. The responses to other interventions such as the Municipal Board were even stricter.

1 August 1995	Enforceable decision
22 March 1996	Proposal for execution
28 March 1996	Court accepts proposal
1 July 1996	Conclusion by court scheduling eviction
11 September 1996	Conclusion by court scheduling eviction
2 October 1996	Ministry of Religion requests postponement of eviction
18 October 1996	Conclusion by court scheduling eviction
October 1996	Office of the President of RS requests postponement of eviction

6 November 1996	Serb Orthodox Church requests postponement of eviction
18 November 1996	Conclusion by court scheduling eviction
18 November 1996	Serb Orthodox Church requests postponement of eviction
16 December 1996	Conclusion by court scheduling eviction
12 March 1997	Conclusion by court scheduling eviction
1 April 1998	Conclusion by court scheduling eviction
3 August 1998	Conclusion by court scheduling eviction
3 September 1998	Executive Board of Bijeljina Municipality requests postponement of eviction
11 September 1998	Conclusion by court scheduling eviction
5 October 1998	Ministry for Refugees and DPs requests postponement of eviction
5 October 1998	Court rejects that request
6 October 1998	Eviction enforced with Police assistance. Movable goods belonging to debtor were catalogued in order to grant compensation to creditor for costs of enforcement proceedings.

3 Lazic v. Dokic I 137/96

Both parties are Bosnian Serbs. The case involves a property exchange between the plaintiff, Lazic, and a Bosniak family. However, the debtor, Dokic, moved in to the property without any legal basis.

24 July 1996	Enforceable decision
6 September 1996	Proposal for execution
10 October 1996	Court accepts proposal
28 October 1996	Conclusion scheduling eviction for 1 November. Police assistance not requested.
31 October 1996	Objection lodged by debtor with letter from the Minister for Refugees requesting postponement until alternative accommodation is found
11 November 1996	Conclusion scheduling eviction for 11 December.
2 December 1996	Hearing scheduled but neither party attends.
11 December 1996	Eviction attempted but unsuccessful. Debtor refused to move out unless provided with alternative accommodation.
16 December 1996	Conclusion scheduling eviction for 26 December. Police assistance requested.
17 December 1996	Letter from Ministry for Refugees and DPs requesting postponement.
27 December 1996	Hearing at which both parties were present. Creditor asked for objection to be rejected, debtor referred to an agreement regarding movable property. The court rejected the objection.
2 January 1997	Conclusion scheduling eviction for 21 January 1997. Police assistance requested.
21 January 1997.	Forcible eviction takes place. House in bad condition with movable assets missing.
28 January 1997	Request made by creditor to seize other movable property of debtor.
27 May 1999	Court requests creditor to indicate whether he wishes to continue with that request.
7 October 1999	Creditor affirms request.
?	Court advises parties that a new suit should be filed.

4 Ristic v. Trifunovic I 526/97

Both parties Bosnian Serb. The case concerns repossession of business premises. Ristic, the creditor, initially exchanged his property with a Bosniak family originally from Bijeljina and then Trifunovic, the debtor, moved in without any legal basis.

5 September 1996	Enforceable decision
21 April 1997	Proposal for execution
10 June 1997	Court approves proposal
29 December 1997	Conclusion scheduling eviction for 12 January 1998. Police assistance requested.
12 January 1998	Eviction attempt unsuccessful. Police failure.
20 January 1998	Conclusion scheduling eviction for 30 January. Police assistance requested.
30 January 1998.	Eviction successful. No record made by bailiff.

5 ODP Panafleks v. Novakovic I 521/97

The debtor is a member of the police special brigade. In 1992, ODP Panafleks, the creditor, made a contract with the Ministry of Interior regarding the temporary use of the apartment by the debtor for one year. The Ministry refused to give the apartment back after that period and ODP Panafleks lodged a civil law suit for repossession.

18 June 1997	Enforceable decision
11 April 1997	Proposal for execution
29 June 1997	Court approves proposal
22 August 1997	Conclusion scheduling eviction for 27 August. Police assistance not requested.
27 August 1997	Eviction unsuccessful. Debtor required police presence.
2 September 1997	Conclusion scheduling eviction for 12 September. Police assistance requested.
12 September 1997.	Eviction unsuccessful. Debtor refused to move out unless provided with alternative accommodation by the Ministry of Interior. Threats made against the bailiff. Crowd gathers.
18 September 1997	Conclusion scheduling eviction for 8 October. Police assistance requested.
8 October 1997	Eviction not performed. The creditor said that it made an agreement with the Police Chief to postpone the eviction because the debtor was on a business trip and promised to move out voluntarily.
13 October 1997	Conclusion scheduling eviction for 28 October. Police assistance requested.
28 October 1997	Eviction unsuccessful. Lack of assistance from Police. On request of the judge, the bailiff asked the debtor's wife to move out in absence of her husband. She refused.
30 October 1997	Conclusion scheduling eviction for 14 November. Police assistance requested.
14 November 1997	Eviction not performed. Debtor absent and no police assistance.
17 November 1997	Conclusion scheduling eviction for 26 November. Police assistance requested by way of special letter from the judge reminding them of responsibilities.
26 November 1997	Eviction unsuccessful. No assistance from Police. File documents missing and judge requests report from court officials.
31 December 1997	Conclusion scheduling eviction for 12 December. Police assistance requested.
12 December 1997	Eviction not performed. Agreement by parties for seven-day postponement.
19 December 1997	Conclusion scheduling eviction for 24 December. Police assistance requested.
24 December 1997	Eviction not attempted. No police assistance.
29 December 1997	Conclusion scheduling eviction for 13 January. Police assistance requested.
13 January 1998	Eviction begun. Debtor had vacated but furniture remained.
4 February 1998	Eviction resumed after a family of refugees from Sarajevo moved into the apartment. One family member worked in the police antiterrorist unit. The Police and the creditor agreed to postpone the eviction for 90 days and the creditor withdrew its proposal for execution.
Later in 1998	Eviction successful

6 Gojic v. Sijeric I-185/98

4 May 1998	Enforceable decision
26 November 1998	Proposal for execution
28 January 1999	Court accepts proposal
15 February 1999	Objection by debtor suggesting postponement until 15 April 1999.
24 April 1999	Court allows postponement in accordance with the conclusion of the RS National Assembly that evictions of some categories of refugees and DPs should be suspended between 15 November 1998 and 15 April 1999.
22 March 1999	Conclusions scheduling eviction for 19 April 1999.
19 April 1999	Eviction successful.

7 Kasrati v. Simic 385/99

The creditor is Albanian and the debtor is Bosnian Serb. The debtor initially entered the creditor's house on the basis of an agreement made with the Geodesic Department. In 1996, the former forcibly evicted the latter from the house and the creditor obtained a decision from Bijeljina Basic Court ordering his repossession of the property.

29 May 1998	Enforceable decision
18 September 1998	Proposal for execution
29 October 1998	Court approves proposal
4 May 1999	Objection by debtor
1 December 1998	Eviction scheduled for 24 December 1998. Police assistance not requested.
10 December 1998	Letter from Ministry for Refugees and DPs calling for postponement, due to debtor's request for alternative accommodation. De facto postponement (RSNA conclusions calling for postponement of evictions until 15 April).
23 March 1999	Eviction scheduled for 27 April 1999. Police assistance requested.
27 April 1999	Eviction not attempted because the creditor did not provide any means for transportation of furniture.
	Letter from creditor explaining he cannot pay the enforcement fees and calling for another schedule.
4 May 1999	Objection from debtor.
5 May 1999	Second letter from Ministry of Refugees and DPs requesting postponement.
12 May 1999	Court rejects debtor's objections and schedules eviction for 17 June. Police assistance not requested. Debtor files appeal.
17 June 1999	Eviction not attempted because creditor did not pay the costs of enforcement.
22 June 1999	Decision suspending eviction until costs paid by creditor. This decision was overturned on appeal to the District Court on the basis that the court and not the bailiff should determine the costs.
18 October 1999	Eviction scheduled for 2 December. Police assistance not requested.
2 December 1999	Eviction unsuccessful because of resistance by the debtor. To be rescheduled with police assistance.
January 2000	Eviction successful

8 TE "Uglievik" v. Ilic and Josipovic I 580/97

23 July 1997	Enforceable decision
30 July 1997	Proposal for execution made and accepted by court.
2 August 1999	Eviction scheduled for 22 August. Police assistance not requested.
6 August 1999	Debtor appeals on the basis of no alternative accommodation.
14 August 1999	Appeal rejected as having no legal basis in the Law on Enforcement Procedure. Debtor also requests postponement, which is refused.
22 August 1999	Eviction unsuccessful. Debtor refused to move out, saying he was sick, and the Police refused to assist the bailiff without doctor's intervention.
?	Alternative accommodation eventually found for the debtor, who moved out voluntarily.