

The Adjudication of “War Salaries” of Justice Sector Employees in Una Sana Canton

FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS

ISSUE

In November 2000 a large number of employees of the judiciary in Una-Sana Canton (the “Canton”) obtained their salaries for the period December 1994 to December 1995 (“War Salaries”) through standard court proceedings. The payments caused widespread controversy throughout the Canton and increased the already existing perception of public distrust in the judiciary. The primary issue raised was whether the judges in question acted in accordance with the internationally recognized standards of judicial conduct, the Federation Constitution and laws, and the Ethics Codes for Judges in the Federation of Bosnia and Herzegovina (BiH).

INTERNATIONAL STANDARDS AND RELEVANT LAW

1. European Convention for the Protection of Human Rights and Fundamental Freedoms:

Article 6, Paragraph 1: “In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair public hearing within a reasonable time by an independent and impartial tribunal established by law.”

2. European Charter on the Statute for Judges, General

Principles:

Paragraph 1.5: "Judges must show, in discharging their duties, availability, respect for individuals, and vigilance in maintaining the high level of competence which the decision of cases requires on every occasion – decisions on which depend the guarantee of individual rights and in preserving the secrecy of information which is entrusted to them in the course of proceedings."

Paragraph 1.6: "The State has the duty of ensuring that judges have the means necessary to accomplish their tasks properly, and in particular to deal within cases within a reasonable period."

3. Constitution of the Federation of BiH, Chapter C:

Article 4, Paragraph (2): "The Courts shall ensure that all parties to legal proceedings are treated equally."

Article 5, Paragraph (1): "All judges of all the courts of the Federation shall be distinguished jurists of the highest moral standings."

4. Law on Judicial and Prosecutorial Service of the Federation of BiH:

Article 2, Paragraph 3: "The behavior of the judge and prosecutor, either while exercising their duty or in private life, always has to be such that the trust of public in its independence, lack of bias and integrity are not put in question."

5. Constitution of Una-Sana Canton, Chapter C:

Article 2: "The courts in the Canton shall ensure an equal position to all sides in judicial proceedings."

6. Law on Courts of Una-Sana Canton:

Article 14: "Courts ensure equal position to all parties in court proceedings."

7. Code(s) of Ethics for Judges in the Federation of BiH:

Article 2, Fundamental Fairness: "Judges shall perform their duties in an impartial manner and shall always act in a manner that is fair to all parties to any proceeding. Judges must never allow feelings of personal prejudice or favoritism in any way affect the performance of their duties."

Article 3, Conflicts of Interest: "Judges must diligently avoid any potential conflict of interest based on a family relationships, friendships, as well as financial or professional relationships and must disclose to the parties to any proceeding any such relationship that the Judge may have to any party in that proceeding. Judges must avoid not only any actual impropriety but also the appearance of impropriety in the manner in which they carry out their duties. Judges have the obligation to withdraw from a case where there is a valid reason to believe they have a conflict of interest."

8. Civil Procedure Code of the Federation of BiH:

Article 60: "A cantonal court may, upon request of the party or the competent court, order that in a particular matter another substantially competent municipal court from within its territory acts if it is apparent that it would be easier to conduct the procedures that way, or if there are other important reasons for such decision. The Supreme Court of the Federation may, upon request of the party or the competent court, order that in a particular matter another substantially competent court from another canton acts, if it is clear that it would be easier to conduct the procedures that way, or if there are other important reasons for such decision."

Article 63: "Judges have to exempt themselves in the following circumstances:

(5) – if there are some other circumstances that may appear to compromise [a judge's] impartiality."

Article 64, Paragraph 2: "If the judge believes that there are some other circumstances that may jeopardize his impartiality (Article 63, point 5) he shall notify the president of the court, who will decide on exemption. Until such a decision is reached, the judge can only undertake the actions that may be jeopardized by the delay".

BACKGROUND

The political scene of Una-Sana Canton continues to be widely affected by a specific problem that arose during the war from 1992-1995. For approximately one year during the war (primarily 1995), the salaries of the employees in public institutions – administration, judiciary, health and education

– as well as the salaries of employees of state-owned companies were not paid. At the end of the war, several cantonal administrations attempted to resolve this issue, but a comprehensive solution was not achieved, thus perpetuating tension within the Canton.

In early 1996, reportedly some parts of government employees, namely the employees of the executive branch, succeeded in obtaining payment of their past due “war” salaries. As a result of mounting public pressure, the Canton government issued a formal decision on 20 January 1997 to start the gradual payment of war salaries to the employees from the judicial, health, and educational sectors. However, the Canton government did not implement its decision and the salaries remained unpaid thereafter.

In 2000, however, the majority of judges, prosecutors and other employees of the judiciary (justice sector employees) managed to obtain their war salaries through standard court proceedings. In what the public perceived as a relatively short period of time, justice sector employees were able to finish court proceedings and enforce the court judgments awarding them past war salaries with interest. The enforcement of these judgments created frustration among the public, particularly among the employees of the health and the educational institutions, who were also seeking court judgments awarding them past war salaries.

A controversial aspect of most of the judgments awarded to the judicial sector employees was the court-ordered payment of the legal default interest, which, in some cases, exceeded the principal amount of the judgments. The high interest awards triggered a public outcry.

Serious public concern also arose over the fact that some

judges adjudicated cases involving their colleagues' claims for war salaries. Judges presiding over these cases did not observe or implement existing regulations for the disqualification of judges and/or the change of venue, which are intended to safeguard the public's perception that a court is impartial, unbiased, and independent.

The Office of Ombudsmen issued a report in March 2001 identifying the above issues and criticizing the court for its handling of the war salaries cases. Two members of the Federation Commission for Appointment and Election of Judges (FJC) held a meeting with the judges in Bihac in January 2001 and recommended concrete, remedial steps. Specifically, the FJC recommended that the judges return the interest received on their individual court judgments. Most of the judges returned part or all of the interest awarded in addition to the principal amount of the war salaries.

The FJC also referred this matter to the Association of Judges of the Federation of BiH and recommended that the Association carefully examines the judges involved and sanctions those judges who violated the code of ethics. To date, the Association has not issued any sanctions.

The Independent Judicial Commission (IJC) initiated its own inquiry into this case. The inquiry resulted in a thorough examination of the court's handling of the war salaries of justice sector employees. The IJC's findings, conclusions, and recommendations are set out below.

IJC FINDINGS

1. The judges, prosecutors and other justice sector employees had a legal right to claim their war salaries. Nevertheless, the judges from the Bihac Cantonal and

Municipal Courts, by obtaining judgments within the same court system, rather than seeking a neutral venue, undermined the public's perception of judicial impartiality and independence. The judges, in obtaining judgments from the local courts, ignored legal and ethical norms that apply to them as judges.

2. A total of 13 judges, currently on the bench, adjudicated the war salary cases of their colleagues who were judges at either the Canton or Municipal Courts. Although no judge directly participated in the adjudication of his/her own case, eight of the 13 judges filed claims for war salaries and participated in the direct adjudication of each other's case or cases. These judges are Hasan Pjanic, President of the Cantonal Court at the time, Cantonal Court judges Abdulmedzid Music, Mira Blazevic, Ilvana Pracic, Fikret Hodzic, Bahra Coralic and Municipal Court judges Fata Nadarevic and Edita Rekic. Five of the 13 judges did not file a claim for war salaries before any court; however, they adjudicated the war salary claims of their colleagues.
3. All presiding judges should have requested a change of venue to courts in another Canton in the 'war salary' cases filed by their colleagues in the first and/or second instance courts. The presiding judges should have invoked Article 60 of the Federation Civil Procedure Code (FCPC), which requires the delegation of cases that involve conflicts of interest, as well as provisions of the code of ethics. In particular, the Federation Supreme Court, in a decision that interpreted Article 60, clearly stated that cases involving a similar conflict of interest should be delegated to a neutral court (Pravna Misao 11-12/1999 at p. 115). In addition, the judges, as parties to the proceedings, could have

considered themselves obliged to invoke the relevant provisions of the Civil Procedure Code and ask for change of venue of the 'war salaries' cases.

4. Generally stated the 'war salaries' cases were identical and not disputable in their legal or factual contents, which made it possible to dispose of them in a uniform manner . The IJC investigation revealed that, with the exception of four cases filed by judges, the courts did not handle the justice sector employee war salary cases differently or in a preferential way compared to the cases of other claimants outside the judicial system. Four cases involving the claims of judges were processed within three to five months; whereas, the average case required approximately one year to process. These four cases involved the following judges: Fikret Hodzic, Hasan Pjanic, Ilvana Pracic, and Mira Blazevic.
5. The legal default interest awarded in the war salary cases for judges was fixed by law, although it triggered a serious public reaction due to the large amounts of interest payments (sometimes more than the principal amount of the claim). As a rule, the interest on the basic payments is due in cases of unpaid salaries.. The high amount of interest rate was paid on the basis of valid regulations and, therefore, should not be considered an element of the case, which the presiding judges could influence through the proceedings. In other words, the interest payments were awarded in a lawful manner.
6. Intervention by the FJC was limited to encouraging the judges to return the interest payments. The Association of Judges has not reacted in the last ten months since

the issue was referred to it and has proved not to be an adequate body to sanction judges for ethics violations.

CONCLUSIONS AND RECOMMENDATIONS

1. The ethics codes applying to the judiciary in the Federation should regulate more strictly issues such as conflict of interest and bias. In addition, the limited provisions that do regulate such issues are not sufficiently enforced and, consequently, neither prevent nor deter judges from handling cases improperly. A comprehensive code of ethics should be enacted in order to serve as a basis for invoking responsibility of judges. The FJC should have stronger authority to discipline judges for violations of the code of ethics.
2. The IJC recommends that the FJC review the eight judges who directly adjudicated each other's cases and failed to ask for a change of venue and/or self-exemption (See Findings, Paragraph 2). This review should involve the random inspection of cases handled by the judge in the past three years in order to assess the judge's capacity to carry out judicial functions and court president duties (where appropriate). In addition, this review should include an examination of the judge's past annual performances to determine whether the judge has met quotas and does not have a high case reversal rate. **In all of these cases, the FJC should, at the very least, recommend disciplinary measures or commence removal proceedings, depending upon an evaluation of the overall performance of the judge in question.** In determining the appropriate action, the FJC may consider whether the judge has returned all or part of the interest awarded by the court.

3. The IJC recommends that the FJC should also review the other five judges who did not file claims for war salaries but nevertheless adjudicated 'war salaries' cases filed by their colleagues in the first and/or second instance courts and failed to ask for a change of venue and/or self exemption. This review should involve the random inspection of cases handled by the judge in the past three years in order to assess the judge's capacity to carry out judicial functions and court president functions (where appropriate). In addition, this review should include an examination of the judge's past annual performances to determine whether the judge has met quotas and does not have a high case reversal rate. **The FJC should then consider taking the necessary and appropriate action.**
4. The IJC recommends that the Federation and Cantonal Judges Commissions and the High Judicial Council (in the RS) vigorously discipline judges and prosecutors who do not act in compliance with domestic constitutional, statutory, or ethics provisions designed to ensure the impartiality and independence of the judiciary.

Judge Kari Kiesilainen

IJC Deputy Director