

Legal Department of the Court of BiH

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On 2 December, 2004 the Registry for Section I for War Crimes and Section II for Organized Crime, Economic Crime and Corruption of the Criminal and Appellate Divisions of the Court of Bosnia and Herzegovina and the Special Department for War Crimes and Special Department for Organized Crime, Economic Crime and Corruption of the Prosecutor's office of Bosnia and Herzegovina (hereinafter: The Registry) was formally established.

The launch of the Registry officially ended the War Crimes Chamber Project, which was devised to develop special Sections within the Criminal and the Appellate Divisions of the Court of Bosnia and Herzegovina and the Special Divisions of the Prosecutor's Office of Bosnia and Herzegovina to deal with war crimes, organized crime, economic crime and corruption.

The Law on Amendments to the Law on Court of BiH,¹ which entered into force on January 6, 2005, established three Sections: Section I for War crimes, Section II for Organized Crime, Economic Crime and Corruption and Section III for general crime within the Criminal and the Appellate Divisions of the Court of BiH.

The staff of Section I and Section II of the Court are composed of both national and international judges with at least one international judge per Panel. Currently² there are 28 judges working in Section I and Section II; 16 of them are nationals of BiH. In each case, the composition of the Panels of Section I and Section II remains the same.

To strengthen the court's capacity, the registry provides legal and administrative support to Sections I and II of the Court of BiH.

Legal Department

The Legal Department (LD) of the Registry, which provides support to Section I and Section II, is divided into the Office of the Head of Department and the Legal Documentation Unit. The LD employs both national and international lawyers. The international attorneys, who work mainly for the LD help strengthen the capacity of the Registry by bringing expertise to complicated criminal cases.

The LD provides substantive judicial support to Section I and Section II of the Court.

Each Panel is supported by a small team of lawyers consisting of one national lawyer (stručni saradnik), one national intern (pripravnik) and one international legal associate or international intern (law clerk). LD staff members are involved in pre-trial and trial procedures; they are responsible for drafting decisions on custody and other measures to guarantee the presence of a suspect and successful conduct of criminal proceedings, as well as drafting verdicts, procedural decisions and orders. Additionally, LD staff conduct research and provide judges with legal analyses.

Additionally, the LD also handles a number of administrative issues, such as the organization of reference meetings, maintaining summaries of cases before the Court of BiH and other related matters.

Legal basis

Amended article 27 of the Law on the Court of BiH³ states in paragraph 1 that “there shall be a <...> Registry for Section I and Section II”. According to paragraph 5 of the same article is the Registry for Section I and Section II managed by a Registrar who is responsible, in cooperation with the President of the Court, for the administration and provision of support services to Section I and Section II of the Court. The Registry Agreement⁴ details the administrative and support services provision.

The Agreement explains that the Registry is responsible for the administration and provision of support services to Section I and II of the Criminal and Appellate Divisions of the Court of BiH, article 2 (2). The Agreement enumerates certain support services though the list is not exhaustive and is presumed to include the provision of support staff. This article can be read to supplement article 27 (5) of the Law on the Court.

Article 2 (3) of the Registry Agreement states that the Registry will be responsible for the recruitment and administration of both national and international support staff to assist the work of international judges. According to article 2 (4), the Registry is prohibited from interfering with the independence of the judges of the Court of BiH.

Neither the Law on the Court of BiH nor the Criminal Procedure Code of BiH specifically refer to legal support staff for the Court. However, article 31 (2) of the Law on the Court states that the Court shall determine the duties and responsibilities of their administrative staff; this implies that the Court can task them with legal support. The Court shall determine the organizational structure of its staff in its Rules of Procedure, article 31 (1) Law on the Court. This implies that the Court has the discretion to set-up legal teams to support the Panels and that the Court can decide whom to hire. According to article 2 (3) of the Registry Agreement, the Registry supports the Court in recruiting staff.

As discussed above, the Court’s structure consists of legal teams composed of two national lawyers and one international lawyer. Pursuant to the Registry Agreement, however, international support staff may only assist the work of international judges. Because lawyers work as part of teams that support a particular Panel, and international judges form part of each Panel, the international staff provide *de facto* support to the Panel as a whole.

The Law on the Court does not mention the possibility of international staff becoming employees of the Court. The Book of Rules on the organizational structure of the Court of BiH states in Article 24 that the work of the employees of the Court of BiH is based on the Labor law for Institutions of BiH. According to article 10 (1) b) of this law, in order to be employed by an Institution of BiH, one must be a national of BiH. Pursuant to article 2(2) of the Registry Agreement, international Legal Associates and International Law Clerks have the authority to work for international judges. Therefore, they work *de jure* for the Registry.

Although the Registry employs international staff, it does not supervise their work. Article 2 (4) of the Registry Agreement states that the Registry shall not interfere with the independent exercise of the judges of the Court of BiH in the fulfilment of their duties under law. If the Registry were to supervise the work of the legal teams, it would compromise the independence of the judges, a direct violation of article 2 (4) of the Registry Agreement.

The Court of BiH will gradually phase out its use of international judges and the international component of the LD. By the end of 2009, the LD will no longer have any international staff; thus, all Court staff will be nationals of Bosnia and Herzegovina.

1 Law on Amendments to the Law on Court of BiH, Official gazette of BiH, 61/04.

2 August 2006.

3 Law on the amendments to the Law on the Court of BiH, Official gazette of BiH, 61/04.

4 Agreement between the High Representative for BiH and BiH on the establishment of the Registry for Section I for war crimes and Section II for organized crime and corruption of the Criminal and Appellate Divisions of the Court of BiH and the Special Department for war crimes and the Special Department for organized crime, economic crime and corruption of the Prosecutor's Office of BiH, Official gazette f BiH, International Agreements, 12/04.

Pravni odjel Suda BiH

Pripremio David Hein, međunarodni pravni saradnik, Pravni odjel

Ured registrara Odjela I za ratne zločine i Odjela II za organizovani kriminal, privredni kriminal i korupciju Krivičnog i Žalbenog odjeljenja Suda Bosne i Hercegovine, te za Posebni odjel za ratne zločine i Posebni odjel za organizovani kriminal, privredni kriminal i korupciju Tužilaštva Bosne i Hercegovine (u daljnjem tekstu: "Ured registrara") zvanično je uspostavljen 02.12.2004. godine.

Uspostavom Ureda registrara, službeno je okončana realizacija Projekta vijeća za ratne zločine, osmišljenog sa ciljem uspostavljanja posebnih odjela u sklopu Krivičnog i Žalbenog odjeljenja Suda Bosne i Hercegovine i Posebnih odjeljenja u okviru Tužilaštva Bosne i Hercegovine koji bi se bavili rješavanjem predmeta ratnih zločina, organizovanog kriminala, privrednog kriminala i korupcije.

Zakon o izmjenama i dopunama Zakona o Sudu BiH je stupio na snagu 06.01.2005. godine čime su oformljena tri odjela: Odjel I za ratne zločine, Odjel II za organizovani kriminal, privredni kriminal i korupciju i Odjel III za opšti kriminal u okviru Krivičnog i Žalbenog odjeljenja Suda Bosne i Hercegovine.

U Odjelu I i Odjelu II Suda rade i domaće i međunarodne sudije, a u sastavu svakog vijeća je bar jedan međunarodni sudija. Trenutno² u Odjelima I i II radi ukupno 28 sudija, a 16 od njih su državljani Bosne i Hercegovine. Vijeća Odjela I i Odjela II rade u istom sastavu na različitim predmetima.

U cilju osnaživanja kapaciteta suda, Ured registrara pruža podršku pravne i administrativne prirode Odjelu I i Odjelu II Suda BiH.

Pravni odjel

Pravni odjel Ureda registrara, koji pruža podršku Odjelu I i Odjelu II, čine Ured rukovodioca Odjela i Jedinica za pravnu dokumentaciju. U Pravnom odjelu rade i domaći i međunarodni pravници. Međunarodni pravници, koji rade u Pravnom odjelu, pružaju pomoć u jačanju kapaciteta Ureda registrara putem pružanja stručne pomoći u komplikovnim krivičnim predmetima.

Pravni odjel pruža značajnu sudsku podršku Odjelu I i Odjelu II Suda BiH.

Svim sudskim vijećima podršku pruža po jedan mali tim pravnika, koji se sastoji od jednog domaćeg pravnika u zvanju stručnog saradnika, jednog domaćeg pripravnika i jednog međunarodnog pravnog saradnika ili međunarodnog pripravnika. Aktivnosti osoblja Pravnog odjela obuhvataju učešće u prethodnom postupku i glavnom pretresu; odgovorni su za pripremu rješenja o određivanju pritvora i drugih mjera kojima se osigurava prisustvo osumnjičenog, te uspješno vođenje sudskog postupka, kao i pripremu presuda, procesnih rješenja, procesnih naloga, itd. Pored ovih poslova, osoblje Pravnog odjela se bavi istraživanjem i pravnom analizom za potrebe sudija.

Pored navedenih pravnih poslova, Pravni odjel se bavi i nizom administrativnih pitanja, poput pripreme tematskih sastanaka, ažuriranja sažetaka predmeta koji se vode pred Sudom BiH i sličnim pravnim poslovima.

Zakonski osnovi

Izmijenjeni član 27. Zakona o Sudu BiH³ u stavu 1. definiše da "Sud ima <...> Ured registrara Odjela I i Odjela II". U stavu 5. istog člana navodi se da "Registar rukovodi Uredom registrara Odjela I i Odjela II i nadležan je, u saradnji sa predsjednikom Suda,

za upravljanje i pružanje podrške Odjelu I i Odjelu II Suda.” Sporazumom o Uredu registrara⁴ definisan je način upravljanja i vrsta podrške.

U Sporazumu o Uredu registrara stoji da je odgovoran za upravljanje i pružanje podrške Odjelu I i Odjelu II Krivičnog i Žalbenog odjeljenja Suda BiH - član 2. stav 2. U Sporazumu se navode određene vrste podrške, iako lista nije detaljna i moglo bi se reći da se ovim obezbjeđuje osoblje za podršku koje će raditi u Sudu. Navedeni član može se smatrati dopunskim članu 27. stav 5. Zakona o Sudu BiH.

Članom 2. stav 3. Sporazuma o Uredu registrara definisano je da je u njegovoj odgovornosti angažovanje i rukovođenje domaćim i međunarodnim osobljem za podršku, čiji je zadatak da pomaže u radu međunarodnih sudija. U skladu sa članom 2. stav 4, Ured registrara se ne miješa u nezavisni rad sudija Suda BiH.

Zakon o Sudu BiH, kao ni Zakon o krivičnom postupku Bosne i Hercegovine nigdje konkretno ne pominju osoblje za pružanje pravne podrške Sudu. U članu 31. Zakona o Sudu BiH pominje se, međutim, administrativno osoblje. Članom 31. stav 2. definisano je da Sud utvrđuje poslove i zadatke svog administrativnog osoblja, što znači da ih može zadužiti da pružaju pravnu podršku. Član 31. stav 1. Zakona o Sudu BiH definiše da Sud Poslovnikom utvrđuje organizacionu strukturu službe, što znači da Sud ima diskreciono pravo da oformi pravne timove za pružanje podrške sudskim vijećima, kao i da Sud može donijeti odluku o tome kakvo osoblje će zaposliti. Ured registrara pruža podršku Sudu u procesu angažovanja osoblja, u skladu sa članom 2. stav 3. Sporazuma o Uredu registrara.

Kao što je prethodno navedeno, struktura Suda je takva da ima pravne timove, koji se sastoje od dva domaća i jednog međunarodnog pravnika. Međutim, u skladu sa Sporazumom o Uredu registrara, međunarodno osoblje za podršku pomaže u radu isključivo stranim sudijama. S obzirom na činjenicu da su pravnici dio tima koji pomaže u radu sudskim vijećima, a da u sastavu vijeća rade međunarodne sudije, međunarodno osoblje *de facto* pomaže u radu sudskom vijeću u cjelini.

Zakon o Sudu BiH ne pominje mogućnost zasnivanja stalnog radnog odnosa međunarodnog osoblja u Sudu. Pravilnik o organizacionoj strukturi Suda BiH u članu 24. propisuje da se radni odnos u Sudu BiH zasniva na u skladu sa odredbama Zakona o radu u institucijama Bosne i Hercegovine. Članom 10. stav 1, tačka b) ovog Zakona definisano je da zaposleni u institucijama Bosne i Hercegovine moraju biti državljani Bosne i Hercegovine. Međunarodni pravni saradnici i međunarodni pravni asistenti rade sa međunarodnim sudijama, kako je propisano članom 2. stav 2. Sporazuma o Uredu registrara. Shodno tome, oni prilikom izvršavanja svojih radnih zadataka *de jure* rade za Ured registrara.

Iako Ured registrara angažuje međunarodno osoblje, Ured registrara ne nadgleda njihov rad. Ovo proizilazi iz člana 2. stav 4. Sporazuma o Uredu registrara, koji propisuje da Ured Registrara ne ometa nezavisno djelovanje sudija Suda Bosne i Hercegovine i tužilaca Tužilaštva Bosne i Hercegovine u ispunjavanju njihovih obaveza u skladu sa zakonom. Nadgledanjem rada pravnih timova, Ured registrara bi posredno uticao na nezavisno djelovanje sudija, čime bi direktno prekršio odredbe člana 2. stav 4. Sporazuma o Uredu registrara.

Međunarodno osoblje koje radi u Jedinici za sudsku podršku Suda BiH postepeno će odlaziti, kako bude prestajao angažman međunarodnih sudija na Sudu BiH. Do kraja 2009. godine, svi zaposleni na Sudu biće državljani Bosne i Hercegovine.

¹ Zakon o izmjenama i dopunama Zakona o Sudu BiH, "Službeni glasnik BiH", broj 61/04.

² Avgust 2006.

³ Zakon o izmjenama i dopunama Zakona o Sudu BiH, "Službeni glasnik BiH", broj 61/04.

4 Sporazum između Visokog predstavnika za BiH i BiH o uspostavi Ureda registrara Odsjeka I za ratne zločine i Odsjeka II za organizovani kriminal, privredni kriminal i korupciju Krivičnog i Apelacionog odjeljenja Suda BiH, kao i Posebnog odjeljenja za ratne zločine te Posebnog odjeljenja za organizovani kriminal, privredni kriminal i korupciju Tužilaštva BiH .