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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**

**INFORMATION ON THE SITUATION OF  
THE JUDICIARY IN THE FEDERATION  
OF BOSNIA AND HERZEGOVINA**

**(Articles on the Constitutional Court of the  
Federation of Bosnia and Herzegovina from  
the American Bar Association Journal)**

COVER STORY / INTERNATIONAL LAW

# Prelude to Justice

Sarajevo. It is a city of contradictions. It was the scene of the assassination of Archduke Ferdinand, which history credits as being a catalyst for World War I. It also was the scene for the 1984 Winter Olympics, where skaters Katarina Witt and Scott Hamilton thrilled audiences worldwide. Lately, it has been the scene where the rule of law is nowhere to be found.

The rule of law. It is a phrase we Americans accept as a given because we are accustomed to settling our disputes under it. It is a concept that cannot be fully appreciated until one sees its absence.

Such is the case in Bosnia-Herzegovina. Lawyers there, having spent their lives under communism, are rapidly having to learn our system of justice, all while trying to help the nation extricate itself from a war not of its choosing.

To explain the war is beyond the scope of this article. For most Americans, it is a confusing series of news reports involving Serbs, Croats and Muslims—and places with few, if any, vowels.

The conflict involves three distinctly different peoples thrown together by history. Croats generally are Roman Catholics, Serbs mostly Eastern Orthodox. These two peoples have been in conflict for centuries in the struggle between Rome and Constantinople. In the 14th century, the Ottoman Empire introduced Islam to the region. Only in Bosnia-Herzegovina did it take hold significantly to establish a majority status.

Bosnia-Herzegovina is the least nationalistic state in the former Yugoslavia. Before war broke out in 1992, the estimated Bosnian population was 44 percent Muslim, 31 percent Serb, 17 percent Croat and 8 percent other. Most Bosnians blame outsiders—

Croatia and Serbia—for forcing ethnic, nationalistic divisions that, until the early 1990s, the Bosnian people had chosen to overlook.

This is also a story of how the American Bar Association, through its Central and East European Law Initiative, has facilitated this shift to democracy.

In January, ABA Journal Editor and Publisher Gary A. Hengstler traveled to Sarajevo with ABA Executive Director Robert Stein, CEELI board chair Homer E. Moyer Jr. of Washington, D.C., and Mark Ellis, executive director of the CEELI program, for this report. As Stein later observed, it was a "powerfully emotional experience."

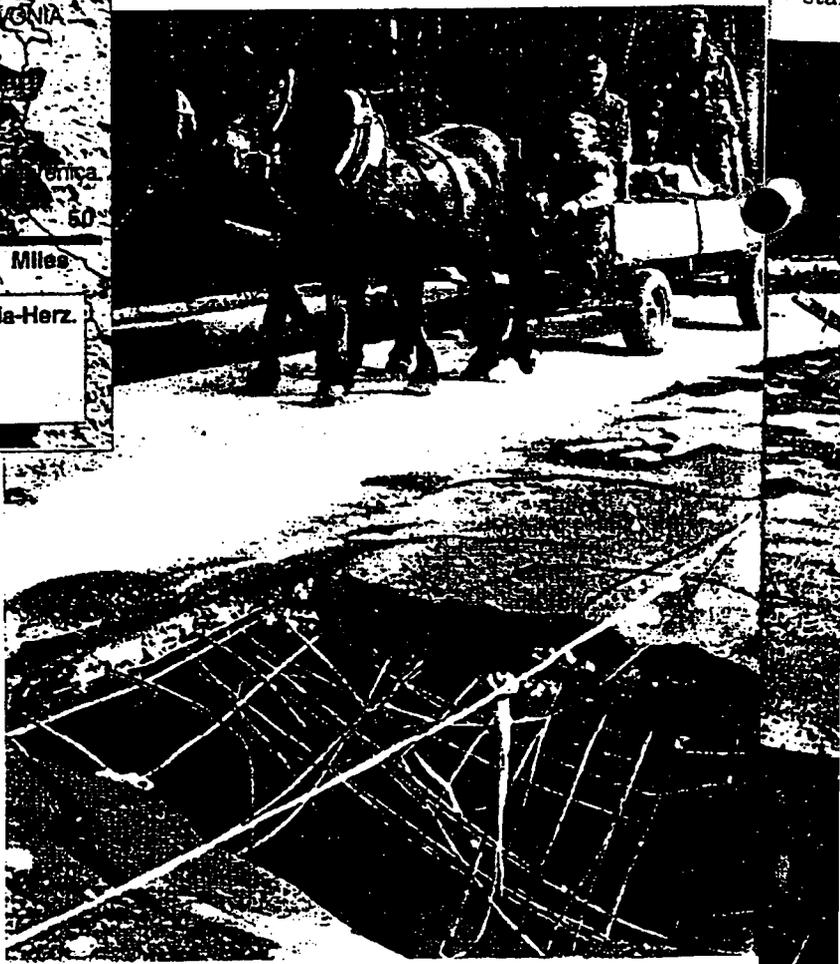
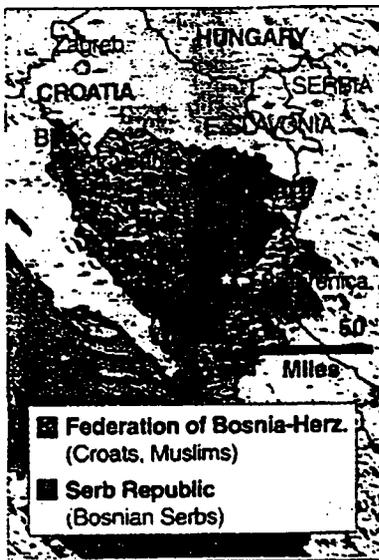
# Out of

## With training from U.S. lawyers, justices on a new Constitutional Court will try to establish the rule of law in war-torn Bosnia.

BY GARY A. HENGSTLER

**B**y American traditions, it was a small symbolic gesture—one daily taken for granted in U.S. courts. But this gesture, coming at the conclusion of a full, hard day's work by the justices of the new Constitutional Court of the Federation of Bosnia-Herzegovina, captured the essence of the fundamental shift of values in this war-torn nation in a way, perhaps, that few other things could.

The scene was a conference room in the office of the presidency in the center of Sarajevo where the justices had spent the day



# the Rubble

hammering out the final details of how they would proceed as the highest national court. They had just elected Omer Ibrahimagic, a Muslim justice who previously had served on the former Yugoslavian Constitutional Court as president of the court, and Mirko Boskovic, a Croat justice who had previously served on the Supreme Court of Bosnia-Herzegovina, as the court's deputy president.

Homer E. Moyer Jr., chair of the board of the ABA's Central and East European Law Initiative, then addressed the court. Because CEELI had played such a significant role during the past seven months in the creation of the court, Moyer presented each justice with a black robe, explaining its symbolic role in the Western legal system. He said he was presenting the robes now so they could be worn in the ceremony the next day that would introduce the court to the nation on television.

Drasko Vulata, one of two Serb justices on the court, thanked Moyer but then expressed his discomfort about the robes. Saying he did not want to wear the robe, he stressed, "Our people would not understand. They would think it is too theatrical, and the

court will lose respect." He further explained that the Bosnian people had become accustomed to viewing judges under the old communist system, where the justices of the peoples court simply wore business suits to demonstrate that the judges were also of the people.

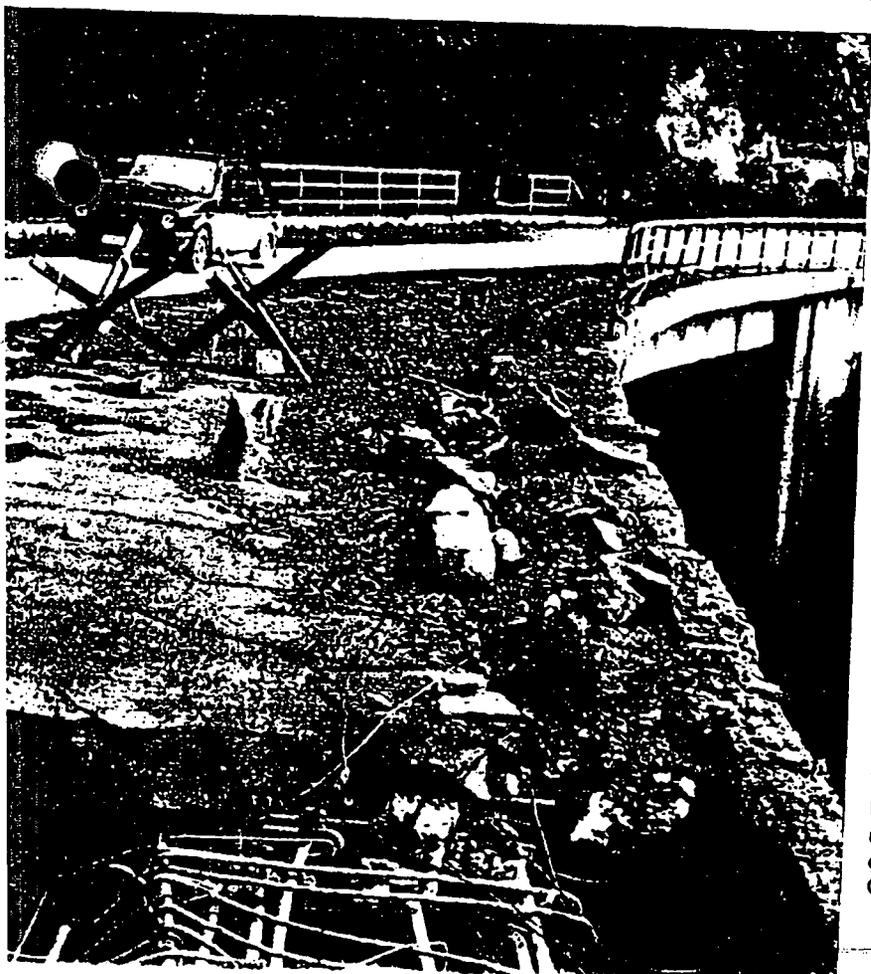
At that point, Justice Bola A. Ajibola of Nigeria, one of the three international justices named to the court, good-naturedly tried to diffuse the situation. "I have flown from Nigeria to The Hague to Zagreb [Croatia] and then by first-class military [U.N.] transport for this event in Sarajevo. If you do not let me wear my robe, I will sue you for breach of contract."

When the laughter subsided, Justice Abdulliah Fikri El-Khani of Syria, another of the international justices, joined in, saying that after the effort his wife had put into getting his robe ready and packing it, she "would divorce me if I do not wear my robe." The third international justice, Francois Ernest Robert Rigaux of Belgium, silently pondered the disagreement.

Turning serious, Justice Katarina Mandic, a Croat and the only woman on the court, argued that the robes should be worn precisely because they would convey the message of change to the people. The general discussion then proceeded along the lines that the court was new, that it intended to operate with a degree of independence not generally demonstrated before, and that the robes would symbolize the seriousness with which the justices were taking their new responsibilities.

As court president, Ibrahimagic closed the matter by acknowledging that the appearance of the justices in robes would likely surprise those at the ceremony, but he also agreed that such a symbolic statement was, perhaps, needed at this time. Justice Vulata remained uneasy, saying "modesty still counts," but agreed to follow the majority's viewpoint.

As I watched this new court work its way through this minor point, I was struck by the enormity of the task it faces. As the Bosnian justices feel their way from a communist legal system into the Western one mandated by the federation's new constitution, their task will be complicated—and at the same time facilitated—by



The devastation of war: Bosnian Army troops navigate a road last fall during an offensive in Ozren in Central Bosnia.

the constitutional makeup of the court.

This is a unique court. No other national high court has members from other nations casting votes on decisions. The concept was born in the 1994 talks in Washington, D.C., to end the fighting between Bosnia's Croatian and Muslim factions and establish a federation of these two peoples.

The constitution provides that the Constitutional Court will be composed of nine members—six from Bosnia and three from other nations. Of the six Bosnian justices, two are Muslim, two Croat and two "others," which, in this case, means two Serbian justices. These justices were appointed by Federation President Kresimir Zubak, a Croat, with the concurrence of Vice President Ejub Ganic, a Muslim, and the confirmation by the majority of the delegates of the House of Peoples of the federal parliament.

The three international justices were nominated by the president of the International Court of Justice after consultation with Zubak and Ganic. The international justices will serve for five years, after which they could be replaced by Bosnian justices. The five-year period is to help establish the court's legitimacy and to aid in developing procedural functioning.

**W**hen I was in Zagreb, I spoke briefly with Peter Galbraith, the U.S. ambassador to Croatia, who was a key player in the development of the new constitution and the establishment of the federation. He explained the rationale for the unusual structure of the court.

"What needed to be done was to have a solution to a particular problem," he said.

"We were writing a framework for a constitution that involved power sharing between two of the peoples of Bosnia, that is, the Bosniaks or Muslims and the Croats."

Unlike in the United States, where our Supreme Court decides both the case before it and any constitutional questions, most European systems separate those two functions between two courts—the Constitutional Court and the Supreme Court.

"Inevitably in a constitution," Galbraith continued, "there are going to be disputes about meaning and application, so you need a mechanism to decide it. The trouble with any mechanism [in the federa-

as "swing members." They also are to serve as "a mechanism to encourage moderation and conciliation."

It is also hoped that the international judges will provide the new court with an authority that a purely Bosnian court might not establish immediately. Galbraith, as one of the architects of this unusual structure, places high hopes on it as one of the first institutions established under the constitution. The court, he maintains, "is of critical importance to the success of the



Federation President Kresimir Zubak speaks at the presentation of the justices of the Constitutional Court in Sarajevo in January. Justices (left to right) Milan Bajic, Muamer Hecceglijaj, Abdullah Fikri El-Khani, Mirko Boskovic, Omer Ibrahimagic, Bola Ajibola, Katarina Mandic, Francois Rigaux and Drasko Vuleta wear the black robes that were presented to them by the ABA's Central and East European Law Initiative, symbolizing their ties to Western democratic principles.

tion) that would be considered normal within a normal constitutional system is that one side or the other would view a decision as suspect.

"For that reason, neither would accept a court dominated by one group or the other. You couldn't have a court created by the parliament because the Bosniacs would have a majority. If they had a majority in the parliament and the courts, the Croats would feel that they could be run over roughshod.

"And a balanced court—equal members from the two communities—risked being deadlocked along ethnic lines. So we came up with a device of Croat, Bosniac-Muslim and three international members."

The ambassador said the inclusion of international justices was not just for resolving a given issue

federation."

The presence of the international justices, in part, amounts to jump-starting the new system. Galbraith, alluding to the international justices' role-model duties during their five-year tenure, said the Bosnian people "are entering an environment where you had a communist legal system, which, in many cases, meant no justice at all—certainly no confidence of justice. Now you develop a more Western-style legal system and after that, a truly independent judiciary.

"After that judiciary has been functioning for a while and demonstrating its independence, the people are more likely to have more confidence in judges in their own country. So in that sense, too, the court is important to the future of

the country," Galbraith said.

**T**hat's the theory as hammered out in the 1994 agreement. But getting a judicial system written into the constitution and beginning to implement it are two different things, especially with Bosnian Serbs continuing their war in the nation. That's where the ABA comes into play.

The CEELI project held a workshop in Washington, D.C., in June 1995 for the newly appointed justices to develop the regulations and the organizational and procedural details of the court. Various U.S. judges, scholars, legislators and other legal experts were called in to assist.

But that in itself presented special problems. The Bosnian justices could get out of the country at that time only at extreme peril to their lives. They had to exit through the tunnel that had been dug under the Sarajevo airport to get to their transportation and then drive at night without lights to avoid sniper fire. The normally four-hour drive to Split, Croatia, took 30 hours.

Getting back was equally hazardous. Justice Vuleta, for example, had to remain in Zagreb for 25 days upon his return before arrangements could be worked out to get him safely back into Sarajevo.

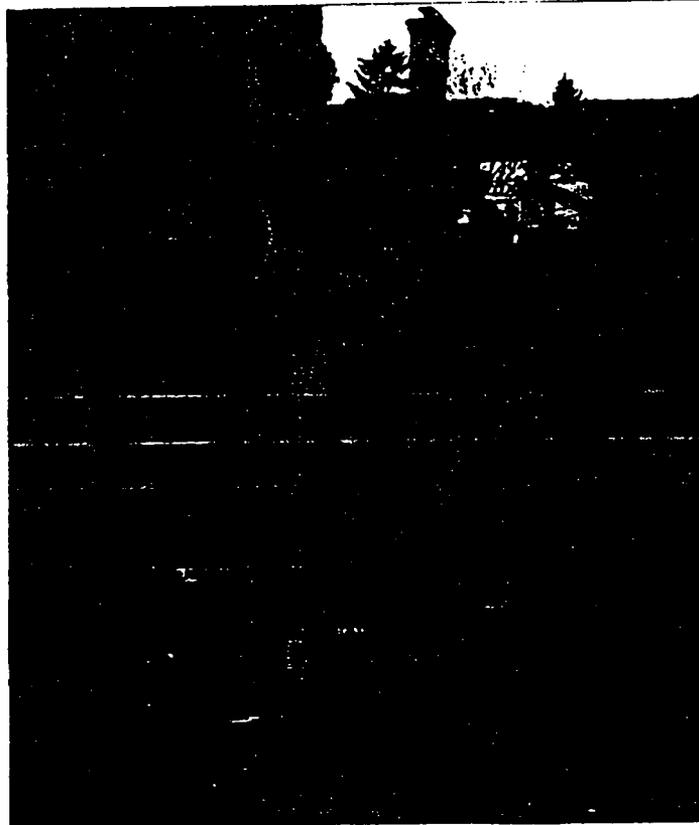
Each of the justices has his or her own dramatic story about the perils of that trip.

At the same time, each readily vouches for the value of the workshop in preparing them for their new duties.

In Washington, the justices were joined by Justices Ajibola and El-Khani. Justice Rigaux's schedule did not permit his attendance. The Bosnian justices also visited Florida State University in Tallahassee—whose president is Talbot D'Alemberte, the former ABA president who co-founded CEELI—for more workshop sessions.

In Sarajevo, Justice Vuleta reflected on the workshop. "Personally, I think the workshop was very useful because we are meeting in a constitutional nature, which is very new to us. We are finishing with one system and starting with a new

thing." He appreciated hearing from "experts from the United States at the top," he said. "Right now, in our constitution, we have many institutions that were taken from the law system in the United States. So it was very useful to hear how your experts are thinking about all these issues. And our hosts were very exceptional; they took very good care of us."



In war, shells make no distinction between friend or foe: Here, the Red Cross building in Sarajevo took direct hits.

The next step was to convene the court in Sarajevo itself. Because of the hostilities, the introduction of the court was impossible until the Dayton accords. In January, I flew to Zagreb where I joined ABA Executive Director Robert Stein, CEELI Executive Director Mark Ellis and the three international justices for our flight into Sarajevo.

At a dinner the night before our flight, the talk was a mixture of comments on the war's impact and hopes for a lasting peace. Several dignitaries, including the German, Belgian and Bosnian ambassadors and the president of the Croatian Constitutional Court, were on hand to wish the court well. Ambassador Galbraith gave a brief perspective of the trip's significance.

It was a strange and eerily exciting trip into Sarajevo. After clearing all the U.N. paperwork and receiving our U.N. badges designating us as on a humanitarian mission, we waited in a tent-like holding room.

It became clear that Justice Ajibola, a prince in the royal family of Nigeria, would be the most effusive on the trip. He had a story for almost every circumstance and delighted at poking good-natured fun at his colleagues and his hosts alike. Justice Rigaux, a continuing legal scholar, always was writing in his tablet. He has written many papers. Generally sitting stotically, Justice El-Khani observed his surroundings with a quiet and dignified sophistication.

All of us felt a trifle edgy as we headed up the ramp of the transport plane and took our seats on benches along the sides with the baggage and cargo strapped in the middle.

Sitting next to a U.N. official wearing a helmet and flak jacket in the darkened interior doesn't exactly

ease your mind when you feel the plane descend into Sarajevo's airport. Neither does having the French soldiers quickly hustle you behind barricades of sandbags, barbed wire and machine guns. You look at what is left of the airport buildings and have second thoughts about the wisdom of coming here.

Still, we only had to speed past the shells of what were once thriving high-rise apartment buildings and businesses to realize that unless law can be genuinely rooted here among the people, the continued hatred, desolation and death is the only alternative. No photo or televised news footage can prepare you for the totality of the destruction. You begin to see why such high hopes and expectations have

been placed on this new court.

After checking into the Hotel Bosnia where the Bosnian justices and the international justices met for the first time, we packed into a caravan of cars led by a police escort with flashing lights to dinner. I admit to feeling a bit uneasy as the procession followed the Miljacka River. On the mountainsides about a football field-length away were trenches and the Serb gunners.

It did occur to me that if we wanted to signal a would-be sniper that there were some heavyweights in the Bosnian government close by, we went about it the right way. Fortunately, nothing impaired the happiness of the evening.

The dinner conversation only served to confirm, in human terms, what the structural devastation we saw meant to the city, which had endured the longest siege since Leningrad in World War II. The shelling was an equal-opportunity destroyer. I sat beside Justice Milan Bajic, himself a Serb, whose 25-year-old son was killed by a Serb shell in front of his home. A Musiim, Justice Ibrahimagic's 9-year-old-son was also killed in front of his home.

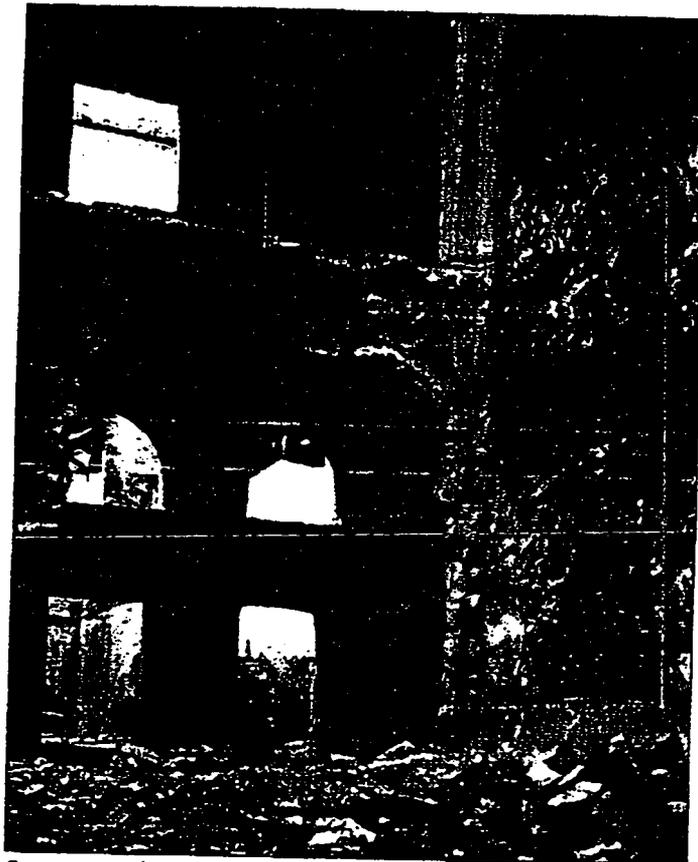
Before the court would be introduced to the nation in a televised session in two days, a final CEELI workshop ironing out the last details was scheduled the next day. Justice Mirko Boskovic, a Croat, served as chair since the last order of business would be to select a president of the court. It was a painstaking, full-day process that went past the time allotted.

Much of the difficulty and delay was attributed to the language barrier. As a view or statement was translated, some confusion would surface about interpretation.

For instance, part of the draft rules were ambiguous. One raised the question of whether a nonconcurring opinion always equated to a dissenting opinion and whether one

who dissents was always obligated to explain the dissent.

It was clear that some of the Bosnian justices either were not comprehending the subtle distinctions Justice Ajibola was attempting to make or they disagreed with adopting his view as the way they wanted to proceed. In any event, they ultimately resolved the fine



Once a proud monument to the long history of the peoples of Bosnia, the National Library in Sarajevo now lies in ruins.

legal points.

As the final details were being worked out around 5 p.m. that evening, Justice Muamer Herceglijja, Justice El-Khani, Moyer, Stein, Ellis and I visited the office of Muhamed Sacirbey, the minister of foreign affairs. Sacirbey, who has a law degree from Tulane University in New Orleans, was enthusiastic in offering his support and championed the independence of the judiciary.

A critical logistical problem is that of office space for the court. The Supreme Court Building along the river was destroyed. In fact, with so much of the city bombed out, space is at a premium everywhere. When it was brought to his

attention that the court now had only two offices total, Sacirbey agreed that it was a problem, but not one his office could address because of jurisdictional lines.

However, when Justice El-Khani told of the difficulty the international justices had in getting permission to enter the country even temporarily and raised the problem of whether they would even be able to attend court functions without something more permanent, Sacirbey immediately got on the phone and ordered Bosnian passports prepared for them.

The next day it was time for the court to officially begin. The introduction ceremony took place in the large reception hall in the Presidency Building. The room could be described as ornate, yet the scars of the war were also present. I counted five bullet holes not yet patched and some of the intricate detailing was gone from shell blasts.

As reporters and television crews crowded together along the sides, the room quickly filled to standing room-only with virtually every government leader and the Sarajevo legal community on hand. As one onlooker remarked to my translator, "This is the most important event for the nation since Dayton."

When the robed justices entered, an audible murmur came from the crowd along with a few gasps. As Justice Vuleta had predicted, looks of astonishment were evident as people turned to look at each other and whisper their reactions. Almost immediately, though, a hush descended.

The president of the court, Justice Ibrahimagic, set the tone: "I hope this court, whose members are justices with great respect in international law institutions and in our country as well, by its actions will contribute to replacing the strength and power of weapons with the strength of justice and equality in the territory of Bosnia and Herzegovina."

Federation President Zubak said the court would "ensure the founding of our young country on

the criteria of modern countries and the needs of the two constituent peoples. For that reason, we will lend our full support and help to the justices, respecting their independence and impartiality."

Judicial independence was stressed by Mariofil Ljubic, president of the Federation Constituent Assembly, who said the legislature "expects you to be fully independent of anyone, without interference from any institution."

He called on the court to protect the constitution and the legal system, "to protect justice from injustice. According to the constitution, you have the last word and it is up to us to ensure that the rule of law is respected on all levels of the government, as well as the enforcement of the judgments you render."

For the past year, because the court had not been constituted, the three federation ombudsmen mandated by the constitution, have carried the majority of the efforts to provide judicial protection. Speaking for them, Esad Muhibic urged the court to join in the fight to protect human rights. "The ideal of human rights is unique, but it should be brought closer to reality. With the Constitutional Court and other federal institutions of justice, we will be getting closer to that ideal."

Speaking for the international justices, Justice El-Khani reminded the audience that there is no peace without the rule of law." He said that while observing the tragedy that befell Bosnia, "We had our hearts, spirit and feeling with you the last four years."

He added that while the international justices come from three different countries, three different legal systems, "The atmosphere of cooperation and understanding that we have felt at the first working session indicates to us that we will work together as if we came from the same country and the same legal system. We actually do come from one system—the rule of law—and that will be the leading guide in our work."

U.S. Ambassador to Bosnia

John Menzies called the beginning of the court a "unique and exciting event because Bosnia is creating a new nation, not repairing an old one." He said the most "important pillar of democracy is a strong and independent legal system" and that the work of the court will be "of decisive importance to the people." On behalf of the U.S. government,

Justice by the Security Council and the General Assembly in 1991 December. I completed my term in February 1994. I was appointed by the president of the International Court of Justice in consultation with the president and vice president of the federation of Bosnia-Herzegovina. So this has nothing to do with Nigeria."

In slow, measured tones, Justice El-Khani of Syria shot back to the reporter: "First of all, I will not accept your allegation that we have come to be known as a non-democratic country.

"Syria has been known for the longest democratic constitution and policy. We have a parliament that has been elected freely, and many journalists have come from America, Europe and other countries to attend the elections of the members of parliament.

"We have five parties who are members of the parliament and who are represented in all our institutions of the government. We have a constitutional court that is functioning perfectly all right. So I do not accept your allegation that we belong to a nondemocratic country because

democracy has been known in our country much longer than in any other country."

He then explained how he, too, had been selected, adding, "We must secure at least eight votes in the U.N. Security Council and 95 votes at least in the General Assembly. I do not see anything that could interfere in the choice in the Security Council and the General Assembly about this status." Saying he was "sorry" he had to explain who he was, he then listed several of the international institutions on which he has served as a judge or arbitrator.

After the press conference, the court and the ABA delegation met privately with President Zubak and Vice President Ejub Ganic. Both



The bombed-out Parliament Building: Just running the government in Bosnia, trying to find office space, is a logistics nightmare.

Menzies said. "We give our word to do everything possible" to enable the court to succeed.

While the focus was clearly on the new court, every speaker included strong expressions of gratitude both to the U.S. government and to the ABA's CEELI program. Menzies also cited CEELI as a principal means by which "we have been able to support the federation."

After a brief reception, the court held a press conference. When a reporter suggested that two of the international justices come from "countries considered nondemocratic" and asked if those nations had a role in the selection, Justice Ajibola of Nigeria icily replied, "My last appointment was to the International Court of Jus-

again offered their full support for the independence of the court. Justice Ibrahimagic stressed the importance of the court quickly obtaining suitable office and work facilities to begin its job. Zubak, himself a lawyer, acknowledged that both space and money remain major concerns for the new nation but assured the court that it "had a friend" in the president and that he would be an advocate for the new court.

Justice Ibrahimagic also noted that many of the cases that normally would be decided by the court had been sent to other institutions because the court had not been constituted and urged Zubak to make sure future cases were forwarded to the court so it could begin to establish its record. Zubak chuckled and replied, "My fear is that you will soon have too much work."

And then it was over. In the span of two days, despite a language handicap, the justices seemed to establish a workable, collegial relationship. As Justice Rigaux told reporters later in Zagreb, "We are very enthusiastic about the willingness for cooperation that has been expressed by all six of our Bosnian colleagues. Their ethnic differences were not to be detected even in a single moment. Even more so, they have been reaching all decisions jointly and with a lot of expertise and competence. It is my opinion that, for creating such an atmosphere—apart from undoubted expertise—our Bosnian colleagues needed a lot of political wisdom."

At the final dinner in Sarajevo, ABA Executive Director Stein told the court his trip was a "powerfully emotional experience" and he was certain that the event had "unleashed a powerful force" that will establish justice in the nation.

Justice Boskovic pulled me aside and said, "You know we had the disagreement about the robes. And all of us were a bit apprehensive about how the people would react. When we came out I saw the look of surprise in my group [of lawyer friends]. Then I saw some of them begin to cry for joy. It was a good day."

And Justice Vuleta? "I think everything went just fine in the ceremony. You heard I was against the robes because our environment is not used to this. Well, it was very good and very correct. There was a big tolerance." □

## An Idea That Works

In the wake of the collapse of the Soviet Union, as Central and Eastern European countries struggled to establish free enterprise economies and democratic legal systems, Homer



(Left to right) the ABA's Robert Stein with CEELI's Homer Moyer Jr. and Mark Ellis on U.N. plane.

E. Moyer Jr. of Washington, D.C., and former ABA President Talbot "Sandy" D'Alemberte envisioned scores of American lawyers fanning out across the former Soviet bloc, providing legal assistance to the young governments.

Their vision resulted in the Central and East European Law Initiative. The legal aid organization provides a wide variety of legal assistance in 20 countries in the region. More than 3,000 lawyers, judges, law professors and law students have served as pro bono volunteers to assist those nations.

Current programs include:

- Technical assistance

workshops, in which American and Western European lawyers from a civil law system hold drafting sessions with experts from the participating country.

- Legal assessments and concept papers written by American and European lawyers, reviewing draft

constitutions and legislation.

- Resident liaisons and specialists. Volunteer lawyers reside in a host country for at least a year without salary, providing legal assistance and technical advice to governments and other legal entities.

- Sister law school programs, in which law schools in Central and Eastern Europe are paired with American law schools. These programs

include student and faculty exchanges, joint research projects, and assistance in developing curriculum, libraries and academic administration.

CEELI volunteers also provide advice on the establishment of a commercial law system, judiciary reform, constitutional drafting, the establishment of bar associations, civil liberties and other aspects of any legal system.

CEELI is an outgrowth of the ABA Section on International Law and Practice, which in 1990 provided seed money.

The section also has set up its own assistance program in Cambodia.

## How It Helps Bosnia

Coordinating the unfolding of the Central and East European Law Initiative effort in Bosnia is the pro bono work of two lawyers—an American and a Bosnian.

Charles S. Rudnick is a Boston lawyer who was chief aide to a Massachusetts state senator before going to Bosnia this past December. There he will oversee all CEELI programs this year as an unpaid volunteer.

Sevima Salj is a Bosnian lawyer who has been with the project since early last year, and who helped launch it before lawyers from the U.S. could be sent in.

During February 1995, while fighting was still going on, the U.S. Agency for International Development allowed Mark Ellis, CEELI executive director, to go to Sarajevo to assess the possibilities for providing technical legal assistance in Bosnia. The agency also supplied some seed money.

For the next three months, Ellis created the CEELI assistance program for Bosnia, including the work with the Constitutional Court.



Charles Rudnick Sevima Salj

In a nation split by strife, the CEELI effort has won widespread praise from throughout the government and courts—including the president of the federation. Speaking at the installation of the Constitutional Court, President Kresimir Zubak praised the ABA and CEELI for their work in the country. So did everyone else who spoke.

With the court installed and the speeches over, the CEELI work has just begun.

# Will 'Law of Guns' End?

## Justice minister says new court can ease tensions

**A**s the federation of Bosnia-Herzegovina reshuffles its legal deck to create a new justice system, the person on whose shoulders the responsibility probably falls heaviest is the minister of justice, Mato Tadic. The creation of the new Constitutional Court gratifies him, but he remains wary as he ponders the myriad details yet to be worked out.

Although the justice ministry's actual involvement with the Constitutional Court is limited, that court has to be in place before the other courts can be implemented. While Tadic's office will recommend justices for the Supreme Court, it does not do so for the Constitutional Court. At this initial point, Tadic said he has "good cooperation on the foundation of this court. How we will continue together is yet to be determined."

He stressed that whatever the Constitutional Court decides in future cases, "It should be regulated by the laws. We will work to have a law for that part. We will also pass on to the Constitutional Court for review everything that is done in the lower courts and, as well, the management of the government."

Tadic admitted his uneasiness at providing all the logistical support requested for the court, given the demands by other government units for space and support. "Apart from the president and vice president of the country," he said, "this ministry was the one to support the new court by providing rooms, telephones and other details."

He has concerns that the international justices may expect more of the office support and material comforts they have been used to than the ministry can now afford to provide. "We know that we are not able to offer any comfort at this



Mato Tadic: "This system will be difficult for us to implement. Some of the solutions reached [in Dayton] have never before been tried."

time. If the justices want to help us, they will have to adjust to our situation and work with us to improve the circumstances."

He pointedly said he is not satisfied with the level of material support provided by the international community. "The supreme court building was destroyed," he said. "If it could be rebuilt, then we would have the room the courts are requesting. As it is, the court is not a top priority because there are other problems, like food, electricity, gas and everything."

Nevertheless, he is convinced the court "will have a lot to do and it would have been better if it could have started much earlier because it will help calm political tensions."

He is also optimistic that people will trust the new court. He said Bosnians have traditionally trusted the courts because "whenever there

was a dispute between people before the war, the last sentence would be, 'I will sue you.' People expect this new court to solve their problems rightfully in justice.

"But we have to be realistic, too. The war has taken its toll on us, and human rights have been trampled. There will be resistance to the new legal system and many problems to solve. It will be hard for the people who, for so long, have only known the law of weapons.

"But I am convinced the law system will ultimately work out. Most of our people can hardly wait until the law system is in force again."

He said that the ABA's CEELI project has assisted his office by their review

of drafts of pending laws.

Tadic's optimism, however, is sometimes betrayed by his anxieties. "This system will be difficult for us to implement. Remember, our constitution was largely made by Americans, so we have to adjust to your ways. I was a member of the delegation in Dayton, and I worked on the peace agreement. Unfortunately, I have to say that most of what we have in the Dayton agreement was imposed on us. Some of the solutions reached have never before been tried, so there is a big chance they won't work.

"But we are very grateful for this agreement and that the war stopped. Without the help of the United States, we would never have accomplished this. And these issues with which we are not satisfied? We will probably in a democratic way manage to change them." □

# Lawyers Hope Strife

## Horrors of war show no concern for social class

**T**hey have faced the rocket's red glare and felt the bombs bursting in air—and in their homes and offices. And they give proof that their legal system is still there.

They are seven Sarajevo lawyers and judges who, with their colleagues, tried to keep the rule of law alive in the midst of hell. In two separate sets of interviews in the Sarajevo CEELI offices, they shared their experiences and their hopes for the future.

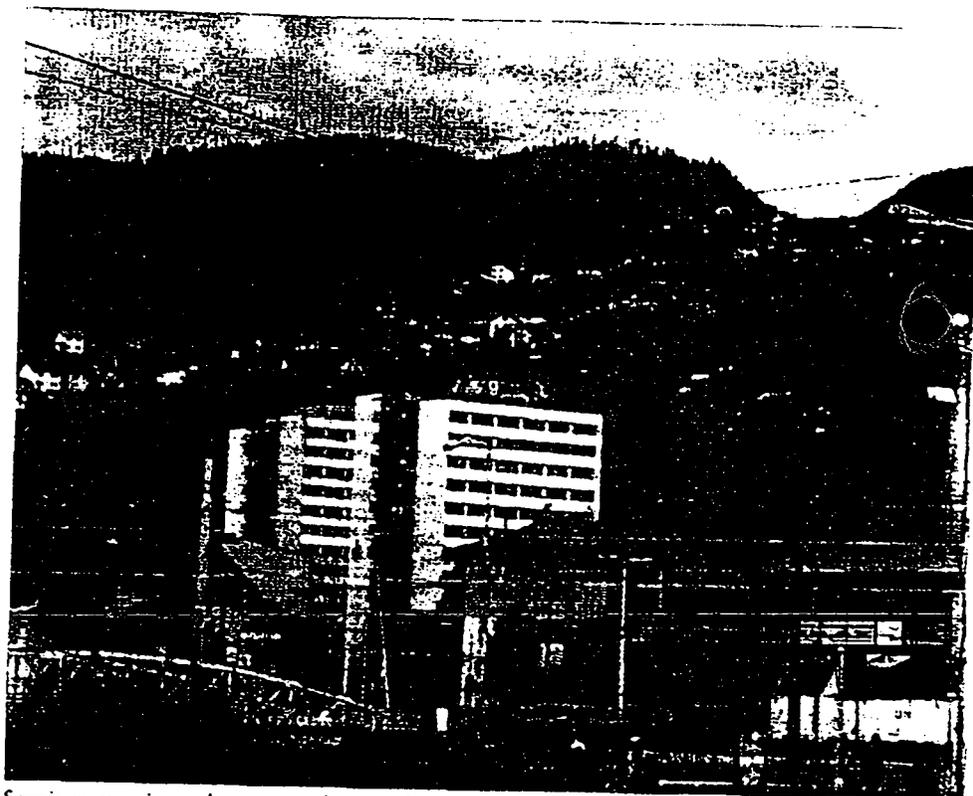
"It is very difficult for people coming here to understand what happened and how horrible it really was," said Jelica Vukovic, who until 1994 served as a judge, but returned to private practice.

Branko Maric, president of the executive board of the Bosnia-Herzegovina Bar Association, agreed. "Somebody already calculated that in Sarajevo, we had an Oklahoma City here every 12 days. We are disappointed because so many people seem to have come just to look at our suffering, like they were visiting the zoo and wanted to see the animals. They promised a lot, but after they left, nothing happened to help us."

"We were exposed to the dangers, the shelling and the snipers," said Mladen Srdic, a municipal court judge since 1990. "We had the same problems as all people had."

"The courts never stopped working during the war, but at the beginning the majority of cases involved criminal law," said Zlatan Terzic, a prosecutor in the Office of the Bosnia-Herzegovina Higher Prosecutor. For 14 years he was a judge and during the war served as a justice in the military court. In peacetime, he practiced civil law. Now he prosecutes in the criminal justice system.

Mirhad Durdevic, a solo practitioner, added that most of the mili-



Sarajevo remains a dangerous place, with Serb snipers still on the mountainsides.

tary cases involved charges of avoiding military duties or collaboration with the enemy—criminal charges brought by the army.

For lawyers, maintaining client contact was itself life-threatening. Durdevic told of having to walk 13 kilometers for court appearances "because the military court was on the other side of the city. There was no telephone communication, so it was impossible to communicate with clients other than by walking."

And all of that was if you had clients.

"You can't compare how many fewer clients we had during the war than before," said Judge Zdenko Eterovic, a deputy president of the Supreme Court of Sarajevo.

"Those cases which were important for the people during peacetime weren't so important to press during war," added Maric, a lawyer for the past 23 years who had to shift his peacetime practice in civil law to criminal law during the war. "It was very difficult to establish communications with clients," he

recalled. "My office was hit twice by the shells. And after I repaired it, it was looted by local robbers. It was very difficult to work."

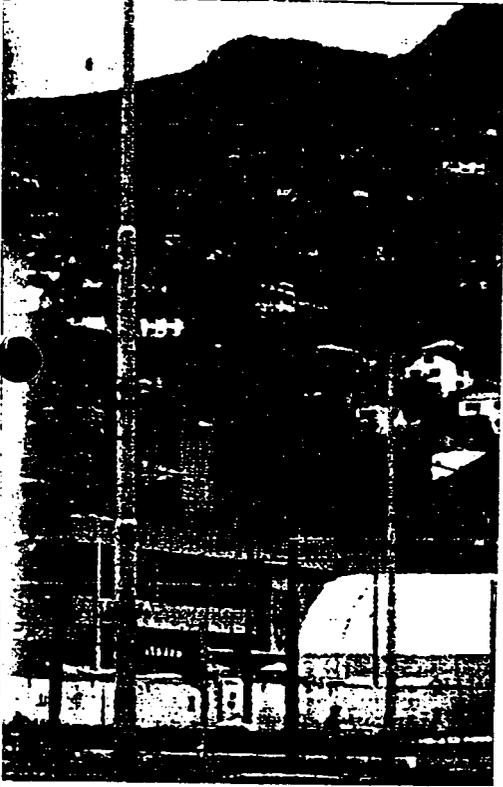
Even if you managed to keep a client base, getting paid was another matter. "People here were not prosperous before the war," explained Srdic. "In the war, it got even worse. The working conditions were very bad. It's a little better now after the Dayton agreement."

Durdevic said the war forced all attorneys to take "cases in which we knew there would be no money. Our clients just didn't have any money. From our bar association involvement, we all just knew it was our duty in these hard times. We did this throughout the war."

Srdic acknowledged that the court was responsible for paying lawyers in such cases, but the court didn't have any money, either. "We didn't even have money for paper to work on. But hopefully the hard times are behind us."

Durdevic said attorneys rallied when the government tried to tax

# Over



humanitarian organizations 300 Deutsche marks a month. "We succeeded in the courts in preventing that. There have been several cases where we have acted to protect the public. And while that made us feel good about our work, still, at the end of the year, it is hard to explain how we can be involved in so many activities and there are no earnings to show for it."

"Attorneys shared the destiny of the people," replied Vukovic. "None of us made that much. The clients could not pay, so we all had to share the hardships. Even during peacetime, judges were paid less than attorneys. It is a problem of the state."

Terzic said it was "a little bit better for the attorneys who represented people at the military court. Whoever had the opportunity to defend the local criminals could earn some money. Whoever was involved in political cases couldn't earn that much."

Besides seriously disrupting their client relationships, the war

left physical and emotional scars on the lawyers themselves. Vukovic lost her mother, and her husband lost a brother who was killed while his Bosnian army unit defended a bridge in Sarajevo.

"There were 23 direct impacts on the court building," said Eterovic. "One of the justices was wounded in her office during one of the attacks. There is no glass left in the windows of the court."

Durdevic is a refugee now living with his mother. "I used to live at Grbavica, but in May 1992, I had to flee. My office was damaged by the shelling."

Srdic said the municipal court building was hit many times, but "most of the important records were taken to the basement for protection. But the labor court, which was in the same building as the supreme court, was almost completely destroyed and many files were lost in the fires."

Lejla Sijercic, an attorney in private practice, said lawyers have a big job "to reconstruct all the case files that were destroyed."

One aspect that disturbs some of the lawyers is how the war has been portrayed in the Western press. Vukovic said the war erupted because Croatia and especially Serbia "wanted bigger territories. It was pure aggression. The people [in Bosnia] themselves are not interested in all that; that is a matter of concern to the politicians. We were just dragged in by politicians."

Terzic echoed her view. "[Serbia] just wanted to use the fact that Serbs lived here so we were attacked," she said. "The worst thing is that many journalists are saying that the mixture of peoples here started the war because we couldn't get along. And that is just not true."

One question arising out of the Dayton accords is whether the Serbs who chose to remain in Bosnia-Herzegovina will accept a legal system that is largely controlled by Muslims and Croats. "I am a Serb," Vukovic said, "and I am still living here by choice."

Eterovic estimated that in the Bosnia-controlled part of Sarajevo there are 40,000 Serbs who chose to remain and "were participating in the power and life of the city throughout the war and will continue to do so."

Maric said the estimate has not been confirmed, though, and is disputed by the Serb leader Rad-

ovan Karadzic who is "trying to make this figure smaller than it is. There is maybe exaggeration on both sides."

An obvious potential problem is how residents who stayed will react to those who fled and are returning. "This is a case of refugees versus refugees. It depends on how the people who stayed here are treated," said Sijercic.

Srdic said problems will likely surface at the beginning but would lessen over time. "It will depend on the people, what they were doing and where they were."

Durdevic said it will depend on "whether the people have a chance for prosperity."

**A**s with others interviewed, the lawyers stressed the housing problem as the most critical. "We have a technical problem in dealing with the refugees who are coming back and the refugees who came into the city from the villages around Sarajevo," Srdic said.

"They are living in the flats of the people who left Sarajevo. The problem is how to solve the problem of getting the people who came from the villages back to their original homes because they are used to the lifestyles in their villages."

Durdevic said the problem needs to be resolved quickly because the longer it is ignored, the more serious it will be and the harder it will be to get the residents to accept the law as the means of settling disputes.

Beyond the housing problems, the lawyers are having to deal with a significant increase in the number of divorces filed that began during the war, according to Vukovic.

"The main reason," Terzic explained, "is that people were physically separated from each other. The longer they were separated, the more they became strangers to each other."

Maric said that when the war started, "Many women and their children had to leave for safety reasons. They assumed the fighting would last only a short time. But as the war dragged on, the separation became harder to take."

So has the war destroyed the people's faith in the justice system?

"We lawyers still believe in justice," Vukovic said. "All of us, as lawyers and members of the bar association, are trying to revitalize

the legal system."

Eterovic said the Bosnian people have always believed in the legal system, even before the war. "I think that among the government institutions, the people still have the greatest trust in the courts. Maybe the courts are the only thing they still trust—so much



Jelica Vukovic: Politicians "dragged us into war."

so that even now we have people coming to the courts with requests that we shouldn't be addressing because it is not our function."

Durdevic said assessing the confidence of the people "is a very difficult issue in the context of the war because, during the war, there was more manipulation than real law. The biggest problem is to make the new law system work."

That prompted Srdic to echo, "By all means, the legal system will have to regain the trust of the people."

Regaining that trust will be made all the more difficult by the current transition from the old legal system to the new one.

"The problem is that we still have almost the same legal system we had before the war," said Eterovic. "There have been very few changes in the law so far. Before the war, we were a socialistic country, but it was not a Russian kind of socialism. We attorneys had our own private practices."

Maric stressed that the system was modeled more on the "German system before the war than it was on the Russian system and we just

kept that. The Soviet legal system was never adopted here."

Srdic agreed that "the laws that we studied when we went to law school are still on the books, but we are expecting big changes because the laws are just now being rewritten, especially laws that will change state property to private property. You have to realize that there is no country like this in the world. We have a difficult job to do. We'll just have to see how it works."

**L**ike the government officials, the lawyers all hope CEELI helps ease the transition. "Our bar association has accepted an offer from CEELI to have a workshop discussing the independence of justices," Maric said. "That will open the question of division of power which has been written on paper, but so far it is only on paper and not in real life."

But is the public ready for this kind of change? "Yes, because the legal system seems to be the only place people can ask for help," Eterovic replied. "In the previous system, we had a sys-

tem that was not that open to the people. In fact, the attorneys and



Zdenko Eterovic: The people still trust the courts.

prosecutors were largely clerks in the system. With this workshop with CEELI, we hope to work to bring back the rights for attorneys

and judges."

Generally, Sarajevan attorneys do not seem to have an image problem. "We don't have that much of a problem with people thinking lawyers are money-hungry," Vukovic said, "because in Sarajevo, the bar association has established appropriate fees for the cases to be handled. Any attorney who charges more than the established fees will face disciplinary action from the bar association."

When told that the U.S. Supreme Court had ruled fee schedules set by bar associations illegal, Terzic laughed and said, "That was a very smart decision from your Supreme Court." And Durdevic chipped in with, "We feel sorry for attorneys of the United States." When the laughter subsided, he added, "Seriously, attorneys are probably happier here, but we are poor."

All lawyers are watching the creation of the federation's Constitutional Court with a mixture of hope and doubt. When Eterovic said he hoped the new court "will affect our practice," Vukovic quickly added: "In a positive way."

Eterovic reminded the group that "when we talk about the Constitutional Court system, Americans helped to bring about the head of this system of justice. But they forget that the body of the judicial system is not in place."

"According to this constitution, which I will call an American constitution, there are ombudsmen and the Constitutional Court. But this won't work unless the lower courts are working as well. We have to build our judicial system so that it is independent of the government and the legislature's powers from top to bottom."

And it is the rebuilding that concerns the lawyers. Because of a drop in law school graduates, said Terzic, "We are likely facing the problem of not having enough lawyers to work on the problems we will have to deal with in the future."

Perhaps Durdevic best summed up the group's views with this comment: "Our biggest wish as attorneys and judges is that we have an independent judiciary so we can all do our jobs the right way." □

# The Tale of a Survivor

## Despite bombardments, law school refuses to close

**C**ritics of the legal profession often take great amusement in the oft-misconstrued line in Shakespeare's *Henry VI* where the murderer Dick the Butcher states: "The first thing we do, let's kill all the lawyers."

It isn't so funny, however, when you see evidence of such a threat literally being attempted. Such is the case with the Sarajevo Law School.

"As you can see, our building is just on the face of the front line," Kasim Begic, the dean of the law school, slowly began. "The confrontation line is surrounding us on all sides on the slopes of the mountain."

Indeed the school on the Miljacka River in downtown Sarajevo retains the visible scars from the massive shelling it took during the war. Despite the attacks, the law school remained open throughout the war.

Asked about casualties, Begic grimaced and made a slow draw on his cigarette. "We don't have exact

data about students, but many were killed or wounded. Two instructors were killed and two were wounded."

He added that many of the professors had to move when their residences were destroyed by the shelling. He said specifics on the students were unknown because the law school is the largest in the university—between 3,000 and 4,000 students when the war broke out. He added, though, that some of the students were part-time because they also held jobs. During the past 3½ years, 310 lawyers were graduated. Today, the war has reduced the student total there to 1,100, with another 600 in Zenica, which was opened this year.

As with all other aspects of life in Bosnia, the law school was undergoing transition from the communist system to a free market sys-

tem. "Before the aggression in our country, there were a lot of changes in the political and economic field," Begic said. "And these reforms included the law system; we changed our programs for education. We

fering was the destruction of Bosnia by force," Begic said in measured tones. "So it is very difficult to explain to the students about democracy, the free market and the rights of the individual. During the past three years, we have only the criteria of ethnic rights."

He said some students have questioned why some democratic nations in Europe opted to support national divisions along ethnic lines rather than promote the multiethnic nature of Bosnia.

He expects, however, to get help from U.S. law schools when he will be part of a law school delegation visiting schools as part of the ABA's CEELI "sister law school" program.

He is also appreciative of the donation of over 600 new books by CEELI. When the shelling destroyed everything in the national library, the law school library became the largest library in the country. While he is grateful, Begic is emphatic about ensuring that the law school does not become a U.S. clone.

"I want to emphasize that this law school's students and professors have managed to preserve the traditional values of Bosnia-Herzegovina—a multicultural, multiethnic Bosnia-Herzegovina."

He said that the war vividly demonstrated to the students why the rule of law is critical to resolving disputes.

"In my opinion, in most cases, this war had a positive effect on most students' minds regarding their understanding about the meaning of the law for a democratic system. And despite everything, they are convinced they are on the right track."

Begic concluded the interview with a brief tour of the facilities. Each corner turned evokes a memory of when each shell hit and what damage it caused to the law school that refused to be killed. □



The war brought home to students the need for the rule of law in a democratic system, says Dean Kasim Begic.

were following tracks of democracy and the free market.

"Now we professors have double the obligation. We have to continue and improve what was stopped by the war."

Begic is quick to laud the efforts of the U.S. government. "I am saying this because I was included in all these international efforts about Bosnia-Herzegovina and all these arrangements. The difference between the European Community and the American government is obvious from the law point of view.

"The international community is focusing on human rights, but Europe is insisting on collective rights, ethnic rights, excluding individual human rights. The American attitude was completely different."

All of which has left the law students somewhat confused. "What the European Community was of-

# A Voice for the People

## Multiethnic ombudsmen will press cases for everyone

In the past four years, the ominous phrase "ethnic cleansing" came to the forefront in the American media. Chillingly reminiscent of the Holocaust, the human rights violations by Bosnian Serbs to eradicate Muslims from the eastern part of Bosnia-Herze-

govina in an effort to create a "Greater Serbia" shocked the world.

the government officials. "We are the first institution in the former Yugoslavia that was inaugurated in the territory just for the protection of human rights," explained Branka Raguz, who is Croat. "We started with our work a year ago during the war when

the majority of cases. "The war forced many to leave their homes," Muhibic said. "The state didn't have good ways to protect their property. Few records were kept as to ownership or occupancy rights.

"We can enforce our constitutional obligation to allow the people who fled as refugees to get their homes back because refugees from other parts of the territory who came to Sarajevo are now in these homes. Also, when residents had their houses destroyed in the war, they moved into the apartment of someone who left. Now it has to be sorted out legally."

Muhibic added, "The authorities use the excuse that there is no law now regulating land or how refugees should go to their homes."

Another rights violation, he said, is regulations that prohibit freedom of movement, especially in Sarajevo and Mostar. Because Bosnia needed soldiers for its army, it severely limited a person's right to leave. "Even people who were very sick and needed treatment somewhere else," he said, "were not permitted to leave."

He said a third major problem is that of citizenship. "According to existing law, citizens of other former Yugoslav districts that became countries were forced against their will to become citizens of Bosnia-Herzegovina if they were living here at that moment. The reason for this was strictly military because they needed more soldiers."

A very big problem, Muhibic said, is that of missing persons. "Just yesterday it was announced that they couldn't agree on prisoner exchange because of the failure to account for the missing. We have cases of parents desperately looking for their children."

Muhibic added, "Some authorities are already saying we are enemies of the country simply because we are asking the law to be implemented. Unfortunately, when basic human rights are violated, every party says, 'My nationalism is better than [yours]. And my nationalism is the right kind of nationalism and you are wrong.'"

human rights were at the lowest level in the world here. We proved that tomorrow is too late where human rights are concerned. We have to act today."

All three are emphatic about keeping ethnic or nationalistic considerations from affecting their work. "While we are representative of all three ethnic groups, we are not representatives of these peoples," said Raguz.

"From the beginning, we understood that it is not possible to divide human rights into Croatian, Muslim and Serbian human rights. They are universal. We showed we can work and live together. We will show that it is possible for the people to live together."

Vera Jovanovic, a Serb, said, "We try to find the cause when we receive individual complaints of rights violations. We also check for the applicable laws." She said the work initially began in Sarajevo in January 1995 and has now "spread out through our network of branch offices throughout the federation."

"People call or come to our offices every day or they send in written complaints," said Esad Muhibic, a Muslim. "Just in Sarajevo, we had 5,000 different interviews with people in the past year, which resulted in 800 cases we are working on."

The problems in all the cities are similar. Housing disputes form



Ombudsmen Branka Raguz, Esad Muhibic and Vera Jovanovic.

While ethnic cleansing was the worst form of human rights violations, the war and centuries-old ethnic hatreds unleashed widespread violations on a lesser scale by all three sides as well. As the International Court of Justice at The Hague now focuses on crimes against humanity committed in the war, it is left to ombudsmen of the Federation of Bosnia-Herzegovina to sift through and deal with the lesser, but mounting, claims of human rights violations within the federation.

Three Bosnians—a Muslim, a Croat and a Serb—are constitutionally mandated to ferret out abuse regardless of ethnic considerations, and are guaranteed independence.

In their first year of operation, they have already managed to make themselves unpopular with some of