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At Guantanamo, Caught in a Legal Trap

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6 Algerians Languish Despite Foreign Rulings, Dropped Charges

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SARAJEVO, Bosnia -- On Jan. 18, 2002, six men suspected of plotting to attack the U.S. Embassy were seized here by U.S. troops and flown to Cuba, where they became some of the first arrivals at the Pentagon's new prison at Guantanamo Bay.

The seizure was ordered by senior U.S. officials in defiance of rulings by top courts in Bosnia that the men were entitled to their freedom and could not be deported. Today, more than four years later, the six remain locked up at Guantanamo, even though the original allegations about the embassy attack have been discredited and dropped, records show.

In 2004, Bosnian prosecutors and police formally exonerated the six men after a lengthy criminal investigation. Last year, the Bosnian prime minister asked the Bush administration to release them, calling the case a miscarriage of justice.

The men came from Algeria to Bosnia during the 1992-95 Bosnian war. Most were former Muslim fighters who became humanitarian aid workers after the war. They remain imprisoned because the U.S. military still classifies them as "enemy combatants" in the fight against terrorism. A review of thousands of pages of military and civilian court documents, however, shows that many reasons given for the designation are based on flawed or dubious evidence.

The case illustrates how difficult it will be to meet President Bush's stated goal to close Guantanamo as quickly as possible. About 450 detainees remain. While some face military commissions that could sentence them to long prison terms, most are expected to be released to their home countries.

Senior Bosnian officials said they have been told by U.S. diplomats that the six Algerians will never be allowed to return to Bosnia, which had granted dual citizenship to most of the men before their seizure. Instead, U.S. officials have pressed Algeria to take back the prisoners on the condition that they be confined or kept under surveillance there. So far, the Algerian government has balked.

The detainees and their lawyers say they are caught in a trap. They contend that the Pentagon knows the men are not guilty but is unwilling to let them go free because that would be an acknowledgment of a grave error.

"The Americans did not want to return me to Bosnia. Why? Because the Americans claimed to have evidence against me. I can't be returned and found innocent," Mustafa Ait Idr, one of the six Algerians, told a military tribunal at Guantanamo in October 2004, according to a transcript of the hearing.

"So now I am sitting here in Cuba and I do not know why. I do not know what is happening outside; I do not know. But what I do know is that this is a game."

A Post-Sept. 11 Roundup

In early October 2001, the United States was still reeling from the shock of the Sept. 11 attacks. U.S. intelligence agents around the globe worked frantically to chase down leads about Islamic radicals who might pose a threat.

Bosnia was seen as a potential haven. Large numbers of Muslim volunteer fighters had remained in the country, marrying Bosnian women, after the war. Some worked for Islamic charities, which U.S. investigators believed were often fronts for money-laundering rackets by terrorist groups.

One foreign fighter whom intelligence operatives wanted to find was an Algerian known only by the nickname Abu Maali. A veteran of conflicts in Algeria, Afghanistan and the Balkans, he was thought to be close to al-Qaeda.

On Oct. 8, 2001, Bosnian police detained an Algerian, Belkacem Bensayah, who they believed might be Abu Maali. While searching his home, they found a piece of notepaper that listed, in a handwritten scrawl, what appeared to be a phone number in Pakistan and the name "Abu Zubeida."

The scrap of paper was considered a vital piece of evidence. It seemed to match the name of one of al-Qaeda's top leaders, a Palestinian named Abu Zubaydah, who had fought in the Balkans and was at the time serving alongside Osama bin Laden in Afghanistan.

Bensayah told police he had never before seen the note, which was found inside a borrowed library book, "The Tragedy of Immorality." Bosnian and U.S. investigators didn't believe him.

Later, U.S. investigators asserted they had phone records indicating Bensayah had called Afghanistan 70 times after Sept. 11 and accused him of being "the top al Qaeda facilitator" in Bosnia, court documents show. The phone records have not been publicly disclosed.

Police turned their attention to an acquaintance of their lead suspect, another Algerian, Saber Lahmar. A worker for a Saudi aid agency in Bosnia, the Saudi High Committee for Relief, Lahmar had another intriguing connection: His father-in-law had recently been hired as a janitor at the U.S. Embassy.

On Oct. 16, U.S. intelligence officers listened in on a wiretap they had placed on Lahmar's phone. According to court records, they heard him speaking "in code" about what they thought was a plan to attack the U.S. and British embassies in Sarajevo.

The next day, U.S. diplomats and officials from the CIA and FBI met with their Bosnian counterparts. The Americans told the Bosnians that they had closed the embassy for security reasons and made clear they wanted more arrests, according to Bosnian officials present at the meeting.

Over the next week, Bosnian police arrested Lahmar and four other Algerians: Ait Idr, Hadj Boudella, Mohamed Nechle and Lahkdar Boumediene. Most of the men have said they were friends who had met through their charity work.

Srdjan Dizdarevic, president of the Bosnian chapter of the Helsinki Committee for Human Rights, said U.S. officials exerted heavy pressure to round up suspects, threatening to withdraw U.S. peacekeeping troops if Bosnian officials didn't act.

"There was not a single piece of credible evidence against the Algerians," Dizdarevic recalled. "The Bosnian authorities couldn't find anything, and the Americans didn't turn over anything to back up their claims. But the threats from the Americans were enormous. There was a hysteria in their behavior."

Vijay Padmanabhan, a lawyer in the State Department's legal office for political and military affairs, confirmed that U.S. officials met with the Bosnians to discuss the embassy closing.

"We didn't threaten or intimidate the Bosnians into arresting these men," he said. "We provided the Bosnian government with intelligence information, and they took what they felt was the appropriate action based on that information." He declined to provide further details.

Court Orders Ignored

After finding the note in the library book, investigators had trouble finding evidence that would stand up in court.

Phone records revealed no calls from Bensayah's home to the phone number attributed to Abu Zubaydah, according to Bosnian judicial documents. U.S. officials declined to provide Bosnian investigators with transcripts of their own wiretaps, saying that could compromise spying methods.

On Jan. 17, 2002, the Bosnian Supreme Court ordered the release of the six Algerians, ruling that there was not enough evidence to warrant their detention. The same day, the Bosnian Human Rights Chamber issued a separate decision that the men had the right to remain in Bosnia and could not be deported.

By then, rumors had swirled for days that U.S. peacekeeping troops would seize the Algerians anyway.

As dusk fell, an angry crowd of more than 150 people surrounded the prison in Sarajevo. A Muslim radio station urged listeners to turn out to protect the men. Scuffles broke out with police, who dispersed the crowd.

Shortly before dawn on Jan. 18, the Algerians were officially released from Bosnian custody. But instead of gaining their freedom, they were handed over by Bosnian police to U.S. military personnel.

"The only way out was to deliver them" to the Americans, said Alija Behmen, Bosnia's prime minister at the time, in an interview. "We were not interested in introducing a new period of instability in Bosnia."

Other officials said the decision caused lasting harm to efforts to solidify the rule of law in a fragile nation trying to recover from civil war.

Manfred Nowak, the U.N. special rapporteur on torture, said it was especially disturbing that the Bosnian and U.S. governments ignored the order of the Bosnian Human Rights Chamber. Nowak noted that the United States had played an instrumental role in creating the human rights court as part of the international effort to rebuild Bosnia.

"There was a clear order not to deport them from Bosnia. The U.S. government totally ignored it," Nowak said. "It's implausible to say they are enemy combatants. They were fighters during the Bosnian war, but that ended in 1995. They may be radical Islamists, but they have definitely not committed any crime."

Shifting Allegations

At Guantanamo, the Algerians entered a military justice system where the rules allow hearsay and other uncorroborated evidence to be used as justification for keeping an inmate imprisoned.

The men waited more than 2 1/2 years before they got judicial hearings. In October 2004, a U.S. military tribunal held a hearing to examine the evidence against Hadj Boudella and decide whether he should be classified as an enemy combatant.

Prosecutors accused him of being "associated with al Qaeda" and having connections to other Islamic radical groups, including the Armed Islamic Group of Algeria, known by its initials in French, GIA. It was also noted that Boudella had been arrested on suspicion of plotting to attack the U.S. Embassy in Sarajevo, although there was no mention that Bosnian officials had exonerated him of that claim.

The basis for the new accusations, some of which were classified, was not disclosed at the hearing. Tribunal members acknowledged they were just as confused as the detainees about the origin of some of the allegations.

"At this point, we don't know why you are being accused of being a member of the Armed Islamic

Group," one military officer, whose name was redacted from the tribunal transcript, told Boudella. "Do you have any idea why you are being connected with this group?"

"I don't know," Boudella replied. "I've been here for three years and these accusations were just told to me."

In his defense, Boudella asked if the military tribunal could submit as evidence the Bosnian Supreme Court ruling that ordered his release from the Sarajevo jail, as well as a subsequent Bosnian human rights court decision awarding him \$6,000 in damages on grounds that the Bosnian government had illegally deported him to Guantanamo. The documents, he said, would prove his innocence.

U.S. military officers said they had searched for the documents but that they were "unable to be located." At the time, however, the documents were readily available both on the Internet and in U.S. District Court files in Washington, according to the American defense lawyers representing the Algerians.

At the conclusion of the tribunal in October 2004, Boudella -- like the five other Algerians who were in separate hearings that month -- was declared an enemy combatant.

Since then, the military has conducted annual reviews of the six men's status.

Each time, court officers have upheld the original decision.

Records from tribunal sessions in December 2005 show the U.S. military is no longer accusing the Algerians of conspiring to attack the U.S. Embassy in Sarajevo. No explanation for the change is given.

The military has listed other factors in its decision to label the men a security threat.

One detainee was judged a threat in part because he was a karate expert and had taught martial arts to Bosnian orphans, tribunal records show. He was also classified as potentially dangerous because he was familiar with computers.

Another detainee was flagged because he had performed mandatory service in the Algerian army more than a decade ago, as a cook.

Boudella was accused by the U.S. military of joining bin Laden and Taliban fighters at Tora Bora, Afghanistan, the mountain hideout where the al-Qaeda leadership escaped from U.S. forces in December 2001. In fact, at the time, Boudella was locked up thousands of miles away in Sarajevo, after his arrest in the later-discredited embassy plot.

One fresh allegation filed against Boudella last year was that he wore a ring "similar to those that identified the Red Rose Group members of Hamas," the radical Palestinian movement, according to tribunal records.

Boudella's wife, Nadja Dizdarevic, responded in an interview that the ring is a common anniversary band worn by thousands of Bosnian Muslims. She said she obtained an affidavit from the jeweler in Sarajevo where he bought the ring and submitted it to the U.S. military in hopes that they will drop the charge at his next hearing.

"If it is a mark of belonging to Hamas, then 98 percent of the Bosnian Muslims belong to Hamas," she said. "For every claim they make against him, I have proof to show them they are wrong, so they have to invent something new."

The Defense Department declined to answer specific questions about the case, saying that some evidence against the men remains classified.

But a Pentagon spokesman defended the decision to apprehend the six Algerians.

"There was no mistake in originally detaining these individuals as enemy combatants," said Navy Lt. Cmdr. J.D. Gordon. "Their detention was directly related to their combat activities as determined by an appropriate Defense Department official before they were ever transferred to Guantanamo."

State Dept. Responds

On Feb. 2, 2005, Bosnian Prime Minister Adnan Terzic wrote a letter to U.S. Secretary of State Condoleezza Rice asking that the Algerians be returned to Bosnia.

"I took it for granted that it was the responsibility of this government to try to bring these people back," Terzic said in an interview.

Rice responded on March 17 that it was not possible to free the six Algerians because "they still possess important intelligence data" and pose a threat to the security of the United States.

Three months later, the State Department offered a somewhat different explanation. In a letter to U.S. Sen. James M. Jeffords (I-Vt.), Matthew A. Reynolds, acting assistant secretary for legislative affairs, explained that the Algerians could not be released in part because the Bosnian government "has not indicated that it is prepared or willing to accept responsibility for them upon transfer."

Bosnian officials said they received no such offer. They express frustration over the lack of action.

Justice Minister Slobodan Kovac said there would be no legal basis to place the men under arrest or surveillance if they were returned to Bosnia because they have already been exonerated there. "There is no case against them here in Bosnia, no criminal case," he said.

News researcher Julie Tate in Washington contributed to this report.

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