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## EFFECTIVE IMPLEMENTATION OF NEW LEGISLATION IN CRIME CONTROL IN BOSNIA AND HERZEGOVINA

*Implementation of legislation in the transition that Bosnia and Herzegovina is currently going through is particularly characterised by two segments: first, adoption of new legislation, and two, reorganisation of existing or establishment of new state bodies. Thus, some laws, such as the Law on Criminal Procedure, have been devised in a way totally new in comparison with old laws. Other laws, such as the Criminal Code, were carried over from before, with some changes and improvements.*

*When it comes to law enforcement bodies, the situation is rather incoherent. The current police forces, prosecutors, courts and legal practices, have been assigned more or less new roles, different from our earlier tradition, both in terms of organisation and in terms of function. With them, judicial, financial and taxation police have been established as a totally new set of law enforcement bodies, though at the local level rather than the state, which would have been logical.*

*Adding to this the following: (1) in different administrative parts of Bosnia and Herzegovina there are different criminal codes (a total of four), meaning that identical actions are not unlawful across the state, and (2) new procedural legislation allows for the use of covert investigation and surveillance, though without adequate human resources and equipment, then the picture of overall inconsistency of the legal system and its implementation becomes complete.*

*Contrary to this, the underground functions perfectly and with no administrative barriers, as confirmed by an increase in serious criminal offences such as drug-related crime, trafficking in persons, murders and fraud.*

### INTRODUCTION

Thirteen years since becoming a member of the United Nations, Bosnia and Herzegovina is still a transitional country. Political and legal processes in Bosnia and Herzegovina are not yet completed. Opinions on duration of the transitional period vary with some saying that it is taking too long and others that it is within the usual limits. However, analysts agree on one thing – that the Dayton peace agreement, which created the constitutional framework for the new state, has been aimed at stopping the war in the territory of the former Yugoslavia rather than creating efficient institutions of a modern state. Different interpretations of Bosnia and Herzegovina's constitution are also impeding the process of establishment and work of some state institutions. In any case, crime prevention policy and practices share the overall destiny of the state administration.

In order to assess the efficiency of the law implementation in prevention of crime in Bosnia and Herzegovina, we must first elaborate on the Criminal Code and the bodies tasked with its implementation. This elaboration would include a brief look at the evolution and then the current situation *de lege lata*. In addition, characteristics of the organization and functioning of administrative bodies responsible for implementation of criminal code – that is for discovery investigation and processing of crime – would also be presented.

## SUMMARY INFORMATION ABOUT BEGINNINGS AND DEVELOPMENT OF CRIMINAL CODE IN BOSNIA AND HERZEGOVINA

A war was raging in Bosnia and Herzegovina when in 1992 the country became a member of the United Nations. That is why conditions did not exist for the usual process for passing of laws, including the criminal code. Therefore, it would be correct to say that everything begun in an unusual that is atypical manner.

Since functioning of a state is not possible without appropriate legislation, Bosnia and Herzegovina took over with minor modification legislation of the former Yugoslav federation of which it was once a part. Under a legal order by the Presidency of Bosnia and Herzegovina<sup>1</sup> the country inherited the criminal legislation of the former Yugoslavia and former Bosnia and Herzegovina with minor linguistic modifications. That legislation was in force not only until the end of the conflict (in late 1995), but also in the post-war period.

However, after the cessation of hostilities it was no longer necessary to apply the inherited legislation so the process of drafting of new laws begun. Since Bosnia and Herzegovina is administratively divided into three parts - the Federation of Bosnia and Herzegovina and Republika Srpska (entities) as well as the Brcko District – three different criminal codes had been drafted and adopted in parallel. That process had been completed in 2000, so that three criminal codes and three criminal procedure codes had been in force in the territory of Bosnia and Herzegovina. No criminal code had been adopted at the state level.

The lack of the state criminal legislation was sort of a non-sense to which fact several theoreticians had been pointing (Petrovic, 2000/1/2/; Sijercic-Colic, 2002). The lack of state-level crime prevention institutions further complicated the situation. The above facts clearly show that the state had no strategy for prevention of crime. Unfortunately, such strategy had not been developed to date although there are requests for that to be done at least in the area of fight against organized crime, specifically the smuggling of narcotics and human trafficking.

## LEGISLATION IN FORCE IN BOSNIA AND HERZEGOVINA

Criminal legislation in force in Bosnia and Herzegovina includes four substantial and four criminal procedure codes. Those are: Criminal Code of Bosnia and Herzegovina<sup>2</sup> (further in the text CCBH), Criminal Code of the Federation of Bosnia and Herzegovina<sup>3</sup> (further in the text CCFBH), Criminal Code of Republika Srpska<sup>4</sup> (further in the text CCRS) and Criminal Code of the Bosnia and Herzegovina's District of Brcko<sup>5</sup> (CCBD), Criminal Procedure Code of Bosnia and Herzegovina<sup>6</sup> (further in the text CPCBH), Criminal Procedure Code of the Federation of Bosnia and Herzegovina<sup>7</sup> (further in the text CPCFBH), Criminal Procedure Code of Republika Srpska<sup>8</sup> (further in the text CPCRS) and Criminal Procedure Code of Bosnia and Herzegovina's Brcko District<sup>9</sup> (further in the text CPCBD).

## SUBSTANTIAL CRIMINAL LAWS

Substantial criminal laws are based on the criminal legislation of the former Yugoslav federation of which Bosnia and Herzegovina had been a part before gaining independence. In the process of development of the new legislation, Bosnia and Herzegovina followed certain international standards related to the specter of punishable crimes that is the criminal-legal protection. As a result, new criminal offences had been introduced in the CCBH that have long ago been a part of criminal codes of numerous other

countries. Among others these include: trafficking in persons (article 186), international procuring in prostitution (article 187), funding of terrorist activities (article 202), money laundering (article 209), breaches of copyrights (article 242) and organized crime (article 250). It is without a doubt that Bosnia and Herzegovina's legislation can be described as current after inclusion of the above and some other criminal offences. Some new criminal offences had also been introduced into the CCFBH, CCRS and CCBH. But that is just one positive aspect while those that are negative prevail. The negative aspects of the Bosnia and Herzegovina's criminal legislation clearly include the existence of four criminal codes of which three at the entity level, the lack of harmonization between those entity laws and insufficient capability of the law enforcement agencies to implement the legislation.

We are of an opinion that Bosnia and Herzegovina needs just one criminal code. The disharmony between the existing criminal codes is the best proof of that.

The existing criminal codes differently define the same crime and prescribe different penalties for the same criminal offences in the two entities. For example, the same criminal offence related to intoxicating drugs is defined and treated in one way by the CCFBH and in another by the CCRS. In the CCRS it is defined as "sale of intoxicating drugs" (article 225) and in the CCFBH as "possession and sale of intoxicating drugs" (article 238). From the very definition of the crime, one can see that possession of intoxicating drugs is legal in Republika Srpska and illegal in the Federation. Further on, the CCRS defines the sale of intoxicating drugs for the use by mentally retarded persons as a more severe form of the above criminal offence, while that is not the case in the CCFBH. As illustrated by this example, identical actions are not illegal in the entire territory of such a small state as Bosnia and Herzegovina is. There are many other similar examples with criminal offences of different nature. Provisions regulating eco crime (chapter 26 in the CCFBH, chapter 33 of the CCRS) differ in the two entity codes and are even given under the different chapter titles. The definition of different criminal offences is different in the two codes, as are the prescribed penalties. It indicates that the legal protection of the environment is not the same in different parts of Bosnia and Herzegovina.

There are also differences in criminal punishments prescribed by different codes for offences related to intoxicating drugs. More severe form of the criminal offence of "illegal production and sale of narcotics" (article 239, paragraph 2) is punishable under the CCFBH by the sentence of imprisonment ranging between two and twenty years in prison, while under the CCRS (article 224, paragraph 2) a person charged with the same offence can be punished by the sentence of imprisonment ranging between three to fifteen years. Similar situation exists in relation to other criminal offences, including for accepting bribe (article 380 of the CCFBH, article 351 of the CCRS), espionage (article 157 of the CCBH, article 304 of the CCRS) and sexual intercourse with children (article 207 of the CCFBH, article 195 of the CCRS)

#### CRIMINAL PROCEDURE CODE

Unlike the substantial laws, criminal procedure codes are harmonized to a great extent. Having in mind the minor differences, it would be correct to say that criminal procedure is the same in the entire territory of Bosnia and Herzegovina. In our opinion, that at least formally contributes to the efficiency of crime prevention. The law enforcement bodies are in position to base their work on the application of the same methodology with the use of same or similar means. Due to the above fact, different law enforcement bodies can cooperate in a simplified way.

However, it is necessary to stress that a totally new concept of criminal procedure had been introduced in Bosnia and Herzegovina. That new concept resembles much more the Anglo-Saxon than the continental practices that had traditionally been used in our country. Two features of that new concept should be specifically mentioned: the new role of participants in criminal proceedings, especially in investigation and as related to special investigative actions.

Role of participants in criminal proceedings had been significantly changed. Position of investigative judges had been eliminated by the law and courts were given a new role of controlling the investigation by issuing warrants for investigative activities aimed at collecting the evidence, such as searches of persons and premises, or warrants for special investigative actions. These tasks are now under the authority of the preliminary proceeding judge (article 20, point d and article 24, paragraph 5 of the CPCBH). Under the new criminal code, prosecutors are tasked with initiating and performing an investigation (article 35, paragraph 2, point b in relation to article 20, point g of the CPCBH). A new feature is that the prosecutor has the authority over all other authorized officials who participate in the investigation under his supervision. Authorized officials had been given new rights and obligations, which will be further discussed latter in the article. Among other things, as Sijercic-Colic (2003:195) stresses, legally regulated procedure for gathering of information from persons opens a way for the use of such information not only in the investigation, but also as evidence in criminal proceedings. We can agree that such a legal solution represents an improvement in comparison with the previous practice when information gathered in the investigation could not have been used as evidence in criminal proceedings. After analyzing the provisions of the CPCBH it would be correct to say that prosecutors is not only tasked with prosecuting, but also with investigating crime. Scope and structure of an investigation depend on the strategy and guidelines decided upon by the prosecutor (Sijercic-Colic, 203:197).

Similarly as in the case of prosecutor, the role of defense attorney had also been changed. The code regulates that the defense attorney in representing a suspect or an accused must take all necessary steps aimed at establishment of facts and collection of evidence in favor of the suspect or accused as well as protection of his rights (article 50 of the CPCBH) which indicates that the defense attorney is also leading his own "investigation". Not only that a defense attorney may be present at questioning of a suspect (article 78, paragraphs 2 and 4 of the CPCBH) or an accused (article 229, paragraph 1 and articles 248, 260 and 261 of the CPCBH), but he may also be present during the search of apartment and other property of a suspect or an accused and can engage an expert (article 269 of the CPCBH).

The new criminal procedure code also allows for the following special investigative actions: (1) surveillance and technical recording of telecommunications, (2) access to the computer systems and computerized data processing, (3) surveillance and technical recording of premises, (4) covert following and technical recording of individuals and objects, (5) use of undercover investigators and informants, (6) simulated purchase of certain objects and simulated bribery and (7) supervised transport and delivery of objects of criminal offense (article 116, paragraph 2 of the CPCBH)

## **CRIMINAL LEGISLATION ENFORCEMENT AGENCIES**

It is interesting to mention that since independence in 1992 Bosnia and Herzegovina did not have state-level prosecution, courts and police. The reason for this is that there existed independent crime prevention agencies in different parts of Bosnia and Herze-

govina throughout the country's four-year war. But even if there was some justification for such situation in the time of war its continuation in the post-war period is without excuse.

The only explanation for the existing status of criminal legislation and law enforcement agencies in Bosnia and Herzegovina is the lack of will by the country's authorities to follow the modern principles in regulating these issues. It is thus of no surprise that separate prosecution, courts and police independently function in the Federation of Bosnia and Herzegovina, Republika Srpska and Bosnia and Herzegovina's Brcko District. The situation is further complicated by the administrative arrangements in the Federation of Bosnia and Herzegovina where in addition to the entity police forces there exist cantonal police forces that are greatly independent from the Federal Interior Ministry and form each other. Such a policing system cannot contribute to the efficient stamping out of crime but is instead counterproductive.

The Office of the High Representative (OHR) has initiated a process of police restructuring in Bosnia and Herzegovina in order to overcome the existing situation.

## COURTS AND PROSECUTION

In addition to the state court and prosecutor's office, there are separate and independent courts and prosecution offices in each of Bosnia and Herzegovina's administrative units (Federation of Bosnia and Herzegovina, Republika Srpska and Bosnia and Herzegovina's Brcko District). The judiciary is differently organized in each administrative unit.

### *STATE COURT AND PROSECUTION*

The state court and prosecutor's office had been established recently due to the fact that Bosnia and Herzegovina's constitution delegated the authority for judiciary to the two entities. Activities on establishment of the state court and prosecutor's office had been initiated in 2000 and completed in 2003 with the passing of the CCBH and CPCBH. Jurisdiction of the state court and prosecutor's office is different to the models recognized in other modern states.

The state court and prosecutor's office have first instance and second instance authority over the implementation of CCBH and some authority in relation to other laws in force in Bosnia and Herzegovina. The state court has the authority for criminal offences regulated by other laws of Bosnia and Herzegovina, but also for those offences that are regulated by CCFBH, CCRS and CCBD in cases when such offences: (a) undermine sovereignty, territorial integrity, political independence, national security and international subjectivity of Bosnia and Herzegovina, (b) can have serious repercussions and negative consequences on the economy of Bosnia and Herzegovina or can have other negative consequences for Bosnia and Herzegovina or can cause serious economic damage or other negative consequences to one of the entities or the Brcko District (article 13 of the Law on the Court of Bosnia and Herzegovina). Another specific feature of the Bosnia and Herzegovina's state judiciary is participation of international judges and prosecutors in criminal proceedings. In transitional period that cannot last for over four years, a maximum of six (6) international judges can be appointed to special chambers for organized crime, economic crime and corruption, as well as the appeals chamber of the state court of Bosnia and Herzegovina. International judges cannot be the citizens of Bosnia and Herzegovina or its neighboring countries (article 65 of the Law on the Court of Bosnia and Herzegovina).

The situation is similar with the office of the prosecutor of Bosnia and Herzegovina. In transitional period that cannot last for over four years a maximum of three (3) international prosecutors can be appointed with the special department for organized crime, economic crime and corruption (article 18, point a of the Law on the Prosecutor's Office of Bosnia and Herzegovina)

Participation of international judges and prosecutors in the criminal proceedings in Bosnia and Herzegovina can be seen as assistance in prevention of the most serious forms of crime extended in transitional period in which the state court and prosecution are not yet fully prepared for efficient execution of their functions.

*COURTS AND PROSECUTION OFFICES IN THE FEDERATION OF BOSNIA AND HERZEGOVINA, REPUBLIKA SRPSKA AND THE BRCKO DISTRICT*

Federation of Bosnia and Herzegovina has lower and cantonal courts, as well as a Supreme Court. It also has cantonal prosecution offices and the entity prosecution office. Therefore, the cantonal prosecution offices are tasked with prosecuting the cases before both the cantonal and local courts. Further on, the Supreme Court and the office of the prosecutor of the Federation of Bosnia and Herzegovina are vested with original jurisdiction in cases of the most serious criminal offences, primarily in cases of organized crime. Such allocation of jurisdiction is often a subject of debate. The prevailing opinion is that the Supreme Court and Prosecution Office of the Federation of Bosnia and Herzegovina should not have original jurisdiction, but that it should rest with the cantonal courts.

The existing situation creates a dilemma on how to act in some criminal cases. Cantonal courts have jurisdiction over narcotics-related crimes for which less severe sentences are prescribed. But Supreme Court has original jurisdiction in cases of more serious narcotics-related offences for which more severe sentences are prescribed. To illustrate how complicated this situation is let us look at the examples when cases are brought before the Supreme Court, but prosecution fails to prove the involvement of an organized criminal group. In such situation, the case would have to be returned under jurisdiction of a relevant cantonal court. Also, cases initially prosecuted before the cantonal courts must be transferred to the Supreme Court if it is determined during the proceedings that the offence constitutes a more serious violation than initially believed. It sometimes happens that the cases prosecuted before cantonal courts are transferred to the Supreme Court and then returned to the cantonal court again because it is not possible to immediately determine the jurisdiction.

The above situation clearly does not contribute to the efficient prevention of crime because it creates unnecessary delays and has negative consequences for the quality of both material and other evidence.

Victims of crime are forced to wait for justice for too long, while suspects or the accused are exposed to prolonged repression which in some cases leads to violation of their human rights and freedoms. It is also necessary to stress that this situation contributes to the increase in the number of cases in which the statute of limitation runs out.

Additionally, jurisdiction of courts and prosecution offices in different stages of criminal procedure has changed in 2003. Traditionally, the investigation of crime had been a responsibility of investigative judges, but following the change prosecutors and police are tasked with initiating and performing the investigation. Additional education of prosecutors is crucial because they are now taking over the task that in the

past was not under their authority. The police functions had also changed significantly with introduction of new bodies for identification and investigation of some specific forms of crime, which would be elaborated further in the text.

Republika Srpska has municipal and regional courts, as well as the Supreme Court of Republika Srpska. As far as prosecution offices are concerned they are established at regional and the level of Republika Srpska. Courts and prosecution office in the Brcko District have original and appellate jurisdiction.

The same as in the Federation of Bosnia and Herzegovina, the authority for investigation rests with the prosecution. Such practice was first introduced in the Brcko District and it is thus that the prosecutors there have more experience with crime investigations.

#### *EDUCATION OF JUDGES AND PROSECUTORS*

Since both Bosnia and Herzegovina's legislation and its judiciary system had been reformed it was necessary to provide additional education for judges and prosecutors. Education centers for judges and prosecutors (one in the Federation of Bosnia and Herzegovina and another in Republika Srpska) had been established in 2003 to provide training related to the new substantial and criminal procedure legislation. A strategy has been developed for the work of these centers, including the criteria for selection of training courses and appropriate educators. Educators include University experts and experienced judges and prosecutors. In designing the training courses, the training centers' managers interviewed judges and prosecutors about their priority needs.

Education will be provided permanently with a goal to educate all judges and prosecutors not only about the changes of our criminal procedure, but also about the state and characteristics of crime in our country. The latter is particularly important because certain types of criminal activity - including sale of intoxicating narcotics, trafficking in humans, and appropriation and sale of vehicles – are increasingly taking form of organized crime. Additionally, new criminal offences included in the legislation and new procedural practices indicate a necessity to improve the work of both the judiciary and police. This is clearly a complicated and sensitive process and educators have a great responsibility before them.

#### **AUTHORIZED OFFICIALS**

Under the old Bosnia and Herzegovina's legislation, authorized officials of the police bodies participated in detecting and investigating criminal actions alongside the prosecutors and courts. Recently introduced legal solutions have provided for establishment of a number of new state bodies tasked with detecting and investigating specific criminal activities. Those institutions include the state border service, judicial police, financial police and tax bodies. These have taken over many of the responsibilities that used to be specifically assigned to the police bodies. This initiated changes in the Criminal Procedure Code of Bosnia and Herzegovina. Legal definition of authorized official had been extended to include representatives of the newly established bodies. It is necessary to mention that the police bodies had also been reorganized and that the new criminal procedure law has assigned additional authorities to the customs bodies and military police.

Because of the above, this article deals with the scope of work and authority of all the bodies that participate in detection and investigation of criminal offences and all authorized officials who participate in the criminal proceedings.

We have taken as the starting point definition of the "authorized official" provided in the Criminal Procedure Code to see how it applies to different categories of authorized officials. It is our attention to point to innovations with regards to the persons who are allowed to participate in the criminal proceedings. Under the code, the term "authorized official" refers to a person who has appropriate authority within the State Border Service, the Police bodies of the responsible ministries of interior of the Federation of Bosnia and Herzegovina, Republika Srpska and the Brcko District, Judicial police and customs bodies, financial police bodies, tax bodies and military police bodies.<sup>10</sup> It is clear from the above definition that authorized officials include different bodies functioning in different administrative levels, including the levels of state, entity and the Brcko District administration.

#### POLICE BODIES IN BOSNIA AND HERZEGOVINA

In attempting to define term 'police bodies in Bosnia and Herzegovina' special attention must be given to the powers of individual state bodies with different crime prevention duties. This group clearly does not include all bodies that have the word "police" in their name, which fact opens way for some confusion. In saying this we refer to the judicial police, financial police and military police. Although in a wider sense the above could also be regarded as police bodies, their powers are limited by their jurisdiction, so for example financial police only investigates financial crime, or by the scope of their work as is the case with military police.

With the above in mind, only authorized officials of the interior ministry<sup>11</sup> should be considered as police bodies. Considering the situation in our country this category includes interior ministries of Republika Srpska, the Brcko District, the Federation of Bosnia and Herzegovina and cantonal interior ministries.

At the moment the process of establishment of police bodies at the level of state is being completed. In addition to already established Security Ministry and State Information and Protection Agency of Bosnia and Herzegovina, a State Intelligence and Security Agency of Bosnia and Herzegovina<sup>12</sup> had been established on June 1, 2004, which will enjoy police powers.

The existing organization of police, especially in the Federation of Bosnia and Herzegovina, can lead to confusion in implementation of specific provisions of the Criminal Procedure Code. The original jurisdiction is distributed in the Federation of Bosnia and Herzegovina between the cantonal interior ministries and the interior ministry of the Federation. This division is further complicated by two facts: first is a high degree of independence of the cantonal ministries from the federal ministry of interior and second is a high degree of independence between individual cantonal ministries. This level of independence between different ministries has led to unusual distribution of original jurisdiction in the Federation of Bosnia and Herzegovina and to an insufficient level of cooperation between individual ministries. Provisions of the police laws illustrate this to a certain extent.

For example, under article 2 of the Law on Police of the Sarajevo Canton<sup>13</sup>, police responsibilities in the Sarajevo canton include among others "(1) implementation of the constitution and the laws of the canton, the Federation of Bosnia and Herzegovina and Bosnia and Herzegovina which regulate the police work; (2) policing jobs and tasks other than tasks that are under the authority of the police of the Federation of Bosnia and Herzegovina; (3) policing jobs and tasks entrusted to the cantonal interior ministry by the Interior Ministry of the Federation of Bosnia and Herzegovina".

Further on, under article 2 of the Law on Police of the Federation of Bosnia and Herzegovina<sup>14</sup>, responsibilities of the police of the Federal Interior Ministry include, among others, "prevention and discovery of criminal acts of terrorism, inter-cantonal crime<sup>15</sup>, sale of intoxicating drugs and organized crime and discovery and apprehension of persons responsible for crime and their bringing before responsible bodies."

At the first sight, the above provisions appear to be quite precise and clear in defining responsibilities of the cantonal interior ministries and the Interior Ministry of the Federation of Bosnia and Herzegovina. However, in practice the situation is much more complicated primarily due to a lack of necessary hierarchy, coordination and cooperation. Such divisions in police sector create practical problems in deciding which ministry should act in some cases and can have negative consequences for the implementation of the Criminal Procedure Code. It can also result in parallelism in the work of the cantonal interior ministries and the Interior Ministry of the Federation; especially in cases where it is not clear if some criminal activity falls under category of organized crime or terrorist activity. The end result of such fragmentation of police can be a low degree of discovery of crime and consequently low security.

That is why we believe that the existing police organization in Bosnia and Herzegovina is inefficient and should not be maintained. The nonexistence of a state-level interior ministry as well as the existence of the cantonal interior ministries further complicates the present situation requiring urgent reorganization. As soon as the police are restructured improvements can be expected in discovering and investigating crime and protecting human rights and freedoms.

#### STATE BORDER SERVICE

The State Border Service of Bosnia and Herzegovina has been established to provide border protection and airport security.<sup>16</sup> Its tasks cover a wide range of activities including some law enforcement duties. Beyond border protection and airport security, article 5 of the Law on the State Border Service (further in the text SBS law) also regulates that "the State Border Service would have investigative powers...where suspicion exists that a crime or offence committed (1) was aimed against the security of the border or the execution of border service duties; (2) was a subject of official prosecution under legislation regulating personal identification documents, passports, visa requirements, migrations and asylum and was committed in connection with the act of crossing the border or in a manner directly related to it; (3) involved transportation of goods across the border without official approval or in a manner which constitutes violation of existing bans or is in contradiction to criminal code to the extent to which the State Border Service is authorized to supervise the ban on the basis of some other law or administrative arrangements with official bodies charged with such authority."

The same article of the Law also regulates concrete obligations of the State Border Service, which are of a law enforcing nature, providing for the officials of the State Border Service to be granted a status of authorized officials.

It is obvious from the already mentioned article 5 of the SBS Law that investigative action can be taken by the State Border Service even outside the determined border zone in consultation with other authorized bodies. The above-mentioned authorized bodies include prosecutor's offices and some police bodies. Since the State Border Service is identifying and investigating criminal offences it clearly needs to submit a report on its activity to the authorized prosecution office. The State Border Service must consult with the police bodies in the process of proving that the criminal offence has taken

place, but they must also exchange information with police about prepared or committed criminal offences and suspects.

It can be concluded from the above that the State Border Service officials enjoy similar powers like police bodies, which is logical given the nature of their work.

## JUDICIAL POLICE

Judicial police had been founded to assist the State Court of Bosnia and Herzegovina, Office of the Prosecutor of Bosnia and Herzegovina, Constitutional Court, Supreme Court, cantonal courts and the Ombudsmen in "the apprehension of witnesses, indictees and the accused; apprehension of convicts and their bringing to penal institutions determined by the court; maintaining order in the courtroom, providing protection to judges and other court officials, protecting court buildings and in execution of other court orders."<sup>17</sup>

Among many authorities of the judicial police we would particularly like to stress those than can be perceived as typical law enforcement powers in which case judicial police officers clearly act as authorized officials. Under article 10 of the Law on Judicial Police of the Federation of Bosnia and Herzegovina "judicial police executes court orders on searching apartments or persons, temporary seizure of goods, as well as orders to ensure implementation of court decision and other court orders by which success of the legal proceedings is ensured"<sup>18</sup>

To be able to implement various court orders, judicial police officers have other police powers as well. The judicial police are authorized to carry and use weapons and other coercive measures, which is of special importance since they are "obliged to carry out their duties even in cases when it may endanger their life."<sup>19</sup>

The sphere of work of authorized officials covers not only standard tasks of identifying and investigating crime, but also includes a duty to provide protection which is clearly illustrated by the following provision of the Law on Judicial Police: "Judicial police officers can apply coercive measures, including: physical force, rubber bats and other coercive measures, only in cases when it is necessary to prevent physical attack against judges and other court officials, ombudsmen and other persons they protect, as well as to prevent the escape of witnesses, indictees or convict or material damage to the court"<sup>20</sup> Further on, if they cannot execute their duty through the use of the above coercive measures, judicial police officers are authorized to use fire arms in accordance with law.

## CUSTOMS BODIES

We are witnessing difficulties in establishment of a single customs administration in Bosnia and Herzegovina. Existence of customs bodies at the entity level and practically at the regional level obstructs the rule of law in various ways. It is easier to understand reasons for the existing strong opposition to the establishment of a single administration for indirect taxation when one is aware of the fact that different customs offences are directly enabling acquisition of "dirty money." However, we will not focus here on the above issue, but would rather look at customs bodies as authorized officials under provisions of the Criminal Procedure Code. The role of customs bodies as authorized officials is reflected in the implementation of jobs and tasks on prevention and identification of criminal offences. The basic reasons for such activity are specific criminal offences in the area of customs introduced in our legislation in 2000. A special chapter on criminal offences in the area of customs has been introduced in

the Criminal Code of the Federation of Bosnia and Herzegovina under number XXIV which included the following three types of criminal offences: "Smuggling of Goods" - article 272a, "Organizing a Group or Association for Smuggling or Distribution of Goods on Which Duties Were Not Paid" – article 272b and "Customs fraud" – article 272c.<sup>21</sup> These offences had also been included into the 2003 Criminal Code of Bosnia and Herzegovina and are given in the Chapter XVIII under heading "Criminal offences against the economy, market integrity and in the area of customs." These three types of criminal offences are now regulated by articles 214, 215 and 216 with more or less the same disposition, but somewhat changed sanctions. The prescribed sanctions testify to the difficult nature of these criminal offences and the importance given to them by the lawmaker.<sup>22</sup> This indicates how important is the work of customs bodies for discovery, investigation and prevention of these criminal offences.

The authority of the customs officials is regulated by the book of rules which prescribes measures and activities of customs officials in discovering, investigating, preventing, documenting and reporting criminal offences in the area of customs (further in the text Book of Rules).<sup>23</sup>

The Book of Rules establishes which customs officials enjoy the status of authorized officials and are thus allowed to take actions in accordance with the established powers of the police bodies and can act in accordance with the provisions of the Criminal Procedure Code. Article 4 of the book of rules regulates that "authorized customs officials must have reasonable doubt that a criminal offence in the area of customs had been executed in order to take any measures." A list of powers that customs officials have in implementing their duty has been completed and it includes power to "(1) require necessary information from citizens; (2) search transportation vehicles, passengers and luggage; (3) limit movement of suspects to a specific area for a necessary period of time; (4) take necessary measures to confirm the identity of persons and accuracy of the list of declared goods; (5) to in the presence of responsible persons inspect specific buildings, facilities and other offices of businesses and other legal entities and control specific documentation, as well as to take other necessary measures and actions; (6) to temporary size materials believed to have been used for customs crime; (7) to act on an order to search apartments and persons; (8) to temporary hold persons; (9) to participate in some aspects of crime scene investigation and (10) to submit a report to authorized prosecution office".<sup>24</sup>

It is clear from the above that customs officials can take many police measures and actions, but their powers are limited to crime in the area of customs.

## FINANCIAL POLICE

Financial police is a relatively new body of state administration functioning within the Ministry of Finance. It has been established by the 1995 Law on Financial Police to take over duties and tasks that until its establishment were under the authority of the interior ministries and inspectorate bodies.<sup>25</sup> Many jobs and tasks related to control of persons and legal entities are in the scope of work of financial police. Here we would list only some of those jobs and tasks: (1) to control legality, accuracy and efficiency of calculations and payments of state revenues, public revenues and revenues for special funds; (2) to control financial records and tax reports on the sale of goods and services; profit, salaries and other elements of importance for public revenues; (3) to control reports on taxable property and real estate; (4) to control sale of stocks or shares in the process of privatisation of the state-owned property etc. Financial police has specific powers that enable it to carry out the above and other tasks.

Article 9 of the Law on Financial Police authorizes financial police officers to: "temporarily seize goods...until final legal order on criminal offence is adopted; (2) to temporarily close businesses; (3) to stop and control vehicles suspected of transporting goods of suspicious origin; (4) to enter apartments and other premises in accordance with law; (5) to inspect premises, goods, devices and equipment; (6) to control financial books and other financial documentation of private and legal entities; (7) to control the use and supply of materials and raw materials and movement of final products, to control bank accounts, to determine identity of private businessman; (8) to ban certain activities."

The sensitivity of work of the financial police is clearly illustrated by the above provided information. Due to that fact, financial police can request support from the interior ministry and its officers are authorized to carry firearms if there is suspicion that their life could be in danger while on duty.

#### TAX ADMINISTRATION

Similarly as in the case with numerous crime prevention bodies in Bosnia and Herzegovina, tax administration is not organized at the state level, but at the level of entities. Tax administration of the Federation of Bosnia and Herzegovina is organized in three levels so it includes central office, cantonal offices and regional offices. Since tax administration bodies had been recognized by the CPCFBH as authorized officials they had been granted appropriate powers. Among many of their powers we would like to emphasize those that are related to identification and investigation of criminal offences. The authorized officials of tax administration are allowed to: (1) in accordance with the CPCFBH take all the measures and actions that fall within the police authority in the process of discovery, investigation, prevention documenting and reporting of tax crime; (2) cooperate with institutions authorized for investigating crime with the goal to detect corruption in tax bodies; (3) to summon for questioning all persons who can present documentation or give statements that are crucial for the implementation of tax laws; (4) enter any property or facility where books and records and other items necessary for implementation of tax laws are stored or might be stored.<sup>26</sup>

Tax bodies are discovering, investigating and reporting tax-related crime from their jurisdiction. Following criminal offences from CCFBH (listed under the heading number XXIII) fall under the jurisdiction of tax administration: tax evasion (article 273), counterfeiting tax return reports (article 274), failure of legal entities to pay appropriate amount of tax (article 275) submitting false information on acquired taxable income (article 276), preventing the work of tax administration officials (article 278).

Having in mind the scope of their work, it is clear why tax administration bodies enjoy the status of authorized officials in criminal proceedings.

#### MILITARY POLICE

A state-level Ministry of Defense has recently been established in Bosnia and Herzegovina and creation of a unified army is underway. However, until the reform process is completed the military forces in the country will continue to be organized at the entity level as will the military police bodies. Since Bosnia and Herzegovina has no military courts or prosecutors, the cases of military crime fall under jurisdiction of civilian judiciary. Accordingly, military police bodies enjoy the status of authorized officials. It is of no surprise that military police bodies enjoy the status of authorized officials since that has always been a case. The only difference is that in the past they could not have participated in criminal proceedings before civilian courts.

Under Defense Law of the Federation of Bosnia and Herzegovina<sup>27</sup> and Law on the Army of Republika Srpska<sup>28</sup>, rulebooks and official instructions regulate the tasks of military police. According to the rulebooks and official instructions, military police bodies enjoy powers that are almost identical to those of civilian police bodies, but their work is limited to military personnel and facilities.

## UNDERGROUND MOVEMENTS

Our empirical research points to existence of local underground movements in some cities in Bosnia and Herzegovina, Croatia, Serbia and Montenegro (Petrovic, 2000 /3/). The roots of these underground movements are linked to individual criminals who were winning their "gangster reputation" in underground movements of individual European countries including in Germany, Italy, France and Netherlands. Over time they became role models for the criminals in their native countries who started imitating their role models' international gangs. Different criminal groups and gangs had slowly been created in some Croatian, Bosnia and Herzegovina's, Serbian and Montenegro's cities. Mutual rivalry was initially considered by these groups as the best way to build reputation. In late 1980s the rivalry diminished and the links between different criminal groups were getting stronger leading to their better organization and greater danger from them for the society.

Certain criminal groups from this region act in some countries of the European Union, primarily in Italy, Germany and France. Their criminal activity includes money extortion, different forms of profitable deception, trafficking in humans, including children, prostitution, narcotics related crime, robbery, pick pocketing, smuggling of cigarettes and alcohol. In late 1960s and 1970s a huge increase in pick pocketing has been registered in the cities of some western European states and most dangerous were the groups and individuals (pickpockets) from Bosnia and Herzegovina (Petrovic, 2000 /3/). Another characteristic activity of the criminals from Bosnia and Herzegovina was profitable deception.

Some specific features of criminal groups and individuals from Bosnia and Herzegovina can be seen in the structure of organized and mass crime (Clages, 1991:557; Clages, Stullenberg, 1992:390; Schauble, 1991:292). Prior to development of organized criminal groups from Bosnia and Herzegovina, the criminals from our country were involved in some forms of mass or street crime, such as pick pocketing, robberies and theft from apartment and trains, different deception games and prostitution.

In 1980s and 1990s a process of transformation of Bosnia and Herzegovina's underground scene started. Some of the leaders of Bosnia and Herzegovina's underground groups, especially those who had been active abroad, slowly started to be involved in new criminal activities while some completely changed their criminal practice. The new criminal activity primarily included narcotic-related crime, sale of stolen vehicles and trafficking in humans including children. In 1990s they switched to the illegal arms sales. Bosnia and Herzegovina was then hit by the war used by some criminals as a perfect opportunity for training in organized crime. At the end of war criminals were maximally trained and equipped, in the sense of both organizational skills and financial backing. In the post war period we can talk about the existence of organized criminal gangs, which developed during the war from some well-organized criminal groups.

The phenomena of genocide and war crimes committed in this region must be analyzed from perspective of organized crime. Some wartime criminal activities were complex in nature, at the same time including elements of genocide, war crimes and organized

crime. In the period from 1991 to 1995 organized crime was subsidiary to genocide and war crimes committed in the territory of former Yugoslavia.

At the beginning of the 21st century Bosnia and Herzegovina is unfortunately witnessing expansion of narcotics-related crime, trafficking in humans, corruption and armed fights between criminals. Criminals of Western Balkan are clearly linked, especially in the smuggling and sale of intoxicating drugs. The so-called "Balkans route" for transportation of narcotics between East and West crosses the territory of Bosnia and Herzegovina further contributing to development of links between different criminal groups and to their mobility. (Wegner, et al., 2004) .

## CONCLUSIONS

The key issue of this article was to identify indicators for analyses of efficiency of law implementation in the crime prevention activities. Considering the short time that has passed since the legal reforms were introduced and since the appointment of judges and prosecutors, it was impossible to draw general conclusions about the current judicial practice. It would be inappropriate to make any conclusions about the efficiency of the crime prevention mechanisms after they have been in place for just one year (2003). It would take a longer period (of some five years) for the new police and judicial bodies to become fully functional and only then it will be possible to talk about the practical effects of the new arrangements. With the above in mind, we decided to give a review of all the reforms introduced in the area of criminal justice and bodies for its implementation.

In our opinion the process of re-appointment of judges and prosecutors, as well as the new methods for discovering and investigating of crime are of extreme importance. One should also have in mind a significant number of inherited cases.

The process of re-appointment of judges and prosecutors begun in 2003 and is not yet completed. Mindless of the fact that most "new" judges and prosecutors have significant working experience, they need to adapt to the new conditions especially since some of them have assumed new roles. For example, judges of the cantonal court were appointed to the state court and attorneys without much working experience were appointed as prosecutors.

The new practices require from prosecutors to cooperate with a higher number of authorized officials of different police bodies, some of which had been established just recently and also do not have significant working experience. Besides regular police forces and military police bodies, all other law enforcement agencies had been founded after 1995. Some time will have to pass for numerous police bodies to start working efficiently in cooperation with judiciary, and particularly in regards to the special investigative actions. Special investigative actions — such as undercover agents and covert following and technical recording of individuals and objects — open way for more efficient discovering, investigating and proving of crime. At the same time they can be carried out in violation of human rights and freedoms, so the law would have to be strictly respected when these actions are concerned. We would have to be extremely cautious since bodies authorized for special investigative actions are still not sufficiently trained and technically equipped.

Finally, the number of "inherited" criminal cases is measured in thousands, which fact further contributes to inefficiency in prevention of crime. Newly appointed judges and prosecutors must solve new, but also old criminal cases.

There are advantages and disadvantages related to the changes in the status of authorized officials arising from the new criminal legislation. The advantages relate to establishment of some specialized bodies for identification and investigating of specific types of crime. These include tax administration, financial police etc. In the era of organized crime, corruption and abuse of scientific discoveries for criminal purpose, specialized investigative bodies are more than welcome. They are also expected to "lift the burden" off the regular police forces who will therefore be able to focus on traditional crime and some forms of organized crime.

Disadvantages are related to a lack of communication and cooperation between prosecution offices courts and newly established state bodies. The new bodies are just starting to work while courts and prosecutors also need to adapt to the new working practices. Also, some time will be needed before newly established bodies are fully functional, which fact will effect the efficiency of their work. Still, the above-mentioned disadvantages could have been expected in the light of numerous innovations that had been introduced in the legislation and in the functioning and organization of crime prevention bodies in our country. According to the police registers, a fall has been registered in 2003 in the number of resolved criminal cases. Since no statistics data are collected at the state level it is hard to decide about the significance of that fall, but efficiency of law enforcement agencies had clearly been diminished.

As I was finishing this article, a very indicative statement by the chief prosecutor of the Sarajevo Canton caught my ear. In the central news program of a local television (NTV Hayat - June 3, 2004), the chief prosecutor warned citizens about the expansion of organized crime in the Sarajevo Canton, stressing that the abuse of narcotics generated severe forms of crime. There are different possible ways of looking at that statement. It can be understood as a warning about the dangers of organized crime aimed at encouraging cooperation between citizens and crime prevention bodies. However, it can also been seen as proof of inability of crime prevention bodies to deal with organized crime. Finally, it is hard to determine what were the reasons behind giving such statement and weather or not it is justified mindless of the fact that it has been given by the chief prosecutor.

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## ENDNOTES

- 1 Published in the Official Gazette of the Republic of Bosnia and Herzegovina, no. 02/1992.
- 2 Published in the Official Gazette of Bosnia and Herzegovina, no 03/2003.
- 3 Published in the Official Gazette of the Federation of Bosnia and Herzegovina, no. 36/2003.
- 4 Published in the Official Gazette of Republika Srpska, no. 49/2003.
- 5 Published in the Official Gazette of Bosnia and Herzegovina's Brcko Districts, number, 10/2003.
- 6 Published in the Official Gazette of Bosnia and Herzegovina, no. 03/2003.
- 7 Published in the Official Gazette of the Federation of Bosnia and Herzegovina, no. 35/2003.
- 8 Published in the Official Gazette of Republika Srpska, no. 50/2003.
- 9 Published in the Official Gazette of Bosnia and Herzegovina's Brcko Districts, no. 10/2003.
- 10 See article 20, point g. of the CPCBH; article 21, point g. of the CPCFBH; article 20, point e. of the CPCRS and article 20, point g. of the CPCBD.

- 11 Not all the employees of an interior ministry enjoy the status of authorized officials. Most interior ministries include police and administration. Police is the part of interior ministry whose employees enjoy the status of authorized officials.
- 12 Under article 5 of the Law on State Intelligence and Security Agency of Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina, no. 12/2004), in addition to standard intelligence and security tasks, this agency is also responsible for the cases of organized crime, trafficking in humans, narcotics and arms which are of danger for the safety of Bosnia and Herzegovina. In that sense, the agency's employees can take measures of covert surveillance and following, covert collection of information and searches.
- 13 Final text of the law has been published in the Official Gazette of the Sarajevo Canton, no. 42/2002.
- 14 The Law has been published in the Official Gazette of the Federation of Bosnia and Herzegovina, no. 42/2002.
- 15 Under article 3 of the Law on Internal Affairs of the Federation of Bosnia and Herzegovina «inter-cantonal crime...includes criminal activity where offenders and victims live in different canton criminal offences spreading over the territory of several cantons activity that begun in the territory of one canton and had been completed in the territory of another or criminal activity with negative consequences in the territory of two or more cantons».
- 16 Article 1 of the Law on State Border Service of Bosnia and Herzegovina, Official Gazette of Bosnia and Herzegovina, no. 02/2000.
- 17 See article 7, paragraph 1 of the Law on Judicial Police of the Federation of Bosnia and Herzegovina (Official Gazette of the Federation of Bosnia and Herzegovina, no. 19/1996) and article 5, paragraph 1 of the Law Judicial Police of Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina, no. 13/2003)
- 18 Similar provisions are included in article 5, paragraph 3 of the Law on Judicial Police of Bosnia and Herzegovina which regulates that the judicial police implements orders of the State Court related to searches of property and persons and temporary seizure of goods and ensures implementation of the executive orders of the state court as well as other orders of the state court that have for a goal to ensure the success of the legal proceedings.
- 19 Article 19 of the Law on Judicial Police of the Federation of Bosnia and Herzegovina
- 20 Article 20 of the Law on Judicial Police of the Federation of Bosnia and Herzegovina.
- 21 Law on Amendments to the CCFBH (Official Gazette of the Federation of Bosnia and Herzegovina, no. 29/2000)
- 22 The penalty prescribed in article 215 for the crime of "Organising a Group or Association for Smuggling or Distribution of Goods on Which Were Not Paid" is imprisonment for a term of at least three years so that the special maximum prescribed sentence is the same as the general maximum prescribed sentence of twenty years.
- 23 The Book of Rules was adopted by the Ministry of Finance of the Federation of Bosnia and Herzegovina and published in the Official Gazette of the Federation of Bosnia and Herzegovina, no. 21/2001.
- 24 Article 4, paragraph 3 of the Book of Rules (Official Gazette of Bosnia and Herzegovina, no. 21/2001)
- 25 The Law has been published in the Official Gazette of the Federation of Bosnia and Herzegovina, no. 02/1995.
- 26 See articles 7, 8 and 9 of the Law on Tax Administration of the Federation of Bosnia and Herzegovina (Official Gazette of the Federation of Bosnia and Herzegovina, no. 33/2002)
- 27 Official Gazette of the Federation of Bosnia and Herzegovina, no. 15/1996
- 28 Official Gazette of Republika Srpska, no. 03/1996

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