

COOPERATION BETWEEN LAW ENFORCEMENT INSTITUTIONS IN BOSNIA AND HERZEGOVINA – SITUATIONAL ANALYSIS

SUMMARY

Given the complexity of the BiH legislation which regulates the establishment and operation of law enforcement agencies and differentiates their roles and responsibilities depending on the strictly defined domain of work and limited jurisdiction, there arise inevitable problems in situations that require inter-agency cooperation. The original causes of the problem are multifaceted and complex, ranging from radical changes and the evolution of the judicial and political system, financing of the police structures, to the impact of the judicial system, and impact of burning social issues and relationships, to personal factors, and staffing.

POLITICAL AND JUDICIAL SYSTEM

It is clear that the ever increasing post-war constitutional and legal complexity of structures, responsibilities and relationships in law enforcement agencies has placed a significant burden on the institutions. Before 2000 cooperation between entity police agencies was on a very low level, and the absence of institutions with the authority to act on the entire territory of BiH has created a number of problems: **distrust of those belonging to the police services of the other entity, limited exchange of information, malevolence resulting from the war – all these characterised the few cases of cross-entity collaboration there were. These problems continue unabated.**¹

Since 2000, mainly under the influence of or as a result of decisions enforced by the then high representatives of the international community, Wolfgang Petritsch and Paddy Ashdown, there began an intensive process of reform and the establishment of new law enforcement institutions, as well as the reform of the judiciary, aimed at strengthening and improving internal state security and enhancing the efficiency and effective distribution of police activity. In all newly created institutions, especially in the State Investigation and Protection Agency and the BiH Border Police (whose jurisdiction, as opposed to that of FUP and MUP RS, extended

beyond entity borders to cover entire BiH), the employment of personnel was premised on the idea that the ethnic composition should reflect the results of the 1991 census and that the regional structure should be made as balanced as possible by employing staff from all parts of BiH. The creation of agencies whose jurisdiction extended to the entire state sought to enhance the spirit of cooperation and unity and increase efficiency, but this venture, imposed in much the same way as many other constructive solutions, has resulted in agencies which today perform their tasks with only slightly greater efficiency, given all the difficulties faced by the state of BiH.

PROBLEMS IN COOPERATION BETWEEN LAW ENFORCEMENT AGENCIES-INSTITUTIONS

A more detailed review of the main problems in the operation of law enforcement agencies, which were to be addressed, was necessary in order to create an accurate picture of the issues which indicated that legislative provisions, no matter how extensive, were not sufficient to fully resolve the problem of competences and parallel work of multiple agencies, which often created confusion and hampered investigative work.

A) PROBLEM OF TENDENTIOUS INDEPENDENCE IN PARALLEL OPERATION OF LAW ENFORCE- MENT AGENCIES – INTERAGENCY RIVALRY

A striking example of this are individual cases within the jurisdiction of the Prosecutor's Office of BiH, which were investigated in parallel by members of both the Federal Police and the Ministry of Internal Affairs of the Republic of Srpska.² Since the suspects who were suspected of being members of a criminal organisation resided in various cities all over the country, and since neither of the agencies had the authority to act alone against the whole group, it was necessary to establish inter-entity cooperation. The fact is, however, that in this cooperation both sides acted largely on their own initiative, with no adequate coordination of activities, and without constant contact to improve the efficiency of their parallel effort. In the end, the intentionally uneven work of the agencies in different stages of the investigation posed a problem for the prosecution team, causing an inordinate delay in investigation, and ultimately stirring resentment

¹ "Loša saradnja među policijskim agencijama u BiH" [Poor Cooperation among Law Enforcement Agencies in BiH], SRNA/Nezavisne novine, <http://www.nezavisne.com/novosti/bih/Losa-saradnja-medju-policijskim-agencijama-u-BiH-181147.html>, 22 February 2013

² "U akciji Taksa uhapšena 22 policajca" [22 Police Officers Arrested in Operation "Fee"], news portal radiosarajevo.ba, <http://www.radiosarajevo.ba/content/view/33861/60/>, 22 September 2010

and resulting in the agencies apportioning blame on each other, thus threatening any future long-term cooperation. The blame, however, rested on both agencies, as in their forced parallelism they neglected the need for the prior finding of a common approach and co-ordinating their efforts.

One of the main causes of the above problem is rivalry between agencies. If an agency starts working on a case that appears likely to culminate in success, it will be reluctant to subsequently hand over all fruits of its labour to a more competent agency or agency with jurisdiction to deal with the particular case more appropriately. If it was a criminal offence that falls outside the jurisdiction of the agency, the agency should, of course, refer the case to the competent agency. In practice, however, there have been lots of examples such as the previously mentioned one, which indicate that the agencies are prepared to insist on their conducting the investigation even at the cost of effective implementation of investigative activities, and, instead of referring the case to the State Investigation and Protection Agency, cooperate with the police structures of the other entity. Cooperation itself would not be a problem, unless it was established only nominally in order to maintain control over the investigation, which in turn results in a shift from truly necessary cooperation and referral of cases to the agency that would conduct the investigation with potentially better results and in accordance with the appropriately conceptualised competencies.

B) CONFLICTS OF JURISDICTION IN CRIMINAL CASES

Although the competences of the Prosecutor of BiH appear to be defined quite clearly and broadly in the Criminal Procedure Code of Bosnia and Herzegovina (Article 35, para. 2, items a) to j))³, this appearance is yet another problem that hinders the work and cooperation of law enforcement agencies and quite justifiably leads to a conflict of jurisdiction, thus contributing to the strife and animosity between the agencies.

Over the last few years, there has been a debate between the Prosecutor's Office of BiH and Indirect Taxation Authority and between the Prosecutor's Office of BiH and law enforcement agencies about the vagueness of the provisions concerning the threshold for criminal or misdemeanour prosecution of specific economic criminal offences, and overly broad wording of Article 7 (formerly Article 13) of the Law on the Court of Bosnia and Herzegovina, which defines criminal jurisdiction of that court. Due to incomplete provisions, it is unclear when, for example, specific acts that constitute the criminal offence of illicit trade in excise products would come under the jurisdiction of the Indirect Tax Authority as an authority that imposes misdemeanour sanctions (given that the Law on ITA contains an identical, but misdemeanour provision), and when the ITA or some other agency would have a duty to report the criminal act to the Prosecutor's Office. A similar problem of lack of monetary threshold exists in

several other criminal acts,⁴ where neither the laws nor the Court of BiH offered a determined value at its Plenum.

In light of the above, it is not surprising to see the legal uncertainty between the law enforcement agencies, which results in unwanted and unintended conflict over which agency has the right and/or duty to conduct preliminary investigation in certain cases.

This problem gets even more complicated when one looks at the competences of the Court of BiH. Namely, Article 7 paragraph 2 of the Law on the Court of BiH⁵ provides the following:

(2) The Court has further jurisdiction over criminal offences prescribed in the Laws of the Federation of Bosnia and Herzegovina, the Republic of Srpska and the Brčko District of Bosnia and Herzegovina when such criminal offences:

- a) endanger the sovereignty, territorial integrity, political independence, national security or international personality of Bosnia and Herzegovina;
- b) *may have serious repercussions or detrimental consequences to the economy of Bosnia and Herzegovina or may have other detrimental consequences to Bosnia and Herzegovina or may cause serious economic damage or other detrimental consequences beyond the territory of an Entity or the Brčko District of Bosnia and Herzegovina.*

While item a) does not produce any particular negative consequences (the terms are clear enough, and criminal offences are sufficiently specific and prescribed in detail in the Criminal Code of BiH), item b) has long produced and still produces a number of problems. It suffices to remember that, for example, the criminal offence of tax evasion exists in the Criminal Code of BiH, the Criminal Code of FBiH, the Criminal Code of RS and the Criminal Code of Brčko District of BiH, to realise the magnitude of the problem and the high likelihood (actually, not just likelihood, because such incidents have occurred in practice) of two agencies investigating the same case entirely independently of one another!⁶ This has often led to conflicts between agencies, as, instead of adopting a multidisciplinary approach such as would have been justified and in which the two agencies would have cooperated in the investigation, it appeared that one agency was trying to snatch the other agency's work on a particular case, or a situation was created in which one agency, without even knowing it, inadvertently obstructed the work of the other.

It is necessary to point out another cause of the above problem and the lack of knowledge on the part of one agency of the ongoing activities of the other, which leads to collisions, misunderstandings and difficulties in cooperation: insufficient activity of the Directorate for Coordination of Police Bodies of BiH. Given that the Directorate was set up specifically to coordinate the activities of police structures in BiH, the situations like the one described above where multiple agencies conduct parallel investigations thus jeopardising the successful implementation of investigative activities are a result of the lack of effective centralised system of ongoing actions. While the judiciary has made an important step forward in this regard by putting in place CMS as a comprehensive system of recording data on cases pending in the judicial institutions, thus allowing judicial institutions to be better informed about the individuals against whom the various institutions are conducting an investigation, the police system lags behind.⁷ It is this Directorate, based on in its jurisdiction, that should be the focal point that combines knowledge and coordinates the activities of individual agencies, and that should generate proposals and ideas, and act as the implementing body. At the meeting of the Coordination of Police Bodies and the Chief Prosecutor of the Prosecutor's Office of BiH, the issue of unimplemented electronic data exchange system was

³ Official Gazette of Bosnia and Herzegovina, nos. 3/03, 32/03, 37/03, 54/04, 61/04, 30/05, 53/06, 55/06, 32/07, 8/10, Criminal Procedure Code of BiH

⁴ Official Gazette of Bosnia and Herzegovina, nos. 3/03, 32/03, 37/03, 54/04, 61/04, 30/05, 53/06, 55/06, 32/07, 8/10, Criminal Code of BiH

⁵ Official Gazette of Bosnia and Herzegovina, no. 49/09, Law on the Court of BiH – official consolidated version, 2009

⁶ Strategic Action Plan of the State Investigation and Protection Agency 2012–2014, p 26, I. Sarajevo, February 2012

⁷ Workshop "Identifying Key Police Bodies as Points of Contact for Operation Centre", <http://www.dkpt.ba/aktuelnosti/?id=217>, webpage of the Directorate for Coordination of Police Bodies, 4 June 2012

highlighted as one of the key outstanding problems.⁸ Of course, it should be noted that the Directorate is still relatively young and shorthanded, and that there are ongoing projects that can potentially contribute to the improvement of its work.⁹

C) CONSEQUENCE OF INADEQUATE FUNDING OF LAW ENFORCEMENT AGENCIES

The approach to financing law enforcement institutions is a quite selective one, with police structures at lower administrative levels being far more poorly staffed and equipped than those at higher administrative and territorial levels.¹⁰ This leads to unequal opportunities for policing structures to perform tasks promptly, efficiently and with adequate results, as well as to unjustified expectations arising from knowledge of the structures of only one administrative-territorial domain, and finally to the actual impossibility of a cantonal police structure to respond to orders and cooperation with, for example, the Border Police of BiH. Such stratification places a burden on both the agency at a higher administrative level, because it makes it impossible for it to delegate certain responsibilities, and the agency at a lower level, as it creates a sense of powerlessness and inability to respond to challenges.

The role of the international community in respect of this issue is not negligible either. Their selective approach and favouring of state-level structures certainly contained a partially good intention (strengthening the state at the expense of the entities, encouraging the quarrelling “constituents” to focus on the whole, etc.), but these efforts have not paid adequate attention to funding, stimulating and training police structures at lower administrative levels, which in turn led to a number of practical difficulties in establishing cooperation.

D) IMPACT OF THE JUDICIARY ON COOPERATION BETWEEN LAW ENFORCEMENT AGENCIES

By eliminating the role of the investigating judge, whose job was to conduct investigations and direct the work of law enforcement agencies, the criminal codes in the country have transferred the investigating judges’ workload to prosecutors. This role requires them to “take the necessary measures... [to ensure] management and oversight of the investigation, as well as direct the activities of authorised officials pertaining to the identification of the suspect and gathering of information and evidence”,¹¹ or, in layman’s terms, to conduct the investigating procedure in a comprehensive manner and use the police apparatus as a kind of tool to do the job.¹² Unfortunately, few prosecutors have truly complied with this.¹³ A lot of prosecutors expect from the law enforcement agencies to “bring them the evidence”, paying no regard to what they are, by law, required to do – to direct, control and supervise. Thus, the law enforcement agencies are stretched between what the law requires them to do and what the prosecutor demands from them. They are forced to act on their own initiative when the responsibility for initiative, by law, rests with somebody else. However, this acting on one’s own initiative is not unlimited; for example, police agencies cannot independently establish cooperation with other law enforcement agencies, bureaucratic predestination of cases does not allow them to engage the resources of other agencies, and in some cases they are not even allowed to communicate with members of other agencies about the case and activities unless they have explicit approval and permission from the prosecutor, who, in turn, is true to the old system, fails to act, and instead keeps repeating “Bring me the evidence”. While in the previous examples it was the

legislative provisions and their inconsistency that stirred up mutual animosity and resentment, the cause here is the human factor – inadequate behaviour on the part of the superior and lack of will to adjust, presenting an obstacle to effective cooperation. This human factor will, perhaps, be taken into account more carefully in the new reform that could take place as part of the structured dialogue on the judiciary.

E) IMPACT OF SOCIAL AND PERSONNEL FACTORS

Despite the international community’s efforts to create a healthy climate for cooperation among the police structures, ethnicity as a factor continues to pose obstacles to deepening cooperation, especially if facts emerge that indicate active wartime role of police officers.¹⁴ Police structures of the entities or of individual cantons are not always capable of bridging that gap, and as much as this issue belongs to the realm of collective relations, it also continues to be a question of personal convictions. Similarly, the occurrence of corruption, especially if it is prevalent in police structures, upon exposure of the perpetrator stamps and bears the seal of future mutual distrust among agencies.¹⁵

Such consequences do not necessarily arise only from corruption or individual nationalism. Difficulties in cooperation can also come from arrogant, thoughtless and uncooperative staff occupying a position responsible for the establishment and maintenance of inter-agency cooperation. If correct allocation of personnel is not given due regard (which is a common outcome when the HR manager enjoys the management’s full confidence), this can destabilise and jeopardise interaction between agencies and lead to inadequate or completely ineffective cooperation. Furthermore, it is common practice for new heads of the law enforcement agencies to make quick and massive reallocations of human resources and numerous secondments of authorised official persons, such as was done by Dragan Lukač upon his appointment as director of the Federal Police Administration.¹⁶ While such moves may be meaningful and appropriate, and may even contribute to the successful work of the

8 “U Sarajevu održan sastanak koordinacije direktora policijskih agencija u BiH...” [Meeting of Coordination of Police Agency Directors Held in Sarajevo], news portal crime-zone.com, <http://crime-zone.com/index.php/sigurnost/rubrike/nacionalna-sigurnost/1236-u-sarajevu-odrzan-sastanak-koordinacije-direktora-policijskih-agencija-u-bih-glavnog-tuzioca-tbih-i-sekretara-ministarstava-sigurnosti>, 5 March 2013

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10 “Donacija vozila i opreme policijskim agencijama” [Vehicles and Equipment Donated to Police Agencies], news portal “Café.ba”, http://www.cafe.ba/vijesti/80541_Donacija-vozila-i-opreme-policijskim-agencijama.html, 31 October 2012

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13 Skenderagić Emir, “Kako rade bh tuzioci” [How BiH Prosecutors Work], <http://www.hayat.ba/vijesti/hayat-vijesti/53475-kako-rader-bh-tuioici>, 20 November 2012

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16 “Bit će i kadrovskih promjena” [Personnel Changes Imminent], Šeherčehajić Senita, Oslobođenje, <http://www.oslobodjenje.ba/index.php?id=14149>, 17 February 2011

institution in the long run, it is, however, necessary to implement them at a slower pace, **because otherwise the vision of the judiciary and other agencies about whom to collaborate with on a particular case can be completely lost**, or may result in one officer working in parallel on multiple cases. If this is not common practice, it will have an indirect negative effect on cooperation, because the employee will be less efficient as he/she will have divided attention.

RECOMMENDATIONS

Each of the above-mentioned problems has a possible solution which, in turn, implies the involvement of all social structures and a strong political will of the holders of executive and legislative powers:

1. Changes in the political and judicial systems – The transition from one social system to another has inevitably caused involuntary or voluntary adjustment of both the collective and individuals. Unfortunately, this adjustment has not been equally successful in all domains. The existing legislative provisions were designed hastily in order to facilitate the transition. Also, they are not acceptable in terms of their content and substance, have a lot of legal gaps, and provide for competences for which no funds or resources are available, or fail to provide for those that would be viable, while, at the same time, the lack of case law as a mandatory legal source continues to hinder judicial transformation. Also, police powers are not as broad as they used to be in the socialist period, and police structures are under much greater scrutiny and pressure from the public and senior institutions. Solution to the problems arising from this source certainly include more intense training of staff of law enforcement agencies, establishment of working groups at the level of the legislature, and opening applicable legislation to public hearings and expert evaluation with the aim of making possible amendments.

2. Conflicts of jurisdiction – At the level of the legislature, it is necessary to concisely define and delineate the responsibilities of individual institutions and agencies in order to avoid, to the extent possible, parallel investigations and mutual confrontation or “shifting the responsibility”. It is also necessary to encourage the Directorate for Coordination of Police Bodies to take steps towards designing a better system for cooperation between law enforcement agencies, as the existing one does not seem to be producing expected results. In considering this options, it would be useful to look up and to the existing CMS system in the judiciary, which, although not perfect, improves activities in certain domains.

3. The transition status of BiH – It is necessary to harmonise the provision of resources and make sure that all segments of the law enforcement structures develop equally. It is necessary to intensify work on the training of as many police officers for complex operational tasks. It is necessary, to the extent possible, to leave law enforcement agencies out of budget cuts, taking account of the difficulties they face in their daily work. Quite the opposite, it is necessary to increase the amounts of resources invested in the development of law enforcement institutions, in their stimulation, as well as in their training, at all administrative-territorial levels.

4. Reform of relations in the BiH judiciary – This is a problem that the law enforcement institutions can only have a partial influence on, by arguing, demanding, and insisting that the prosecutors they work with invest more time and attention to ongoing investigations. Of

course, it is very difficult to expect police officers to approach a government official in such a way. On the other hand, it is necessary to encourage the High Judicial and Prosecutorial Council to devote greater attention to accumulating knowledge about the activities of the judiciary, and to consistently make sure that they really perform their job in accordance with the law. Such monitoring should be carried out in cooperation with law enforcement agencies and heads of judicial institutions. Also, some of the resources should be devoted to education, or, if education fails, to sanctioning irresponsible officials.

5. The influence of social and personnel-related factors – This is a problem which law enforcement institutions can address internally, either through education, or by sanctioning employees who violate ethical and disciplinary rules in the workplace. Appropriate and active approach to the eradication of corruption, finding adequate staffing solutions, paying more attention to the activities that involve inter-agency cooperation, coordination of these activities by the management, regular meetings, consultations, and working together to eliminate problems in cooperation – these are just some of the options available to the heads of law enforcement institutions, and they are easily enforceable.

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