

THE ISSUE OF CIVILIAN INTELLIGENCE SERVICE CONTROL IN BOSNIA AND HERZEGOVINA

Original Scientific Article

DOI: 10.5937/zurbezkrim2102023C	COBISS.RS-ID 135111425	UDK 341.456:343.958]:351.746.2(497.6)
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Abstract: Intelligence and security services are a useful state apparatus; they are considered to be of special importance in every country. They can help protect and develop social relations, but they can also be an obstacle to the democratic development of society. The subject of this research is the social control of these services, which, if not appropriately resolved, instead of being in the purpose of society, can be used to serve the interests of powerful individuals and groups, which is completely contrary to their statutory role. The issue of intelligence service control in each country is of great importance for the development of democratic relations. In a divided society, such as the one in Bosnia and Herzegovina, it has a larger dimension due to the still present ethnic tensions and the disagreement of political elites on many issues, the most important of which is the interpretation of the Dayton Agreement. The paper presents the development of civilian intelligence services in BiH, and the way of their social control from the dissolution of the SFRY to the present day. Did it exist only declaratively or were the legal solutions implemented in practice? The aim of this paper is to answer these questions.

Keywords: society, intelligence service, control, parliament, government, judiciary

INTRODUCTION

The determinant for the State Security Service of Bosnia and Herzegovina was – “the striking fist of the Party”. This was most often pointed out in the “Party” itself, that is, the bodies of the League of Communists of BiH (LC of BiH). The mentioned coinage mainly refers to the ideological character of the intelligence and security organization that worked for the needs of the authorities in BiH and cooperated with the “Federal Service”, that is, performed its

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function under the Law on the Basics of the State Security System:² “The affairs of the state security in the Federation are performed by the Federal Secretariat for Internal Affairs and other federal administrative bodies when it is specifically determined, and in the republics and autonomous provinces – republican or provincial bodies in charge of internal affairs” (Law on the Basics of the State Security System, Official Gazette of the SFRY, No. 15/84, Article 9).

The law defined “the basis of the system of protection of the order established by the SFRY constitution (state security)” which was supposed to be “the basis of the activities of the state security service necessary for the fulfillment of the responsibilities by federal bodies and the harmonization of the bodies performing state security activities” (Law on the Basics of the State Security System, Official Gazette of the SFRY, No. 15/84, Article 1). Control activities were performed by the Commission for the Control of the State Security Service, and the President and members of the Commission were appointed by the SFRY Assembly, which was obligated to report on their work to the SFRY Assembly at least once a year (Law on the Basics of the State Security System, Official Gazette of the SFRY, No. 15/84, Article 17). In practice, the League of Communists of BiH, that is, the “Party”, had control over the State Security Service of BiH (SSS of BiH) to the extent that the application of the SSS methods according to the LC article had to be previously verified by the LC bodies. It is highly likely that this was the practice in other republics as well.

After winning the 1990 elections in BiH, the national parties took over key levers of power, including the State Security Service. The SSS of BiH continues to function as a part of the Republican Secretariat for Internal Affairs. Until the beginning of the war, the SDB BiH had formally functioned within the constitutional and legal framework as it was during the existence of the SFRY. The SSS of BiH, as the only security service, ceased to exist with the first armed conflicts in March 1992, and its members joined national movements on the basis of ethnicity.

This paper addresses the development of the intelligence service in Bosnia and Herzegovina with a special focus on the issue of its control. From the dissolution of the SFRY to Dayton BiH, the intelligence service had gone through various phases. During the war in BiH, there were three intelligence service, after the war there were two, and eventually one, a joint intelligence service. As the issue of control was raised more often, a question arose whether control reflected the need of society to control this important segment.

² The law was published in the Official Gazette of the SFRY, No. 15/84, and entered into force on April 7, 1984.

SECURITY SERVICES IN WARTIME AND THE POST-WAR PERIOD

After the declaration of independence and the outbreak of war, parallel intelligence systems were developed in Bosnia and Herzegovina:

- In the area under the control of the authorities in Sarajevo, that is, the Army of Bosnia and Herzegovina, the SSS continued to operate as part of the Ministry of the Interior. Intelligence and security bodies were formed within the BiH Army;
- Within the territory under the control of the Serb Republic of Bosnia and Herzegovina (later Republika Srpska), the National Security Service (NSS) operated within the Ministry of the Interior. At the end of 1993, it changed its name to the Department of State Security (the organization of the RSS of Serbia was used as a model)³, while military intelligence and security bodies operated within the Army of Republika Srpska;
- Within the territory of the Croatian Community of Herceg-Bosna, later the Croatian Republic of Herceg-Bosna, an independent intelligence and security system was developed and operated based on the model of the Republic of Croatia and its experiences, consisting of the National Security Service (NSS) of the Ministry of the Interior, and the Security Information Service (SIS) as a military service (Ćeranić, 2008).

With the Dayton Peace Agreement, the security function remained at the entity level, including police structures and intelligence services. The intelligence sector reform began in 2004. Until 2002, there were three national security services in BiH: The Agency for Research and Documentation (AID), the Republika Srpska State Security Department (RDB RS), a service that was subsequently transformed into the Republika Srpska Intelligence and Security Service (OBS RS) and the National Security (SNS). Each agency employs mainly members of one ethnicity, depending on whether it is the AID (Bosniaks)⁴ or

³ Under the Law on Internal Affairs, which was enacted by the National Assembly of the Serbian People in BiH at its session on February 28, 1992, "The unified public security service is regulated, the national security service is regulated and organized within the rights and duties of the Serb Republic of Bosnia and Herzegovina." (Official Gazette of Republika Srpska, No. 4/92). Article 18 states that "the tasks and duties of national security are performed by the Ministry", while "the National Security Service remains a specially organized service within the Ministry for the performance of national security tasks" (p. 76). The National Security Service performs tasks related to protection of the constitutional order and for that purpose collects data and information in order to prevent "jeopardizing the constitutional order and security of the country, and in this regard takes necessary measures and actions in accordance with the law and regulations enacted based on the law." (p. 76). The service is managed by the undersecretary in the Ministry, that is, the head of the National Security Service, and its internal organization also determines the work programs of the National Security Service, which is a continuation of the way of working from the socialist era. Members of the service also have police powers.

⁴ After the end of the war, in January 1996, by the decision of the President of BiH Alija Izetbegović, the SDB BiH, as the Bosniak intelligence service in Sarajevo was officially called, was sepa-

the SNS (Croats),⁵ or the RDB or OBS (Serbs). The services acted as national services of the constituent peoples, and the budget funds were allocated separately (Ćeranić, 2008).

Under the influence of the international community, in 2002 the Law on the Intelligence and Security Service of the Federation of Bosnia and Herzegovina (Official Gazette of the Federation of BiH, No. 23/02) the AID and SNS were merged into one Intelligence and Security Service (FISS) as a result there are two entity services in Bosnia and Herzegovina today. In Republika Srpska, the RDB functioned within the Ministry of the Interior until June 1998, when the Law on the Intelligence and Security Service of Republika Srpska was adopted (Official Gazette of Republika Srpska, No. 21/98). Under the law, the OBS was formed as a “special republican body for intelligence and counterintelligence work in order to protect the constitutional order and security of Republika Srpska” (Law on the RS Intelligence and Security Service, Official Gazette of Republika Srpska, No. 21/98).

Entity intelligence systems ceased to exist after both houses of the BiH Parliamentary Assembly passed the Law on the Intelligence and Security Agency of Bosnia and Herzegovina in March 2004 (Official Gazette of BiH, No. 12/04). Under this law, the entity intelligence services, the Federal Intelligence and Security Service (FISS) and the Intelligence and Security Service of Republika Srpska (ISS) are merged into one intelligence service. According to the Law, the BiH Intelligence Agency is responsible for collecting intelligence regarding security threats to Bosnia and Herzegovina, both within and outside Bosnia and Herzegovina, analyzing and disseminating such intelligence to authorized officials, as well as for collecting, analyzing and disseminating intelligence for the purpose of providing assistance to authorized officials as defined by the Criminal Procedure Code of Bosnia and Herzegovina, and other competent bodies in Bosnia and Herzegovina, where necessary to prevent threats to the security of Bosnia and Herzegovina (Law on the Intelligence and Security Agency of BiH, Official Gazette of BiH, No. 12/04).

In addition to security issues, the Agency should address global threats such as: terrorism, including international terrorism, espionage directed against BiH, sabotage directed against vital national infrastructure, organized crime such as human trafficking, drug trafficking, arms trafficking and the unlawful international proliferation of weapons of mass destruction or their components, as well as materials and tools required for their production. The Agency is also interested in acts punishable under international humanitarian law and organized acts of violence or intimidation against ethnic or religious groups within BiH. The scope of work of the Agency, therefore, is quite extensive and

rated from the Ministry of the Interior and formed as the Investigation and Documentation Agency (AID). With this reform, the members of the AID lost their police powers, and their key job was to document war crimes.

⁵ In parallel with the AID, the SNS operated as the intelligence service of the Croat people in BiH, based in Mostar.

broad and partially overlaps with the activities of the traditional police, and the concept of an open public competition for employment was introduced in the selection of key people of the Agency, which is a novelty and even an unusual practice in intelligence services (Ćeranić, 2011: 129).

The Presidency of Bosnia and Herzegovina approves the annual intelligence policy platform. The Intelligence Policy Platform is prepared by the Council of Ministers and adopted by the BiH Parliamentary Assembly. The platform contains general guidelines for the work of the Agency in accordance with the international standards.

THE ISSUE OF CONTROL

Regarding control and oversight in the security system of a country, they are important in many ways. Control should be viewed broadly, it is present and very important in all social spheres: economy, energy, transport, health, or finance. The control of the Intelligence and Security Service of Republika Srpska was based on Article 20 of the Law on the Intelligence and Security Service of Republika Srpska according to which “a three-member Commission for monitoring and control of the work of the Intelligence and Security Service of Republika Srpska is formed to control the lawful performance of the Service’s work.” The Commission is formed by the National Assembly of Republika Srpska at the proposal of the President of Republic. It elects persons “in accordance with the security practice”, and the chairman is obligated to provide information and report to the Commission at least once a year “in a way that provides insight into the lawful performance of the Service’s work and ensures the confidentiality of data.” Pursuant to the law, the President of the Republic provides guidelines for the implementation of the established policies on issues important for the protection of the constitutional order and security, the preservation of integrity and territorial sovereignty, political independence and international subjectivity of Republic (Law on Intelligence and Security Service of RS, Official Gazette of Republika Srpska, No. 21/98, Article 21).

The control of the work of the Federal Intelligence and Security Service of BiH was based on the Law on the Intelligence and Security Service of the Federation of BiH. According to the Law, the President of the Federation and the Vice President of the Federation will form a Permanent Working Body to coordinate and direct the intelligence and counterintelligence policy of the Federation. Members of the Permanent Working Body are: Chairman of the Houses of the Federation Parliament, President and Vice President of the Federation, Prime Minister and Deputy Prime Minister (Law on Intelligence and Security Service of the Federation of BiH, Official Gazette of the Federation of BiH, No. 23/02, Article 29).

As it has already been stated, the Intelligence and Security Agency of BiH was created by the Parliamentary Assembly of BiH in 2004 passing the Law

on the Intelligence and Security Agency of BiH. This agency was created owing to the influence of the international community, but also to the consent of the then representatives of all three constituent peoples. Although Republika Srpska had the right to an intelligence service under the constitution, the representatives of the then government agreed to form a joint intelligence agency.

The first foreign mediator hired by the Office of the High Representative (OHR) to reform the intelligence sector was a Hungarian diplomat Kalman Kocsis, a former head of the Hungarian intelligence. Kocsis created a concept according to which the two entity intelligence services continue to function, while at the level of Bosnia and Herzegovina, it was envisaged to form a joint body of 40 people, that is, a type of federal body with specific powers. Kocsis respected the constitutional competencies of Republika Srpska, but soon, because of the concept of the joint intelligence service he promoted, he was called out in tabloids and portals because of the scandals in which he was allegedly involved while still working in Hungary. He was soon removed from his position in the OHR. He was replaced by Slovenian Drago Ferš, who built the service in a way that suited political Sarajevo. However, an omission was made, in terms of Kocsis's "legacy", and even now, Article 3 of the current Law on the Intelligence and Security Agency of BiH states that the internal organization of the Intelligence Agency must monitor the constitutional structure of the country, meaning there exist two entity services and one joint.

It so happened that instead of on an equal basis and in accordance with the Law on the Intelligence and Security Agency of BiH, which says that the internal structure of this service (or agency) will monitor the constitutional order of BiH, things went differently. Instead of forming two offices (for Republika Srpska and the Federation of BiH), four offices were formed, which cross inter-entity lines. Instead of merging into an agency that would maintain the structure in accordance with the constitutional order of BiH, it happened that the Federal Intelligence and Security Service (FOSS) simply "swallowed" the Intelligence and Security Service of Republika Srpska (OBS). It just disappeared, which will cause bring long-term problems to this agency and society.

The subordination of Serbian personnel resulted in the main target of the Intelligence Agency being the institutions of Republika Srpska, and the most important targets were those who advocated the interests of Republika Srpska the most. The first "tangible" result of the aforementioned activities of the Intelligence Agency was the placing of the President of Srpska, then Milorad Dodik, on the so-called "black list" of the USA due to fabricated accusations that he violates the Dayton Peace Agreement. However, Dodik is not the only politician the Intelligence Agency deals with. Other people from political and public life, that is, all those who are considered to be opponents of the policy created in political Sarajevo, have become the target of the Intelligence Agency. The Intelligence Agency secretly monitors these people, records conversations, places its information and disinformation through selected journalists and media, but also informs the Western embassies on them.

The Law on the Intelligence Agency determines the manner of supervising the Agency as well as the forms of its control. Thus, the Chair of the Council of Ministers is exclusively responsible for overseeing the work of the Agency as well as ensuring the lawful performance of its work. This means providing general guidelines to the Agency for the performance of tasks within its competency (Ćeranić, 2011: 130).

In order for the Chair of the Council of Ministers to be able to supervise and coordinate security and intelligence issues, he forms an Intelligence Committee. The Committee consists of the Chairman of the Council of Ministers, his two deputies or two ministers from the Council of Ministers, where the representation of all three constituent peoples is taken into account. The Intelligence Advisory Service (IAS) is an expert body acting as the secretariat of the Executive Board (Law on the Intelligence and Security Agency of BiH, Official Gazette of BiH, No. 12/04, Article 15). Thus, the control of the Intelligence Agency by the executive power is regulated. It is also called the management type of control.

Another form of control, that is, oversight of the Agency, is supervision by the legislature. It is embodied in the Joint Security and Intelligence Commission for the Oversight of the Intelligence and Security Agency, and was constituted pursuant to Article 18 of the Law on the Intelligence and Security Agency of BiH, which requires the House of Representatives and the House of Peoples to jointly establish the Security and Intelligence Oversight Commission.⁶ The commission consists of 12 members, six from each house.

In accordance with the law, the Joint Intelligence and Security Commission is responsible for:

- overseeing the legality of the Agency’s work;
- holding hearings on the appointment of the Director-General and Deputy Director-General of the Agency and gives an opinion on such an appointment;
- reviewing reports from the Director-General regarding the expenditures of the Age;
- reviewing reports from the Inspector General;
- calling upon the employees of the Agency to provide, through the Chair, expert consultancy when necessary for the purpose of exercising its oversight authority;
- providing an opinion on the detailed budget proposal of the Agency;

⁶ With the entry into force of the Law on Amendments to the Law on the Intelligence and Security Agency of BiH, the Commission for the Oversight of the Work of BOTH BiH changed its name to the Joint Security and Intelligence Commission for the Oversight of the Intelligence and Security Agency of BiH (Law on Amendments to the Law on the Intelligence and Security Agency of BiH of January 29, 2009).

- conducting inquiries regarding the work of the Agency (Law on the Intelligence and Security Agency of BiH, Official Gazette of BiH, No. 12/04, Article 19).

The commission is numerous; we would say over numbered. Too many people come into contact with confidential documents. Although the president is elected from among the opposition parties, his role in the Commission's decision-making is marginal.

Pursuant to the Law on the Intelligence and Security Agency, the Council of Ministers is competent to prepare an annual platform on security and intelligence policy, which contains general guidelines for the work of the Agency in accordance with international standards. The Council of Ministers has other competencies, but this one is the most important in terms of providing political guidelines for the work of the Agency.

In the security system, the work of courts and prosecutor's offices is an important segment, because the courts and the prosecutor's office play a key role in combating all types of crime. At the same time, the judiciary has a controlling role, they should ensure the principle of the lawful performance of work in the security subsystem, and to protect citizens from abuse of the security system. "In the area of intelligence and security affairs, the judiciary has an extremely important control role in protecting human rights from the unlawful work of security services" (Dragišić, 2007: 160).

The Law on the Intelligence and Security Agency of BiH defines the control role of judicial bodies in several articles. Article 77 states surveillance in non-public places, the surveillance of communications via telecommunications and other electronic devices, as well as the search of property without the consent of the owner or person temporarily occupying the property, may be performed only in cases for which prior authorization has been obtained from the President of the Court of BiH or a judge of the Court of BiH appointed by the President of the Court of Bosnia and Herzegovina (Law on the Intelligence and Security Agency of BiH, Official Gazette of BiH, No. 12/04). The Court of Bosnia and Herzegovina has a dual role: it is part of the security system and at the same time it exercises control in the system. The Court of BiH also controls the work of the Agency through litigations in labor disputes.

Although the Law clearly defines how and which bodies exercise control over the BiH Intelligence and Security Agency, they have not fulfilled their statutory role. Scandals related to the Intelligence Agency took turns. One gets the impression that the Agency has become a powerful weapon in the hands of individuals and interest groups.

The Ušće scandal was quite exploited in the media (Vučetić, M. (January 11, 2017). It showed the helplessness and incompetence of the control bodies. Specifically, an authentic document issued by the Intelligence Agency was published in the media. Some (mostly the media in Republika Srpska) claimed that this was proof that the Agency was dealing with Serbian officials, while the me-

dia in the Federation portrayed everything as an attack on the state-run Intelligence Agency. The media in Serbia mostly looked at this scandal through the eyes of their colleagues from Srpska. The commission in charge of overseeing the OBA determined that there was no wiretapping of officials from Serbia and BiH (September 4, 2018). This scandal resulted in not only media polarization, but also political polarization between the Federation of BiH and Republika Srpska, but political polarization was evident within the entities too.

The release of an intercepted telephone conversation between the director of the Republican Center for the Research of War Crimes, Milorad Kojić, with the president of the Veterans Organization, Milomir Savčić, and his defense attorney, Miodrag Stojanović, in December 2019, left an impression that a significant number of Serbian officials were investigated by the Intelligence and Security Agency, which is in the purpose of the SDA leader, Bakir Izetbegović.

These cases are just part of a wide range of examples of the Agency's use and abuse. And the same thing always happens. The media point out the abuse which is talked about for the next seven days, the control bodies do not comment on it or they do it very abruptly, inappropriate to the role that the society has given them. The case is soon pushed aside by daily political events.

The exception was the case "Diploma", which is a curiosity for the intelligence and security situation in Bosnia and Herzegovina. After the inspection authorities annulled the diploma of Osman Mehmedagić, director of the OBA, obtained from the University of Business Studies in Banja Luka, he soon submitted another diploma obtained from the American University in BiH (RTRS (2020, July 4)).

The second diploma will become the subject of a special prosecutorial investigation by the Prosecutor's Office of BiH, during which Mehmedagić was detained, and the police conducted a search in his residential premises on the order of the Prosecutor's Office of BiH. The director and owner of the American University, Denis Prčić, spent significantly longer time in detention than his most famous "graduate". After his release from detention, Mehmedagic continued to work as the director of the Intelligence Agency. The Prosecutor's Office of BiH opened other investigations against the director of the Agency, but the Court of BiH refused to confirm the detention measure.

In many countries, there is control over the security system by the three main pillars of government, that is, we can talk about three models of control of the intelligence sector in BiH: the parliamentary model of control, the model of control by the executive branch, and the model of control by the judicial branch. Each model plays a role and is significant – it can be said that they depend on each other and support each other. The Parliament controls the security system by passing laws defining the work, powers and organization of the security sector, approving the budget, approving annual work platforms, protecting human rights and other tasks related to security sector control. The executive branch controls the conduct of operations, advises senior officials and ensures the flow of information. At the same time, the executive branch

appoints and dismisses the director of the Intelligence Agency. The judiciary's role is to protect citizens and citizen rights from the unlawful work and actions of members of the Intelligence Agency. This is essentially an appellate form of control. All these forms of control are defined in Bosnia and Herzegovina by laws. However, in practice, they are not implemented in a proper way.

CONCLUSION

In a divided society, such as Bosnia and Herzegovina, the issue of intelligence control is of particular importance, both from the aspect of democratic development of society and the aspect of interethnic relations. The Law on the Intelligence and Security Agency of BiH resolved this issue, but the solution remained only within the legal framework, which is almost not applied in practice. The legislature controls the Agency through the Joint Intelligence and Security Commission, but, for example, the Commission last met in February 2020, that is, almost two years ago. In the meantime, the scandals surrounding the Intelligence Agency took place one after another. The director of the Agency spent one night in detention and the police conducted a search in his residential and official premises on the order of the Prosecutor's Office of BiH. The executive branch also has control instruments, but they are not used. Few MPs know that the Executive Intelligence Committee exists.

Only the Prosecutor's Office of BiH has attempted to sanction the actions it considered illegal of individuals employed at the Agency, consequently every investigation has remained without a court epilogue, in terms of sanctions for the acts for which the Prosecutor's Office charged primarily the Agency's director. The media mostly and politically reported on the scandals related to the Agency in a biased way. Republika Srpska officials have been accused by the Intelligence Agency for unlawful performance of work for years, and identical accusations come from a part of the political elite in the Federation of BiH. All in all, the control of the intelligence sector in BiH exists only declaratively, in practice it is unenforceable, which can have long-term political consequences.

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Paper received on: 2/12/2021

Paper accepted for publishing on: 27/12/2021

