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Bosnia and Herzegovina

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**Strengthening Intelligence Governance in the
Western Balkans**

Intelligence Governance in Bosnia And Herzegovina

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Introduction¹

The intelligence sector reform in Bosnia and Herzegovina stands among the most successful reforms carried out following the signing of the Dayton Peace Agreement. Given that three separate intelligence services operated within Bosnia and Herzegovina (BiH) at the close of the war, this achievement gains in significance.

This paper will describe briefly the course of intelligence sector reform in BiH, focusing on the period from the end of the war until the present day. It will provide basic information on the Intelligence–Security Agency of Bosnia and Herzegovina (OSA), with a special emphasis on the bodies that oversee the agency’s work.

The control and oversight of intelligence services represents one of the greatest challenges faced by any democratic society because of the need to balance the frequently disagreeable conditions of intelligence work with a proper respect for basic human rights. Only by establishing effective governmental and nongovernmental control and oversight mechanisms can societies minimise the tendency to abuse intelligence agencies and their capabilities.

Like most European countries, BiH conducts control and oversight of its primary intelligence agency, OSA, using a range of different mechanisms: internal controls, executive controls, parliamentary controls, and judicial controls, as well as oversight by independent bodies, the media, and civil society organisations. This paper will consider each type of control mechanism separately.

The conclusions presented herein are based on an analysis of the legal solutions, tempered by a critical attitude towards the implementation of the Law on the Intelligence–Security Agency of Bosnia and Herzegovina. Because the first generation of intelligence reform—the establishment of institutions and the development of legislative frameworks for their operations—has been completed, attention can now turn to the second generation of reform, characterised by the adoption of democratic values.

Background

At the time of the 1995 Dayton Peace Agreement, each of the three warring sides (Bosniac, Serbian, and Croatian) operated its own intelligence services. The establishment of Entity

¹ This study was drafted as part of a DCAF project on Strengthening Intelligence Oversight in the Western Balkans, which was made possible by the generous support of the Ministry of Foreign Affairs of the Netherlands. The text will be published as a chapter in the forthcoming edited volume: *Intelligence Governance in the Western Balkans*. The opinions expressed in this study are those of the author and do not necessarily reflect the views or institutional positions of either DCAF or the Ministry of Foreign Affairs of the Netherlands.

Governments following the first post-war election brought about some consolidation, including the replacement of services established on an *ad hoc* basis with those grounded in a legal framework. The most notable new services were the Intelligence–Security Agency of Republika Srpska, the Information and Protection Agency, and the Security Intelligence Service. In March 2002, the latter two services were unified under the control of Croatian and Bosniac elites into the Federal Intelligence–Security Agency. Employees of the two former services did not automatically become employees of the new service. Instead, they were forced to reapply for their jobs through a competitive process that doubled as a security check. Meanwhile, the Intelligence–Security Service of Republika Srpska continued to operate.

When it became clear in 2003 that BiH had to alter its intelligence structure in order to qualify for Euro-Atlantic integration, the High Representative of the international community in BiH established an expert commission to propose intelligence reforms.² The commission’s mandate was to draft a law creating a single BiH intelligence service that would operate in accordance with European practices and principles.³ The move came at an opportune time, when hard-liners in Republika Srpska (RS) who might have blocked negotiations were still recovering from the Orao affair⁴ and another scandal involving the wiretapping of international forces in Banja Luka by the RS military intelligence service.

At the beginning of fall 2003, the commissioners finished drafting the Law on Intelligence Security Agency of Bosnia and Herzegovina and presented their proposal to the BiH Council of Ministers, but the matter languished there until March 2004, when the High Representative used his authority to transmit the bill to the Parliamentary Assembly. On 22 March, 2004, the Parliamentary Assembly adopted the Law on the Intelligence–Security Agency of Bosnia and Herzegovina (henceforth the Law on OSA) during a joint session of the House of Representatives and the House of the Peoples.⁵ OSA became operational on 1 June 2004 with a territorial jurisdiction covering all of BiH.

The law charged the Council of Ministers with executive control of OSA and its Chair with coordinating “the activities of the Agency and provid[ing] guidance regarding intelligence-security policy.” The law further stipulated that the Chair “shall supervise and be politically

² Office of the High Representative (OHR), *Decision Establishing the Expert Commission on Intelligence Reform* (29 May 2003)

³ The establishment of such a service was among the conditions included in the EU Feasibility Study.

⁴ In October 2002, a raid of the Orao Aviation Institute in RS by the NATO Stabilization Force (SFOR) uncovered evidence that the company had sold aviation parts to Iraq in violation of the Dayton Peace Agreement and a UN embargo on weapon sales to Iraq.

⁵ The complete text of the Law on OSA can be found at <http://www.osa-oba.gov.ba/ustavnosthr.htm> (accessed 28 March 2011).

responsible for the work of the Agency.”⁶ To advise the Chair on the performance of these tasks, the law established an Executive Committee, consisting of the Chair and the two Deputy Chairs (or two other members of the Council of Ministers, so long as all three of the constituent peoples of BiH are represented).⁷

Because of the specific nature of intelligence activity, the law further established a special parliamentary committee to oversee the work of OSA.⁸ The committee was charged with “overseeing the legality of the work of the Agency; holding hearings on the Director-General and the Deputy Director-General and expressing an opinion on such appointment; reviewing reports from the Director-General regarding the operations and expenditures of the Agency and especially analyzing the manner of budget expenditure; [and] providing an opinion on the detailed budget proposal of the Agency.”⁹

Intelligence Sector

The legal basis for the activities of OSA can be found in the Constitution of Bosnia and Herzegovina and the Law on OSA; political programme documents such as the Annual Intelligence–Security Policy Platform¹⁰ and the Security Policy;¹¹ and international conventions ratified by BiH, such as the European Convention on Human Rights.

The Law on OSA defines in detail the scope of the agency’s work—specifically, its authority to collect and analyze data on threats to BiH both on its own initiative and in response to directives from other state institutions (the ultimate consumers of the intelligence product). The Law on OSA further stipulates methods and timeframes for the delivery of the required product. It does not, however, grant OSA any corrective or police powers.

Because terrorism threatens BiH as it does the rest of the world, the Parliamentary Assembly has made counterterrorism a top priority for OSA. In the 2011 Annual Intelligence–Security Policy Platform, the Parliamentary Assembly directed OSA to “investigate intensively the activities of individuals, groups, organisations, and institutions financing, supporting, planning,

⁶ Law on OSA, Official Gazette BiH No. 12/04, Article 9

⁷ Ibid, Article 12

⁸ Article 18 of the Law on OSA required the Parliamentary Assembly to establish a joint Intelligence–Security Committee of the House of Representatives and the House of Peoples to oversee the work of OSA. An amendment to the law adopted on 19 February 2009 changed the name of this committee to the *Joint Committee for Oversight of the Work of OSA*.

⁹ Law on OSA, Official Gazette BiH No. 12/04, Article 19

¹⁰ The Annual Security–Intelligence Policy Platform is a planning document that sets forth basic tasks, goals, and priorities for OSA. It is prepared by the Council of Ministers, approved by the Presidency of BiH, and adopted by the Parliamentary Assembly.

¹¹ The Security Policy, adopted by the Presidency in February 2006, defines BiH’s long-term security strategy—including guidelines for creating the structures and mechanisms necessary for an effective, efficient security sector.

preparing, or organising acts of terrorism, whether they represent global threats, threats to BiH in the present, or threats to BiH in the future.”¹²

Even though the High Representative’s expert commission based the Law on OSA on the best European practices, including an emphasis on the principle of democratic oversight, the activities of OSA have hardly been open or transparent, The authoritarian legacy of the pre-war system still lingers, particularly in the widespread public view that OSA has been slow to adopt new democratic values. That few citizens have filed complaints against OSA may be an indication of agency professionalism or it may be that OSA has simply failed in its legal obligation to notify citizens when they have been subjected to special investigative measures such as physical surveillance or wiretapping.¹³

International Cooperation

Recognising the overlapping nature of many security threats (notably terrorism), the Law on OSA specifically provides for international cooperation:

*For the purpose of fulfilling its responsibilities in accordance with this Law, the Agency may, with the approval of the Chair [of the Council of Ministers], enter into an arrangement with intelligence and security services of other countries....On the basis of international agreements, the Agency may cooperate with foreign security and other appropriate services for the purpose of exchanging data, jointly executing activities that fall under the scope of the activities of the Agency, and establishing technical and educational cooperation.*¹⁴

The 2011 Annual Intelligence–Security Policy Platform further states that OSA should “keep, and, if necessary, develop the cooperation of foreign services and institutions and aspire towards deepening partnerships within which data and information shall be exchanged and joint activities undertaken whenever necessary.”¹⁵ Yet the extent to which such cooperation is taking place remains unclear because, as documented in the report for 2008 of the Joint Committee for Oversight of the Work of OSA, the agency has not been fulfilling its legal obligation to inform the Chair of the Council of Ministers regarding cooperation agreements concluded with foreign states and institutions.¹⁶

Cooperation with Other Domestic Security Agencies

¹² Parliamentary Assembly, *Annual Security–Intelligence Policy Platform* (12 January 2011)

¹³ Law on OSA, Official Gazette BiH No. 12/04, Article 77

¹⁴ Law on OSA, Official Gazette BiH No. 12/04, Article 70

¹⁵ Parliamentary Assembly, *Annual Security–Intelligence Policy Platform* (12 January 2011)

¹⁶ Parliamentary Assembly, *Report on the Work of Joint Committee for Oversight of the Work of OSA* (January 2009), page 4

The relationships between OSA and other domestic security agencies, such as the police, are governed not by statutory law but by a Memorandum on Cooperation signed by the agency directors that defines the rights and responsibilities of each party. Several joint operations have been carried out under the terms of this memorandum, including the “Svjetlost” action of February 2010 involving OSA, the State Investigation and Protection Agency (SIPA), the Border Police, entity Ministry of Internal Affairs, and the Brcko District Police. This operation, the largest joint security action yet in the post-war period, was designed to identify suspects who posed a threat either to national security or to the constitutional order.¹⁷ OSA also cooperates with other BiH security agencies in conducting security checks.¹⁸

Public Perception

Public discussion of the work of OSA relates primarily to the agency’s lack of openness and transparency. OSA’s web site,¹⁹ for example, offers little information and has not been updated since 2006. Similarly, OSA has failed to appoint a public relations officer to work with the media and civil society organisations. According to Radio Free Europe editor Dženana Karabegović, cooperation between OSA and the media is virtually nonexistent, making it nearly impossible for reporters to obtain information on the agency and its activities.²⁰

Oversight and Control

As stated previously, control and oversight of OSA and its activities takes place through several different mechanisms:

- internal bodies
- executive
- parliament
- judiciary
- independent state bodies
- the media and civil society organisations

Internal Bodies

¹⁷ <http://www.jutarnji.hr/u-selu-gornja-maoca-u-bih-pokrenuta-policijska-akcija-protiv-vehabija/529772/> (accessed 31 March 2011)

¹⁸ Presentation by OSA representative Faruk Bajramović during the seminar “Intelligence Sector Reform in BiH—Five Years after the Establishment of OSA,” Sarajevo, 7–9 June 2009

¹⁹ <http://www.osa-oba.gov.ba/>

²⁰ Presentation by Radio Free Europe editor Dženana Karabegović during the seminar “Intelligence Sector Reform in BiH—Five Years after the Establishment of OSA,” Sarajevo, 7–9 June 2009

The Internal management of OSA is performed by its Director General and Deputy Director General. The Law on OSA charges the Director General with “organizing, approving, and supervising all activities of the Agency“ and obligates him to deliver regular reports to the Executive Committee of the Council of Ministers (on the work of the agency) and to the Joint Committee for Oversight of the Work of OSA (on budgetary expenditures).²¹ The law also grants the Director General the authority to conduct investigations, including audits and inspections, if he suspects a problem within the agency.²² In this way, the Law on OSA seems to have harmonised the internal management of the agency with democratic practice.

Internal control of the agency’s activities is also performed by the OSA Inspector General. The Law on OSA charges the Inspector General with “reviewing the activities of the Agency to ensure they are conducted in accordance with applicable legislation and regulations.”²³ In practice, when an investigation is demanded by the Chair of the Council of Ministers, the Executive Committee, the Joint Committee for Oversight of the Work of OSA, the OSA Director General, an aggrieved citizen, or an OSA employee, it is the Inspector General who manages the work. The Inspector General can also conduct investigations on his own initiative.

Based on these investigations, the Inspector General presents the Director General with recommendations for the resolution of the initiating complaint and then follows up to determine whether the recommendations have been implemented.²⁴ The Law on OSA grants the Inspector General the authority, upon notification of the Director General, to investigate employees of the agency with full access to premises and data possessed by the agency.²⁵ The law also obligates the Inspector General to cooperate with the Ombudsman for Human Rights.²⁶

Whether these internal controls are sufficient is difficult to determine because of the agency’s lack of openness. In the opinion of Muamera Numić, Secretary of the Joint Committee for Oversight of the Work of OSA, a physical relocation of the office of the Inspector General from OSA’s premises would improve the internal control of the agency.²⁷

Executive

²¹ Law on OSA, Official Gazette BiH No. 12/04, Article 27

²² Ibid, Article 27

²³ Ibid, Article 33

²⁴ Ibid, Article 33

²⁵ Ibid, Article 35

²⁶ Ibid, Article 33

²⁷ Interview with Muamera Numić, Secretary of the Joint Committee for Oversight of the Work of OSA (20 March 2011)

The Law on OSA defines the rights and responsibilities of the Presidency, the Council of Ministers, and the Chair of the Council of Ministers with regard to executive control of OSA.²⁸ Although the law makes the Presidency responsible for comprehensive oversight of the agency, granting it the authority to direct the Inspector General to conduct investigations into actual or potential problems within OSA, the Presidency has, in fact, the least important role in executive control of the agency. In practice, its principal duties are to review the work of the agency, provide opinions on reports received from the Inspector General, and approve the Annual Intelligence–Security Policy Platform. Yet these duties don’t amount to much. Media reports show that during 2010 the members of the Presidency never discussed issues related to the work of OSA in any of their regular sessions.

That the Law on OSA subordinates the role of the Presidency to that of the Chair of the Council of Ministers is made clear in the provision stipulating that all communication between the Presidency and OSA travel through the Chair of the Council of Ministers. Furthermore, the law states, “the Presidency, collectively or any individual member thereof, shall not issue instructions to or otherwise direct the work of the Director General, the Deputy Director General, or any other employee of the Agency, except for the Inspector General.”²⁹

A rare instance of direct interaction between the Presidency and OSA took place early in 2011, when the Presidency acted to suspend the issuance of export licenses for weapons and other military equipment. The Presidency took this action in accordance with a warning from OSA based on information obtained from diplomatic sources that BiH entities were exporting weapons in violation of a United Nations resolution and other international regulations.³⁰ OSA was authorised to provide this information directly to the Presidency by a provision in the Law on OSA that allows the agency to communicate directly intelligence that it considers relevant and important to the work of the Presidency.³¹

The next link in the chain of executive control over OSA is the Council of Ministers. In the BiH political system, the Council of Ministers represents the Government of BiH, with the Chair of the Council of the Ministers occupying a role similar to that of prime minister. According to the Law on OSA, the Council of Ministers is responsible for “preparing an annual Intelligence–Security Policy Platform, approving the Book of Rules on the Internal Organization of OSA, [and] approving the annual Activity Programme of the Agency, taking into consideration the written opinions of the Ministry of Finance and the Treasury with regard to the financial aspects of such

²⁸ Law on OSA, Official Gazette BiH No. 12/04, Articles 7–11

²⁹ Ibid, Article 7

³⁰ <http://www.predsjednistvobih.ba/zaklj/sjed/1/?cid=15741.2.1> (accessed 5 April 2011)

³¹ Law on OSA, Official Gazette BiH No. 12/04,, Article 6

Programme and the Ministry of Foreign Affairs of Bosnia and Herzegovina with regard to issues within its competence.”³²

The Chair of the Council of Ministers has even more numerous rights and responsibilities. Among them, he is charged with “supervising the operation of the Agency and ensuring the lawful performance of its work, including by providing general guidelines to the Agency for the performance of tasks within its competency...in a manner that shall promote the effectiveness and responsibility of the Agency; formulating policies for development of the Agency and issuing guidelines for the implementation of such policy in coordination with the Director General; issuing instructions necessary for the implementation of this Law; convening the Executive Committee at least once each calendar month; and providing an annual briefing on the activities of the Agency to the Presidency and the Parliamentary Assembly.”³³

Although the Law on OSA establishes some general duties and powers of the Executive Committee,³⁴ the committee does not actually play much of a role in intelligence oversight. One reason for this weak performance may be a lack of political will to improve cooperation between the executive branch and the Parliamentary Assembly. Notorious examples of this lack of cooperation are the persistent delays that accompany adoption of the Annual Intelligence-Security Policy Platform.

Appointments of the Director General and Deputy Director General require all three executive oversight bodies to work together. According to the Law on OSA, “The Director General and the Deputy Director General shall be appointed and dismissed by the Council of Ministers, upon the proposal of the Chair of the Council of Ministers and in consultations with members of the Presidency, the Executive Committee, and the Intelligence-Security Committee.”³⁵ Nevertheless, as a matter of practice, the appointment process functions somewhat differently.

For example, the Council of Ministers has taken the position that the selection process need not be competitive.³⁶ As a result, the current Director General, Almir Džuvo, has held the post since the creation of OSA in 2004 and is not scheduled to leave office until 2014. Although Džuvo’s lengthy tenure apparently violates the provision in the Law on OSA limiting the Director General to two four-year terms,³⁷ the Council of Ministers has ruled that Džuvo’s first two years in office were merely a “transitional period.”³⁸

³² Ibid, Article 8

³³ Ibid, Article 10

³⁴ Ibid, Articles 12-17

³⁵ Ibid, Article 25

³⁶ <http://www.oslobodjenje.ba/?id=6298> (accessed on 11 April 2011)

³⁷ Law on OSA, Official Gazette BiH No. 12/04, Article 26

³⁸ <http://www.oslobodjenje.ba/?id=6298> (accessed on 11 April 2011)

The consultation on appointments required by the Law on OSA is also respected more on paper than in practice. Interviews with relevant officials indicate that the Council of Ministers avoids consulting with the Presidency, the Executive Committee, and the Joint Committee for Oversight of the Work of OSA because it wants to make the appointments as quickly as possible and thus avoid subjecting them to political gamesmanship.

To protect OSA from political influence and thus preserve the agency's neutrality, the Law on OSA stipulates that "the Chair may not, in whole or in part, assume the responsibilities and rights of the Director General or the Deputy Director General."³⁹ Otherwise, the law addresses this issue primarily by dividing authority among the Chair of the Council of Ministers, the Executive Committee, and the Presidency. Although, as discussed previously, the latter two bodies have performed weakly, there is little evidence to suggest that politically motivated abuses of power have taken place.⁴⁰

Parliament

In accordance with the best practice of modern democracies, the Law on OSA includes parliamentary controls on OSA, implemented primarily through the Joint Committee for Oversight of the Work of OSA, whose twelve members include six from the House of Representatives and six from the House of Peoples. The committee's work is managed by a chair and two deputy chairs, with the stipulation that the chair not be a member of the governing coalition.⁴¹ (Generally, the chair is a member of the strongest opposition party.)

The Law on OSA charges the Joint Committee with "overseeing the legality of the work of the Agency, holding hearings on the appointment of the Director General and Deputy Director General of the Agency, and expressing an opinion on such appointments."⁴² The committee's jurisdiction over budgetary expenditures is perhaps its most important control tool, of which it makes occasional use.⁴³ Based on the committee's analysis of budgetary expenditures, it expresses an opinion on each proposed OSA budget, as required by law.⁴⁴

The Joint Committee also has the power, granted by the Law on OSA, to inquire into the agency's work should the committee suspect that OSA has been acting illegally.⁴⁵ As part of these inquiries, the committee can access relevant documents and "call upon" the Chair of the Council of Ministers or the Director General to initiate formal investigations. It can even compel the

³⁹ Law on OSA, Official Gazette BiH No. 12/04, Article 11

⁴⁰ The one exception relates to the politically motivated attack on OSA that took place in early 2011.

⁴¹ Law on OSA, Official Gazette BiH No. 12/04, Article 18

⁴² Ibid, Article 19

⁴³ Based on an analysis of the Director General's regular reports.

⁴⁴ Law on OSA, Official Gazette BiH No. 12/04, Article 19

⁴⁵ Ibid, Article 20

Chair and Director General to make oral reports to the committee on the results of such investigations.

Reports issued by the Joint Committee concerning its work during 2007, 2008, and 2009 show that the Chair of the Council of Ministers has failed to fulfil his duty to deliver annual reports on the work of OSA to the Joint Committee. Similarly, the Chair has also failed to deliver required reports on the agency's cooperation with foreign intelligence services. The poor cooperation between the Chair and the Joint Committee is also evident in their repeated failure to accomplish adoption of the Annual Intelligence–Security Policy Platform within the legally mandated time period.

The committee's work is limited somewhat by the authority of the Chair of the Council of Ministers or the Director General to withhold information from the committee that might, if revealed, jeopardise BiH national security by exposing important OSA sources and methods. Nevertheless, when investigating suspected illegal activity within OSA, the committee can, given the consent of at least seven members, compel the Chair or the Director General "to provide information, the knowledge of which is essential for overseeing the legality of the work of the Agency."⁴⁶ There is no record, however, that this power has ever been used.

During the past four years, the members of the committee have made twelve visits to the headquarters and field offices of OSA, all of which were announced.⁴⁷ This practice should be altered in the future so that investigatory visits are unannounced.

With the aim of improving the overall state of oversight, the Committee proposed the Law on Parliamentary Control over the Security Sector, which is currently in parliamentary procedure of adoption. In effect, this Law would provide one of the key elements in the overall oversight over the security institutions. At the moment, the current practice of oversight is conducted through different sets of legislative frameworks concerning different security institutions, as well as through internal rulebooks of the Parliamentary Assembly BiH. The proposed law would constitute a single piece of legislation governing oversight over the security sector in BiH.

Pursuant to the Law on Classified Data Protection, the Joint Committee served for a time as the body to which entities appealed denials of access to classified data.⁴⁸ An amendment to the Law on OSA initiated by the Joint Committee has since transferred this responsibility to a "committee appointed by the Council of Ministers."⁴⁹

⁴⁶ Ibid, Article 21

⁴⁷ Interview with Muamera Numić, Secretary of the Joint Committee for Oversight of the Work of OSA (20 March 2011)

⁴⁸ Law on Classified Data Protection, Official Gazette BiH No. 54/05, Article 45

⁴⁹ Amendments to the Law on OSA, Official Gazette BiH No. 12/09, Article 21

In addition to proposing changes to the legal framework of intelligence activity, the committee has also been active in organising seminars for the edification of civil society organisations and the media. The purpose of these activities has been to open up OSA's work to the public—a function made all the more important by OSA's own desire to close itself off from public view. For all practical purposes, the Joint Committee has become the only reliable source for information about the agency and its activities.

At present, the staff of the Joint Committee consists of a Secretary and two subordinates. According to the current Secretary, Muamera Numić, these three officials are sufficient to perform all of the necessary work.⁵⁰

Judiciary

The role played by the BiH judiciary in controlling OSA relates specifically to OSA's use of special investigative measures. According to the Law on OSA, "Surveillance in non-public places, the surveillance of telecommunications, and other forms of electronic surveillance, as well as the searching of property without the consent of the owner or temporary occupant, may only be used in cases where there has been advance authorisation by the President of the Court of Bosnia and Herzegovina or a Judge of the Court of Bosnia and Herzegovina designated by the President of the Court."⁵¹ All requests for such authorisation must be submitted by the Director General in writing and include a detailed explanation and justification of the request, the specifics of which are enumerated in the law.

The original Law on OSA further obligated OSA to inform citizens, who have been the subjects of special investigative measures within thirty days of the termination of those measures.⁵² However, an amendment to the Law on OSA adopted in 2006 added qualifying language authorising OSA to delay notification if such notification "might jeopardise the finalisation of the Agency's tasks."⁵³ This change has allowed OSA to evade the notification requirement simply by claiming that its tasks are not yet finalised.

When OSA has collected information illegally—that is, without proper authorisation from the Court—the Director General is obligated to ensure that all such information is immediately destroyed. He is also required to notify the Chair of the Council of Ministers and the Inspector

⁵⁰ Interview with Muamera Numić, Secretary of the Joint Committee for Oversight of the Work of OSA (20 March 2011)

⁵¹ Law on OSA, Official Gazette BiH No. 12/04, Article 77

⁵² Ibid, Article 77

⁵³ Amendments to the Law on OSA, Official Gazette BiH No. 56/06, Article 29

General and to initiate disciplinary action against the person who acted in contravention of the law.⁵⁴

In 2007, OSA obtained high-quality wiretapping equipment from the European Commission—which the country’s telecommunications companies have since installed so that OSA can intercept telephone conversations, text messages, e-mails, and other internet traffic.⁵⁵ However, because OSA’s mandate is limited to the collection, analysis, and distribution of intelligence data, and because it operates exclusively under the Law on OSA, the information that the agency collects through its use of special investigative measures cannot be used in criminal proceedings in BiH courts.

The Law on OSA thus generally respects the norms and practices of contemporary Western intelligence work, but how well these legal standards are being met is less clear. As stated previously, OSA’s lack of transparency makes its manner of operation very difficult to discern. Nor is the problem limited to OSA. In an attempt to research judicial authorisation of OSA requests for special investigative measures—specifically, the number of requests made by OSA and the number approved by the Court—the authors of this paper made requests to the Court for information. In response, the Court informed the authors that it does not keep adequate records.⁵⁶

Independent State Bodies

The Supreme **Audit Office** of the **Institutions of BiH** is an independent body charged with auditing the financial operations of state institutions. Pursuant to the **Law on the Auditing of Institutions** of Bosnia and Herzegovina,⁵⁷ the Supreme Audit Office is responsible for providing an independent evaluation of the budgetary expenditures of state institutions. In particular, Articles 39 and 40 of this law give the Supreme Audit Office the authority to compel institutions to grant auditors free and easy access to all data and documents within the institution and to provide auditors with any additional information, documents, or statements they require.

The Supreme Audit Office routinely exercises this authority in the course of its work but not when reviewing the financial operating of OSA. Even though Article 41 of the **Law on the Auditing of Institutions** of Bosnia and Herzegovina **specifically** states that the provisions in Articles 39 and 40 shall not be limited by any other law, the practical reality is that, because of

⁵⁴ Law on OSA, Official Gazette BiH No. 12/04, Article 79

⁵⁵ “Telecom’s Operators Yielded to Parliament’s Request,” *Oslobodjenje*, 14 June 2008

⁵⁶ Letters to the authors from the Court of BiH dated 17 January 2011 and 24 February 2011

⁵⁷ **Law on the Auditing of Institutions** of Bosnia and Herzegovina, Official Gazette BiH No. 12/06

the conflict between this law and the Law on Classified Data Protection,⁵⁸ the Supreme Audit Office enjoys only limited access to information on the operations of OSA. This is evident in the annual reports of the Supreme Audit Office, which do not mention any financial control of OSA.

Another independent state body whose jurisdiction nominally includes OSA is the Ombudsman for Human Rights. Pursuant to the Law on the Ombudsman for Human Rights of Bosnia and Herzegovina, the Ombudsman has the authority, when investigating a human rights complaint, to “ask for at any time any document that he considers necessary for the investigation.”⁵⁹ This right of access specifically includes “those [documents] registered as confidential or secret.”⁶⁰ Furthermore, as noted previously, the Law on OSA requires the Inspector General of OSA to assist the Ombudsman in his investigations.⁶¹

Media and Civil Society Organisations

Oversight by the public—that is, by the media and civil society organisations—is the weakest link in the control and oversight chain. As the authors of this paper have themselves experienced, the lack of available information on OSA makes it nearly impossible for outsiders to understand the agency’s manner of operation. As with other legal requirements concerning openness, OSA regularly fails to respect the provisions of the Law on Freedom of Access to Information⁶², refusing to respond to any requests made pursuant to this law. The authors would like to emphasise this statement, by presenting three examples of situations where there was a significant lack of cooperation between OSA and the public.

Firstly, when the proposed 2011 BiH budget included an increase of one million KM in the budget of OSA, journalists asked why. OSA’s only response was, “For all requested information, you must turn to our spokesman. Because we have no spokesman, you cannot obtain the information.”⁶³ The members of the Joint Committee for Oversight of the Work of OSA are much more open to the media and frequently respond to media inquiries that OSA has rejected or ignored.

Secondly, the other example that indicates low levels of communication between OSA and the media is a scandal that took place in the beginning of March 2011 at the University of Banja Luka. The President of the Students’ Parliament of the University in Banja Luka was interrogated by two men, who identified themselves as OSA officials. “The state Intelligence –

⁵⁸ Law on Classified Data Protection, Official Gazette BiH No. 54/05

⁵⁹ Law on the Ombudsman for Human Rights of Bosnia and Herzegovina, Official Gazette BiH No. 19/02, Article 23

⁶⁰ Ibid, Article 28

⁶¹ Law on OSA, Official Gazette BiH No. 12/04, Article 4

⁶² Law on Free Access to Information, Official Gazette BiH, No. 28/00

⁶³ <http://www.nezavisne.com/novosti/bih/OSA-trazi-jos-milion-KM-za-plate-7140.html> (accessed 11 April 2011)

Security Agency refused to give any comment, hence the case gets mystery remarks,⁶⁴ which gives room to various speculations.

Finally, according to media reports from 2008, although legally provided for, since its establishment, the Intelligence-Security Agency of Bosnia and Herzegovina has not published any annual reports. "OSA's management has, until this day, delivered four reports on its work and financial expenditures. Mirko Okolić, the Chair of the Parliamentary Committee for Oversight over the Work of OSA, does not know the answer to the question why heads of this institution don't publish reports on their work."⁶⁵ Given that OSA collects 90% of its information from publicly available sources, it may be argued that they should make their reports publically available, without providing insight into operative work. This would help to remove the taboo from the work of OSA and to alter the practice predominant in the former system. Such communication between OSA and the public would raise the level of trust citizens have in their work, since currently, everything related to the work of OSA is covered by a veil of secrecy.

Conclusion

The first generation of intelligence sector reform in BiH has been successfully completed. It consisted of the establishment of OSA and the adoption of laws necessary for the agency's successful performance. The second generation of reform has seen the creation of a legislative framework for OSA based on the best practices of democratic countries.⁶⁶ Adoption of this legal solution was made possible in large part by the active involvement of the international community and especially the leadership of the High Representative. Its implementation, however, especially the implementation of those provisions relating to control and oversight of OSA, has been less successful.

Although all of the necessary control institutions have been established and staffed, they have not yet joined together into an effective, coordinated system. The resulting lack of cooperation, especially between the executive and legislative branches of government, has allowed OSA to evade many of its legal responsibilities, most obviously with regard to transparency and

⁶⁴ <http://www.mojevijesti.ba/novost/75384/vlast-rs-a-zastrasuje-banjalucke-studente> , accessed on April 5th, 2011

⁶⁵ <http://www.nezavisne.com/novosti/bih/OBA-cetiri-godine-25207.html?modul=stampano-izdanje&poziv=dogadjaji&naslov=OBA-cetiri-godine&idv=25207> , accessed on April 11th, 2011

⁶⁶ A weakness of this legal framework became evident in the aftermath of the 2011 parliamentary elections. Specifically, the Election Law of Bosnia and Herzegovina contains no provision for the control and oversight of OSA in the absence of a governing coalition. As of this writing, six months have passed since the dissolution of the previous Government without a new Government being formed. As a result, there is currently no functioning Joint Committee for Oversight of the Work of OSA. For obvious reasons, the Election Law should be amended to provide for the continuing functioning of the Joint Committee.

openness. Cooperation must be improved—in particular between the Chair of the Council of Ministers and the Joint Committee for Oversight of the Work of OSA. Furthermore, the in-name-only establishment of the Executive Committee is not good enough. It must exist not simply on paper but in reality as well if it is to carry out its important, legally mandated responsibilities.

Finally, a top priority in the coming years should be the publication of annual reports on the work of OSA. Making the agency's activities more transparent in this way may help improve the public perception of OSA as an excessively authoritarian organisation and promote the agency's embrace of democratic values and standards. All would benefit if OSA were able to distance itself further from the mindset of the former political system—according to which everything connected to intelligence work had to be a top secret.

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