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PRIVATISATION OF THE SECURITY SECTOR AS PART OF CRIME PREVENTION STRATEGY IN BOSNIA AND HERZEGOVINA

With passing of the Law on Protection of People and Property in the Federation of Bosnia-Herzegovina (further in the text – Federation) the framework has been set up for a novelty - the private protection agencies. Although the issue of private security was partially addressed by the 1986 Law on the Social Self-defence, existing solutions had not been appropriate for the contemporary safety challenges and related needs. The private security activity has emerged as part of the overall community protection system. The activities of the private protection agencies are primarily focused on protection of persons and property through the application of physical, technical or combined (integral) protection mechanisms. Since in the past there were no private protection agencies in Bosnia-Herzegovina, it was necessary to pass a law that would fully legitimise this complex sphere of providing protection services. The Law on Protection of Persons and Property has formally established a distinction between the state security mechanisms and private protection agencies by placing the latter in the private sector. The newly established private protection agencies were authorised to act as additional crime supervisors within the limits precisely defined by the law and can offer their services on commercial basis. Established standards require from these private protection agencies to engage professional and specialised staff and respect professional and ethic codes in carrying out their duties.

INTRODUCTION

Uncertainty and a permanent feeling of insecurity are characteristic of humans. As rational beings, humans exist within their technical and social environment which produces the sources of their fears in the form of processes which, by their very existence, jeopardise social order, material goods and ecological systems in general. If a human is not in position to protect itself it becomes a victim even when exposed to the least level of danger. Due to the above, each person attempts to secure the best possible quality of protection for itself in order to ensure safer and better life.

The private security activity emerged as a part of the overall community protection system. The activities of the private protection agencies are primarily focused on protection of persons and property through the application of physical, technical or combined (integral) protection mechanisms. The private security system (protection activity) has first emerged at the time of the industrial revolution which fact is often used as a platitude in the activity's etiology. The permanent discrepancy between the protection-related needs of individuals in a society and the security services offered by states produces a new trend of the so-called "privatisation of the security sector". With this trend, the sphere of work of police is shrinking or precisely an increasing number of responsibilities are being delegated to private security sector with an aim to limit in a systemic manner the monopoly of the state which in the past has had an exclusive task to provide protection through police and other formal state mechanisms.

The term "system of private security" or "protection activity" is not legislative in nature but is used to describe all types of mechanisms for protecting persons and pro-

erty outside the state bodies. Although international experience in this field dates back to the early 20th century there is no universal name for the private security activity or its actors. Different names are used to mark the service of physical and technical protection of persons and property ranging from the initially used term "private police" to "special protection" which is used at the moment. In literature in south Slavic languages one can find different names for this activity. The descriptive categories prevail including "separate protection", "protection activity", "guarding activities", "special protection" etc.

BOSNIA AND HERZEGOVINA , SOCIAL AND DEMOGRAPHICAL PICTURE

Bosnia and Herzegovina is situated in the western part of the Balkan Peninsula. It is bordered by the State Union of Serbia and Montenegro to the east and southeast, and by Republic Croatia to the north, west and south. Bosnia and Herzegovina has a total area of 51.209,2 square kilometres. Land: 51,197 sq. km. Sea: 12.2 sq.km. Climate is mainly continental, harsh continental on mountains, and Mediterranean on the south. During 1991 Bosnia and Herzegovina reached a very favorable state of affairs in regards to household number and housing units' number. As per 1991 census, it had 1,207,693 housing units in 6,823 settlements. Average housing unit had 60.45 square metres per a household, or 16.68 m² per inhabitant. In 1991 Bosnia and Herzegovina was at the level of middle-developed industrial country, with gross national income of some US \$ 2,000 per capita, with some 1.7 million of BiH inhabitants (39% of overall number of inhabitants) living in urban areas.

Bosnia and Herzegovina was internationally recognized on 6 April 1992. It gained its legal existence as independent state within then existing administrative borders, now internationally recognized. Aggression on and late War in Bosnia and Herzegovina, which broke out in April 1992, left enormous consequences on demographic picture of Bosnia and Herzegovina. A total of 2,200,000 persons were moved from their homes, which makes over 55% of prewar domicile population. Out of that number, some 1.2 million persons sought refugee protection in over 100 countries around the world, while at the same time some million persons were displaced within Bosnia and Herzegovina. In the period from 1992 to 1995 some 1,200,000 refugees from Bosnia and Herzegovina were noted in the reception countries. The consequence of war is huge number of casualties, that is some 250, 000 persons, among which there is a huge number of children. It is also estimated that more than 30,000 persons have been reported missing.

As per data from the paper "Strategy of Environmental Design of the Federation of Bosnia and Herzegovina, Phase 1", economic damage, including lost incomes, has been estimated on US \$ 50-70 billion. The World Bank has estimated damage on property at US \$ 15 to 20 billion. Industrial production during the war reached only 5% of prewar production. Towns, city complexes, office spaces, religious buildings, infrastructural facilities and devices, lines of communications, parks, capital goods, and other were destroyed. Some 80% population lived on humanitarian aid. More than 1/3 of housing stock in Bosnia and Herzegovina was destroyed, out of which 18% of housing units were completely destroyed. Forest resources of Bosnia and Herzegovina were heavily destroyed by illegal felling of trees, setting fire and usurping of forest area. A total of 24% of prewar medical facilities have been destroyed, while the percent of damage is over 40%. One of the worst war consequences for Bosnia and Herzegovina are some 2 million remaining mines and some 3 million other unexploded objects, which have not been demined yet.

Efforts of the International Community to end the war in Bosnia and Herzegovina resulted with conclusion of the General Framework Agreement for Peace in Bosnia and Herzegovina (initiated in Dayton on 1 November 1995), signed in Paris on 14 December 1995. Besides ending the war, this Peace Agreement also arranges the relations in Bosnia and Herzegovina. As per regulations of this Peace Agreement, especially Annex IV (the Constitution of BiH), Bosnia and Herzegovina continues its existence as an independent state. The territory of Bosnia and Herzegovina is made up of two Entities, namely the Federation of Bosnia and Herzegovina and the Republika Srpska. A special administrative unit, the Brčko District, was established by the subsequent decision of foreseen arbitrary commission. This Agreement also regulates the competences of central authorities and Entity authorities. The capital remained Sarajevo, and official languages are Bosnian, Croatian and Serbian.

The Preamble to the Constitution of Bosnia and Herzegovina formulates the Basic Principles agreed in Geneva on 8 September 1995 and in New York on September 26 1995, according to which: "Bosniacs, Croats and Serbs, as constituent peoples (along with Others), and citizens of Bosnia and Herzegovina hereby determine that the Constitution of Bosnia and Herzegovina..." Also, under the same principles, Bosnia and Herzegovina is a complex democratic state, that consists of the two Entities: the Federation of Bosnia and Herzegovina and the Republic Srpska. The Federation of Bosnia and Herzegovina possesses 51%, and the Republika Srpska 49% of Bosnia and Herzegovina's territory. The Federation of Bosnia and Herzegovina is administratively sub-divided into 10 Cantons. Cantons are divided into municipalities. There are 84 municipalities at the territory of the Federation of Bosnia and Herzegovina. The Republika Srpska is administratively divided into 63 municipalities

PRIVATE SECURITY IN BOSNIA AND HERZEGOVINA

The private security sector started developing in Bosnia in early 1990s. In the initial phase of its development, it was focused on the tasks of providing physical protection for persons and property. Since at that time this activity has not been legally regulated, it had often been misused taking form of latent coercion tasks, forceful collection of debt etc. After the emergence of the private security activity, Bosnia has been engulfed in a three-and-a-half-year-long war of aggression. The private protection services have been revived after the war and started flourishing due to great demand in the market. This activity in itself depends on the market demands and legal provisions by which it is regulated. Unfortunately, this rule has not been adhered to in Bosnia-Herzegovina and the activity has therefore been developing spontaneously without any formal regulation. There existed a great need for the services of private protection agencies but the state has been slow to formally regulate their work. Such situation, which lasted for full seven years, created numerous opportunities for the abuse of the entire private security sector. Some agencies were totally out of control due to a lack of proper mechanisms to supervise their human and material resources.

The social justification for the existence of private protection agencies has been lost as some turned to be the opposite of what was needed. Already complex situation with the state security management had been further complicated by the existence of new, subsidiary private protection agencies whose activities were not legally regulated. It was therefore necessary to finally legitimise this activity and create a new legally regulated category of protection jobs. If we were to talk about the primary prevention of crime and the subject that carry it out; than we would have to conclude that a large part of such preventive activities rests in the hands of the private protection agents.

"PRIVATISING THE SECURITY SECTOR" IN THE FEDERATION OF BOSNIA-HERZEGOVINA

With passing of the Law on Protection of People and Property in the Federation of Bosnia-Herzegovina the framework has been set up for a novelty - the private protection agencies. Although the issue of private security was partially addressed by the 1986 Law on the Social Self-defence, existing solutions had not been appropriate for the contemporary safety challenges and related needs. The Law on Protection of People and Property regulates the conditions for establishment of agencies for protection of people and properties including the spectrum of their activities, licensing, registration and other issues of importance. It also regulates cases in which it is necessary to secure internally organised protection or engage external protection agents. Since in the past there were no private protection agencies in Bosnia-Herzegovina, it was necessary to pass a law in the Federation that would fully legitimise this complex sphere of providing protection services.

The Law on Protection of Persons and Property has formally established a distinction between the state security mechanisms and "private protection agencies or private security", by placing the latter in the private sector. The newly established private protection agencies are authorised to act only as the additional crime supervisors within the limits precisely defined by the law and can offer their services on commercial basis. Established standards require from these private protection agencies to engage professional and specialised staff and respect professional and ethic codes in carrying out their duties. According to the law, tasks on providing protection for persons and property of legal entities can be delegated to outside agencies specifically organised for the tasks or by organising internal protection services within the legal entities. Such protection agencies cannot provide protection to personnel and property of the Army of the Federation of Bosnia-Herzegovina, its interior ministry, officials in the executive authority or administrative and other official bodies at the level of the Federation, cantons, cities or municipalities. A very important provision from this law (Article 2) bans the private protection agencies from providing security to political parties and their representatives.

Under the law, private protection agencies are authorised to provide physical or technical protection to persons and property. The law defines physical protection as protection of persons and property from destruction, damage, theft and other actions that are dangerous and harmful for health and life. Technical protection is defined as protection of persons and property by the use of specifically designed technical means and equipment. Agencies do not have the same authority as police and judicial bodies (courts, prosecutors etc), they cannot provide services to national or international defence bodies, security or counter intelligence agencies or carry out the tasks that fall under the authority of the state interior sector. In carrying out their tasks, private protection agencies cannot utilise operational methodology or means used by the interior ministry on the basis of special rules and regulations.

Private protection agencies in the Federation can only be established by its citizens and domestic legal entities. However, this provision excludes political parties as well as officials in the executive authorities and administrative bodies as well as officials in other levels of authority in the Federation, cantons, cities or municipalities.

The private protection agencies can be established only if approval from relevant cantonal interior ministry has been obtained. After obtaining the above approval, founder must submit a request to the relevant cantonal court for registration of the agency in the official court register. The founders of private protection agencies must

be the citizens of Bosnia-Herzegovina who had never been found guilty of criminal activities that are subject of official prosecution or violent offences against public peace and order, and must not be under criminal proceedings. The founders cannot be former members of police decertified by the International Police Task Force (IPTF) or former army officials removed from position by the commander of the NATO-led Stabilisation Force (SFOR). The agencies must employ at least five persons that poses a valid certificate for the private security jobs and posses appropriate technical means and equipment for the activity. A private protection agency begins to work on the day it is introduced in the official court register. Unless an agency becomes operational six months after securing the approval, the approval comes out of force.

Agencies can only employ certified citizens of Bosnia-Herzegovina who are physically and psychologically fit for the protection tasks and have completed at least secondary school (a technical school if they are to provide technical protection). The employees must have never been found guilty of criminal activities that are subject of official prosecution or violent offences against public peace and order and cannot be under criminal proceedings. Former members of police decertified by the International Police Task Force (IPTF) or former army officials removed from position by the commander of the NATO-led Stabilisation Force (SFOR) are banned from working for private protection agencies. Also, persons in charge of the agency must have university education.

The private protection agencies' employees must complete appropriate training - designed by the interior minister of the Federation in co-operation with the dean of the Faculty of Criminal Justice Science of the Sarajevo University – and successfully pass the final exam upon which they receive a certificate. Training is organised and provided by the Federal Ministry of Interior and the Faculty of Criminal Justice Science of the Sarajevo University.

PHYSICAL PROTECTION

Physical protection is provided by guards who are taking measures allowed under the law to discover and prevent dangerous or illegal activities that can lead to damage to property or health or life of persons under their protection. Twenty percent of employees of an agency that provides physical protection can for the above purpose poses firearms. Armed guards can use firearms only in self-defence. Guards who provide physical protection for facilities, premises and property are authorised to take the following action: to warn illegal trespassers to leave protected area or property, to prevent unauthorised persons from entering protected area or facility, to detain persons found in carrying out criminal activity in protected property until the arrival of police, to search and prevent from unauthorised entry to or departure from protected area vehicles or persons with luggage.

If guards detain individuals in protected property they must immediately write a report and inform police about the reasons for the action. Guards can apply physical force in the course of their work only if there is no other way to reject illegal attack or direct attack putting in jeopardy their life or the life of persons they protect or which might result in destruction, damage or theft of protected property. The use of physical force includes the use of defensive marshal arts aimed at breaking resistance of persons that are attacking guards or protected persons or property.

Guards who are authorised to carry weapons can use them only if it is necessary to save their or the life of persons under their protection or if the illegal assault against them

and the persons they protect could not have been rejected by the use of physical force, that is if a direct attack on protected property could not have been rejected in any other way than by the use of weapons. Guards must warn their targets that they possess fire arms before using them, but are not allowed to fire warning shoots for that purpose. After the use of firearms, guards must prepare and submit to their superiors in the agency a written report on the incident. Superior personnel of the agency has a duty to submit the reports on the use of physical force or fire arms to relevant prosecution bodies and cantonal ministry of interior. Such reports must be submitted in a timely manner.

TECHNICAL PROTECTION

Technical protection as defined by the law is provided through the use of technical tools for prevention of illegal actions directed against persons and property under protection and includes: techniques for prevention of theft, assault and diversions; protection of humans and environment; protection of data and documents; protection against illegal entry into protected area; protection against explosive, ionised and other dangerous substances and protection against deprivation of protected property and goods. This form of protection is provided in guarded areas, buildings and other facilities as well as while escorting transports of protected persons, money, stocks and other valuables. Types of tools, equipment and devices for protection and alarm that can be used in providing technical protection are decided upon by the Federal Interior Minister.

Persons that provide direct physical and technical protection must carry official accreditation issued by their agency. On the request by the agency such accreditation can be issued by the cantonal interior ministry. Design and contents of such credentials are decided upon by the Federal Interior Minister. The guards employed by the private protection agencies must also wear official uniforms that must not resemble police uniforms or uniforms of other state enforcement agencies. Private protection agency guards can be in uniform only while on duty and in possession of an official working order.

This law also regulates cases in which it is necessary to secure protection service. Under the provisions of the law, all legal entities dealing with radioactive material, nuclear fuel, waste or other material harmful for people or environment or who hold archive material that represents cultural heritage or is of scientific or historic importance, have an obligation to organise internal protection service or sign contracts with private protection agencies.

RECORDS

The provisions of the law would not make sense if there were no precisely defined record keeping procedures related to the private security sector. The records are kept on three separate levels. The first level is the Federal Interior Ministry that keeps a record of persons who had been issued with certificates for physical and technical protection, issued approvals for escort of transports of money, stocks and other valuables and approvals for purchase of fire arms.

Cantonal interior ministries keep a record of private protection agencies that had been issued with working licences, legal entities that had been allowed to organise internal protection service, protection agencies that had been issued with official credentials

and approvals for the purchase of fire arms issued to agencies, as well as concluded contracts on provision of protection services.

Private protection agencies and legal entities allowed to organise internal protection service keep a record of their employees (separately for physical and technical protection), fire arms purchased for the use by persons that directly guard protected goods, persons that are in charge of official uniforms and buildings and facilities that are under technical protection.

The overall supervision of the work of private protection agencies falls under the authority of the Federal and cantonal interior ministries. The supervising officers can provisionally ban agencies from providing physical and technical protection until possible problems determined during the inspection are resolved. Such decisions are allowed in cases when serious violations in implementation of the law are identified, when agencies carry out tasks for which they had not been authorised or if agencies employ personnel that has not been certified, has not signed working contracts or do not possess official working orders issued by their employer.

CERTIFICATION TRAINING

The private security agents are required to go through theoretical and practical lessons according to the pre-determined training program. The training program includes 50 lessons of which 40 for theoretical and 10 for practical training. The Federal and cantonal interior ministries and the Faculty of Criminal Justice Science provide the training. After completing training candidates are issued with a confirmation. The confirmation is not issued in cases when candidates do not attend all the lessons of the theoretical part of training or do not satisfy in practical lessons. After completion of the training candidates are required to pass a professional exam. Along with the request for taking of the exam, candidates are required to submit the confirmation about the completed training. Professional exam is passed before a commission of the Federal Interior Ministry.

Exams are verbal and include tests of candidates' theoretical knowledge. The following marks are used to describe the success of a candidate: 'passed' 'passed with credit' and 'failed.' The 'passed' mark is given if a candidate shows sufficient knowledge and 'passed with credit' if a candidate shows exceptional knowledge in all subjects that were part of the theoretical training. The candidates who do not pass from two subjects that are part of training and exam are allowed to take a partial exam again on a date set by the commission. The period between the initial and partial exam can not be longer than two months. Candidates who fail the first exam completely can take the exam again no earlier than 30 days after the initial testing. Candidates who pass the professional exam are issued with a working certificate.

TRAINING PROGRAM

Training program is organised at the Police Academy of Federal Ministry of Interior under the civil supervising by the Faculty of Criminal Justice Sciences University of Sarajevo. The certification program include different disciplines:

- Introduction to the security studies (4 lessons)
 - a) Theories and standards of human rights (2 lessons)
 - b) Bosnia and Herzegovina's safety system (2 lessons)
- Physical protection (18 lessons)
- Use of equipment and devices for technical protection (2 lessons)

- Special chapters of Criminalistics (6 lessons)
- Communication skills (4 lessons)
- Special chapters of Criminal Law (3 lessons)
- Holding and appropriate use of fire arms (7 lessons)
- Special physical training (8 lessons)
- Shooting practice (2 lessons)

CONCLUSION

There is no need to elaborate on the overall significance and general-preventive aspects of the Law on Protection of Persons and Property. The importance of this project is illustrated by the number of individuals that had been employed by the private protection agencies prior to the passing of the law who had refused to enter the process of formal selection of candidates after learning that their criminal record would be inspected. The private security sector has a good development perspective in Bosnia-Herzegovina so it is of crucial importance to raise the standards that regulate it. This first step can hardly be described as a major undertaking, but it still represents the pioneering effort on regulating a potentially dangerous sector that can easily get out of control of the state enforcement mechanism.

After amendments to Bosnia-Herzegovina's Criminal Code were passed (Criminal Law and Criminal Procedure Law), a Law on Private Detective Agencies could be developed, because detective activity is particularly sensitive and if regulated could represent a clear improvement significant for Bosnia-Herzegovina's efforts to join the European integration. A new set of criminal laws regulating both material (Criminal Law) and formal (Criminal Procedure Law) aspects, is in force in Bosnia-Herzegovina since 2003. The new legislation has completely changed the traditional nature of the criminal procedure in Bosnia-Herzegovina dating back to the beginning of the 20th century. The position of investigative judge no longer exists and the investigation now falls under the authority of prosecutors. The rights of defence team in the so-called pre-processing or pre-criminal procedure had been limited. All of this should serve as encouragement to insist *de lege ferenda* on the need to pass a Law on Private Detective Agencies, which would represent a part of the project that could informally be designed under the same title under which this work has been presented.

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