

Review of the publications about the special investigative actions: Practicum “Special investigative actions”, Zlatko M. Knežević, Ermina Dumanjić, the AIRE centre, Sarajevo, 2019. page 174. and the Manual about the special investigative actions, group of authors, editor professor Hajrija Sijerčić Čolić, Ph.D., Public Institution Centre for judicial and prosecutorial training of Federation Bosnia and Herzegovina, supported by DCAF, 2020; page 112.

Book Review

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For readers of *Criminal Justice Issues*, it will be shown two publications which share the same title – “Special investigative actions”. A lot of things at those two are different – nature, authors, methodology, publishers, and focal point. However, the authors are of the opinion that these two publications should be presented together because one doesn’t exclude the other one and together, they create one whole that helps legal and police professionals in mastering normative solutions, instruments, methods, and technics of the special investigative actions. The following lines will be comparatively presented both.

The first publication on this topic was published by the AIRE center, 2019. It is about the practicum which was made by the president of the Constitutional Court of Bosnia and Herzegovina, Zlatko M. Knežević and Ermina Dumanjić, Department chief for constitutional court practice in the Constitutional Court of Bosnia and Herzegovina. That Practicum contains 174 pages and it is shared in two chapters which consist of several thematic units. The first chapter is a review of the Constitutional Court of Bosnia and Herzegovina practice regarding special investigative actions, while the second chapter is a review of European Court of Human Rights practice regarding special investigative actions.

The first chapter contains an introduction, relevant legal frames (four criminal proceeding laws in Bosnia and Herzegovina, Constitution of Bosnia and Herzegovina as well as the European Convention for Human Rights protection and basic freedoms), and practice of the Constitutional Court of Bosnia and Herzegovina. In the Constitutional Court of Bosnia and Herzegovina practice is given a review of cases which are related to surveillance and technical recording of telecommunications (AP 2400/11, AP 1274/13, AP 2079/13, AP 2980/16, AP

4935/16, AP 4393/11), surveillance and technical recording of rooms (AP 3236/18), secretly tracing and technical recording of persons, vehicles and objects "which are related to them" (AP 1758/15, AP 3459/16), using of undercover investigators and using of informers (AP 1158/10, AP 1655/11, AP 5746/10), simulated buying of objects and simulated bribing (AP 3225/07), observed transportation and deliverance of objects of the criminal act (AP 3224/11). A particular place is a review of the Constitutional Court decision in case U 5/16 dated June 01th 2017. (constitutional compliance among the other stipulated articles of criminal proceeding law of Bosnia and Herzegovina which are related to special investigative acts (article 117. d) and 118. paragraph 3)

By the review of European Court for Human Rights practice regarding special investigative actions are allocated cases connected to search warrant and permanent tracing (like *Dragojević vs. Croatia*, *Lisica vs. Croatia*, *Li Davis vs. Belgium*, *Amann vs. Switzerland*, *Jordachi and others vs. Moldova*, *Peck vs. the UK*, *Matanović vs. Croatia...*), undercover investigators and using of illegally collected proofs in cases (i.a. *Gefgen vs. Germany*, *Othman (Al Qatada) vs. the UK*, *Saunders vs. the UK*, *Jalloh vs. Germany*, *Bikov vs. Russia*, *Grba vs. Croatia...*), law quality (*Roman Zaharov vs. Russia*). Especially, the judgment in the case *Kruslin vs. France* (judgment from April 24th, 1990.), is presented. In that case, European Court for Human Rights has unanimously decided: it is violated Article 8; this judgment by itself represents enough fair compensation regarding alleged damage; responsible State should pay to appellant 20.000 French francs for different costs and expenses. The rest of the request judge dismissed according to Article 15.

This Practicum is made as a result of the second annual conference of judiciary forum held on November 14th and 15th 2018. which title was "special investigative actions". Taking into consideration that the topic of that conference is still accurate and actual among professionals, publishers have decided to make and publish this thematic publication about this important mechanism for the fight against organized crime and corruption. The final product is a huge review of practice in the application of "special investigative actions", which is missing on the level of Bosnia and Herzegovina. Also, it can be used as an excellent Manuel on graduate and doctoral studies of law and criminalistic universities. It is expected that the publication will be used by professionals in understanding of standards and possibilities of the mechanism of special investigative actions, as the earlier publications of AIRE center have done.

At the end of the last year, the Manuel about special investigative actions was published and the publisher was the Public institution Centre for judicial and prosecutorial training of Federation Bosnia and Herzegovina, supported by DCAF.

The Judiciary system of Bosnia and Herzegovina is complex, so the need for the analyses of differences in law existed. Also, it was necessary to close court practice, as well as inside the State as well with the standards of judiciary practice European Court of Human Rights and recognized good European practices. These important and complex questions are recognized by DCAF, with which initiative, as well as the initiative of the Sarajevo center of security studies, is approached of creating the new publication. Detailed and dedicated work judges and prosecutors from all levels of Bosnia and Herzegovina judiciary, esteemed representatives of the academic community, as well as numerous different institutions, legal experts, specialized

in the criminal law area, is resulted with the creation of a comprehensive Manual about special investigative actions. The Manual is translated into the English language. Financial aid for the Manual realization is given by the project partner.

The idea about this publication was the priority of the project aimed at strengthening judiciary capacities for independence supervision on using of special investigative actions. A Working group of 20 judges, prosecutors, and legal experts has been gathered. Through meetings and discussions is achieved structure and contents of this publication as well as discussion about the local legal solutions, procedures and practices, analyses of judge practice of European Court of Human Rights and Constitutional Court practice of Bosnia and Herzegovina. Members of the working group defined the structure and wrote the contents of the practicum. An editor of the practicum is Hajrija Sijerčić-Čolić, dean and professor of the Law Faculty at the University of Sarajevo. Practicum is structured by five themes of authors of which one was headed by five coordinators. Team coordinators and head reviewers were: Šejla Drpljanin, Ljiljana Filipović, Diana Kajmaković, Mirza Hukeljić, Minka Kreho, Slavko Marić, Srđan Nedić and Hajrija Sijerčić-Čolić. Reviewers of the Manuel were Aleš Zalar from Slovenia, who wrote from the aspects of contemporary trends of criminal law and human rights law and Damijan Kaurinović from the Court of Appeal of Brčko District of Bosnia and Herzegovina, who created the review from the perspective of the legal system of Bosnia and Herzegovina.

Practicum is structured in five Chapters.

The first Chapter named "Special investigative actions in the national and international context" is given a general review of principles and standards that arise from significant decisions of the Constitutional Court of Bosnia and Herzegovina, the general review of principles and standards that arise from significant decisions of European Court of Human Rights, types of special investigative actions in criminal proceedings legal frames in Bosnia and Herzegovina and criminal acts for which can determine special investigative actions in positive criminal proceedings legal frames in Bosnia and Herzegovina.

"Argued proposal of the prosecutor for proceedings of special investigative actions" is the title of the second chapter. There were presented legal conditions necessary for submitting an argued proposal for determining special investigative actions, contents of an argued proposal for determining special investigative actions as well as the examples of the prosecution practice.

In the third chapter named "Court decision about special investigative actions", the authors wrote about the judge warrant for a preliminary ruling, length of special investigative actions, judge practice with the special overview on Court of Bosnia and Herzegovina practice.

"Obtaining evidence collected by the use of special investigative actions" is the following chapter in which authors processed the principle of the immediacy of the presentation of evidence. The chapter contains part of the judgment of the Court of Bosnia and Herzegovina number X-KŽ-07/436 from December 16th, 2010. which is about the legality assessment of the report by the undercover investigators connected with the fact that the undercover investigators were not examined at the main trial.

"International legal cooperation and help in criminal Mathers" is the final chapter of the Manual. In that chapter parallel, investigations and joint investigation teams were processed, planning and conducting of the special investigative actions on the international level, as well as legality assessment of conducting of special investigative actions which are done abroad.

Also, there are given exemplary type examples of the letters rogatory (request for international legal help and agreement about joint investigation team).

Both of these publications are important material – a helpful tool to judges, prosecutors, and authorized official persons, while they conduct special investigative actions. It would be ideal if both publications could be used simultaneously because they complement and supplement each other. It is very important to mention that both publications are not published in a relatively short period, thus judge nor prosecution practice is not developed well nor grows between issuing first comparing the other one. The first publication contains the practice of jurisdictional protection of human rights by the European Court for Human Rights as well Constitutional Court of Bosnia and Herzegovina (that follows the practice of the European Court of Human Rights), while the second one beside that (in what is presented in condensate form) contains an exemplary example of prosecution decisions and the practice of regular courts in Bosnia and Herzegovina. The practice of the State Court and prosecution office is dominating, but the intention was to be shown exemplary examples which can be used by judges/prosecutors/police in entities and Brčko District of Bosnia and Herzegovina while they conduct investigations and joint investigation teams as well as international legal aid in criminal matters (agreement about the establishment of the joint investigation team, letter rogatory, order for determining of special investigative actions...).

The contribution of books to legal and police practitioners is undoubtful. In both books, authors tried to enlighten questions regarding use of special investigative actions as well as dilemmas that appear in practice. Acts, besides they can be used as educational material, might be a guideline for judges, prosecutors, and police on the way how to approach the use of special investigative actions. Established judiciary practice can be used for preparing science materials and studies for state authorities.

By the quality work of author teams who were aware of an emptiness in the publicity of special investigative actions with which judiciary and police-community have got two valuable publications. They can be used too as textbook material for education in higher school institutions of Bosnia and Herzegovina.

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