**TRAINING OF POLICE OFFICERS IN FIGHTING ORGANIZED CRIME IN BOSNIA AND HERZEGOVINA – CRIMINAL LAW AND CRIMINAL PROCEDURE ASPECTS OF ORGANIZED CRIME**

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The term *organized crime* has been increasingly used in almost all media, as well as within police and judicial structures. Many authors, at various conferences and symposiums, tend to analyze the term and manifestations of organized crime with the possibilities to efficiently fight them. There is no doubt at all that organized crime is the most dangerous type of crime, that it is a group and pre-planned criminal activity with a priority goal to obtain material gain and expand one's own power, which is a phenomenon that deserves to be paid special attention to by police and judicial bodies in a country and the entire community. In an attempt to define the concept of organized crime one may come upon different perceptions of it in different countries, and by different authors who deal with this issue. Defining the term *crime* is, in that sense, a realtively easy task, while difficulties and controversies appear in defining the determinator 'organized'. Hence, the Agency for Education and Professional Training, as an integral part of the Ministry of Security of BiH, develops a number of police training programmes aimed at acquiring necessary skills and knowledge to efficiently fight organized crime. In fighting organized crime, law enforcement agencies have to 'walk on a tight rope' in a way that, sometimes, in an effort to efficiently combat this type of crime, they get to take measures that are not fully in compliance with the law. The Agency for Education and Professional Training of BiH places a special emphasis on the criminal law and criminal procedure aspects in fighting organized crime. The authors of this paper are fully aware that a review of 'Legalities in the process of investigating and offering evidence to prove organized crime', i.e. its criminal law and criminal procedure aspects, is a key element in conducting various training programmes, and represents the starting and final point of all respective training programmes. In this paper the authors will try to explain why the mentioned aspects are considered to be a key element in all programmes of training of police officers who fight against organized crime.

**Key words:** organized crime, police training, criminal law and criminal procedure aspects

**Introductory remarks**

The State Apparatus applies new preventive and repressive methods to fight organized crime. In an attempt to combat organized crime as efficiently as possible, the State tries to find out the best possible means and methods to prevent and supress organized crime. Modern means and methods follow the development of science and technology, while significantly encroaching on fundamental rights and freedoms of citizens. It is necessary, therefore, to strike a balance, in such a way that the principle of legality is fully observed and that methods and instruments, being as efficient as possible, are applied in combatting organized crime. The State reacts to organized crime by way of implementing reforms in the field of criminal legislation. (Čolić H. S. 2008).

Suppression of organized crime requires an elaborated strategy, as well as planned and systematic actions from the very first intervention to the legally binding verdict, based on science and within the legal framework ( Fejš, 2002)

Law enforcement authorities in BiH, in their efforts to identify and provide evidence for organized crime acts, have to take their actions in compliance with the criminal procedure laws and under supervision of the prosecutor, since the trial outcome will largely depend on how well the preliminary procedure or investigation was conducted. There are special investigative actions laid down for the purpose of identifying and proving evidence for organized crime acts, such as Covert Surveillance, Surveillance and Technical Recording of Telephone Conversations, Undercover Investigators, Surveillance and Video Recording of Premises ... In their efforts to fight organized crime, prosecution authorities in some way 'walk on a tight rope', and, sometimes, with an intention to efficiently combat this type of crime, they get to take measures that are not fully in compliancewith the law.

In order for police officers to be appropriately prepared for this kind of criminal investigation and avoid falling into a trap of taking actions that are not in accordance with the law, it is necessary that they have continuing education from the filed of criminal law, both substantive and procedural criminal law.

**1. Theoretical considerations from the field of criminal substantive law on complicity and organized crime**

A criminal offence can be perpetrated by an action of one person or by joint action of more persons. When a criminal offence is a result of an action carried out by several persons, then, there is complicity under specific conditions. Participation of several persons in the perpetration of a criminal offence is socially a more dangerous type of crime than the crime perpetrated by one person (Srzentić, Stajić, Lazarević 1980). It occurs frequently that several persons participate in the perpetration of a criminal offence. In practice, there are various types of participation of individuals in the perpetration of a joint criminal offence, depending on the contribution of an individual to the occurrence of a prohibitied consequence (Čepek, Modly, Posavac, Veić 1993). With the knowledge of provisions of substantive criminal law, police officers who are involved in the activities of suppression and investigation of organized crime can have better understanding of the legal nature of complicity i.e. participation in the perpetration, incitement and helping in the perpetration of a criminal offence, as the legal nature of complicity represents a basis for determining criminal responsibility of accomplices in the perpetration of a criminal offence. As regards criminal offences involving several persons, it is very important, in all stages of the investigation and pre-investigation procedures, to establish the nature of link between some persons in the perpetration of (a) criminal offence(s). This should be done because it is necessary to establish whether a specific case is about *complicity* in the perpetration of a criminal offence (Article 29, 30, and 31 of the Criminal Code of BiH) or a specific criminal offence was perpetrated by *an organized crime group* (Article 1, CC BiH). A criminal offence perpetrated by an organized crime group implies a special type of crime and complicity which is more socially dangerous, and is governed by special provisions of the Criminal Code of Bosnia and Herzegovina ( Article 249 and Article 250 CC BiH).

**1.1. Complicity**

As we have already stated, a criminal offence can occur as a result of an action (act or failure to act) by one or several persons. Here we mostly speak about criminal offences as a result of action of several persons i.e.the cases when several persons are responsible for the creation of a prohibited consequence (Jovašević, Petrović, 2005).

In cases when two or more persons participate in the perpetration of a criminal offence, it does not necessarily mean that those persons are at the sime time the accomplices in the criminal law sense. If it is for complicity, there should be a certain objective and subjective link between those persons. *Objective link* is reflected in the scope of activity i.e. it is necessary that all of the actions form a unity and that there is casual connection between them and the consequence i.e. that they gave rise to the occurrence of a forbidden consequence. *Subjective link* is reflected in the awareness of each accomplice of the joint performance with other persons. In that way co-perpetrators are aware of each other, while inciters or accessories are aware of the perpetrator. It is not even necessary that they know each other personally; it is enough that there is awareness that other persons too participate in the perpetration of a specific criminal offence (Tomić, 2010).

As regards complicity in the perpetration of a criminal offence, it is necessary first to define the *forms of complicity* i.e. the ways in which a person can participate in the perpetration of a criminal offence in order to be treated as an accomplice in the criminal law sense. In the modern criminal law theory there are **three types of complicity** i.e. three types of accomplices. The first type of complicity in the perpetration of a criminal offence is called *co-perpetration,* i.e. when two or more persons jointly take an action to perpetrate a criminal offence, when they appear to be the co-perpetrators in relation to each other. The second type of complicity comes up when a person helps the immediate perpetrator of a criminal offence. That type of complicity is called *helping,*  while a person or persons who provide assistance are called helpers. The third type appears when some of the persons participate in the perpetration by way of inciting the perpetrator to perpetrate a criminal offence. In that case we talk about *incitement* as a form of complicity, and those who incite are called inciters. It is important to note that the older theory on complicity in a criminal offence, as stated by Srzentić, Stajić and Lazarević (1980), recognizes the fourth type of complicity - *organizers of criminal associations.* Yet, as we already stated, the modern theory, following the current legislation in the field of criminal law in BiH recognizes the three stated forms of complicity. When, on the other hand, a criminal offence is perpetrated by a group for organized crime, then we speak about a special type of crime and complicity which poses a higher-level threat for the society and is governed by special provisions of the Criminal Code of Bosnia and Herzegovina (Article 249 and Article 250 CC BiH), which cover the organizers of criminal associations too.

What is of particular importance for police officers, prosecutors and judges working on the cases of organized crime is the issue of making distinction between the inciter and perpetrator of a criminal offence, as well as between the co-perpetrator and accessory. In the frst case one poses a question as to whether the notion of perpetrator may include *indirect perpetrator* i.e. a person who perpetrates a criminal offence through another person. In the second case it is about a distinction between the co-perpetration, as a heavier form of complicity and helping, as a lighter form of complicity. What may be contoversial too is the issue of incitement and *psychological assistance* as one and the same action may represent both forms of complicity (Tomić Z. 2008). Although the classification of these persons who participted in any way in the perpetration of a criminal offence will be a matter for discussion at the court, these issues are essential for police officers in order that they can take their actions (first of all, 'special investigative actions') in a lawful manner, avoiding to 'provoke' by their moves criminal activities of individuals[[3]](#footnote-3).

Therefore, bearing in mind the key elements of this paper, it is necessary to define the basic notions such as *perpetration, co-perpetration, incitement and helping in the perpetration* in the theory of criminal law of Bosnia and Herzegovina.

**1.1.1. Perpetration and co-perpetration**

To formulate a theoretical definition of co-perpetration, as a form of complicity according to a wider understanding[[4]](#footnote-4), it is necessary first to define the term of *perpetration* i.e.. the perpetrator of a criminal offence.

**1.1.1.1. The notion of perpetrator**

A theory of criminal law recognizes two notions of perpetrator, a wider or extensive notion and narrower or restrictive notion of the perpetrator of a criminal offence. According to the *extensive* notion, the perpetrator is anyone who, through his actions, contributes to the occurrence of a forbidden consequnce. The complicity is denied and both the inciter and the accessory are treated as the perpetrators of a criminal offence.[[5]](#footnote-5) According to the *restrictive* notion, the perpetrator is only such person who through his action contributed to a forbidden consequence i.e. perpetrated an action corresponding to the description of a criminal offence. Other persons who, in another way, took part in the criminl offence are considered to be the accomplicies. In Bosnia and Herzegovina it is the restrictive notion of perpetration that is accepted, according to which the perpetrator of a criminal offence is only the person who, through his actions (by acting or failing to act) contributes to the occurrence of a forbidden consequence. A criminal offence can be commissioned by acting or by failing to act, directly or indirectly. Direct perpetration*[[6]](#footnote-6)* is important in the context of theoretical considerations on perpetration and organized crime.

*Indirect perpetration* involves the cases when a person perpetrates a criminal offence through another person. Again, several persons participate in the commission of a criminal offence, when a person directly involved in the perpetration is considered only as a means or instrument, and not the perpetrator of the offence (Tomić 2008). When one person manages the actions of another person and keeps that person under control or influence, it is indirect perpetrator who has control of the offence and control over direct perpetrator as a means. Direct perpetrator is always subordinated to indirect perpetrator, when the relationship of subordination arises due to the use of force, due to an error, etc. Indirect perpetrator answers for the attempt of perpetrating a criminal offence too, and is penalized as if he was direct perpetrator. According to Tomić, the forms of indirect perpetration are as follows:

1) When direct perpetrator happened to be in an irrecoverable or even recoverable real error. And it is not important how he happened to find himself in the error. He performs an action but does not act with intent*.* He was used as a tool acting with no intent (unconscious and unintentional tool).[[7]](#footnote-7)

2) When direct perpetrator *is not free to act.* He is an *unfree agent* because of the coercion used by indirect perpetrator. The coercion must be absolute and resistless and the person being coerced has no freedom to make decision on his own.[[8]](#footnote-8)

3) When direct perpetrator appears as an *unqualified agent with intent.* This involves the cases of indirect perpetration such as the so-called *delicta propria,* when one person who posesses certain quality uses another person, who does not possess that quality, for the perpetration of a criminal offence.[[9]](#footnote-9)

4) When direct perpetrator is a person who *is not criminally responsible.* This involves the cases when indirect perpetrator uses a mentally challenged person or a child for the perpetration of a criminal offence.

5) When direct perperator appears as a *willng instrument without no original intention.* This is when a specific intention of the perpetrator is essential for the presence of offence.

6) When direct perpetrator through his action *does not bring about the characteristics of a criminal offence.* In these cases direct perpetrator is a victim.[[10]](#footnote-10)

7) A special type of indirect perpetration appears in those cases when *the organized apparatus of power* is used. Indirect perpetrators from behind the scene use the apparatus of power to realize their criminal goals, being aware that their decisions will be implemented as the subordinates have to execute the requests that come from the centre.

**1.1.1.2. The concept of accomplice**

Complicity occurs when several persons take part in the very perpetration of a criminal offence, when such an offence is their joint act. The Criminal Code of BiH, Article 29, speaks about accomplicies in the perpetration of a criminal offence: 'If several persons who, by participating in the perpetration of a criminal offence or by taking some other act by which a

decisive contribution has been made to its perpetration, have jointly perpetrated a criminal offence, shall each be punished as prescribed for the criminal offence'. 'For complicity to occur it is necessary that there is a certain *objective and subjective link* between accomplices*.* Objective link is manifested through the action (the perpetration or taking some other actions that contribute in a decisive manner to the perpetration of an offence). Subjective link is manifested through the awareness of perpetraters of themselves acting jointly (Petrović, Jovašević 2005). Consequently, our law recognizes the *objective-subjective theory;* the accomplice is any person who participates in the perpetration of a criminal offence, no matter whether they want such an action to be attributed to them or not, and any person who did not participate in the perpetration of the given action, but committed another action which in a decisive manner contributes to the perpetration and regard the perpetration as belonging to them (element of intent).

**1.1.2. Incitement**

As stated in Article 30 of the Criminal Code of BiH, incitement occurs when a person intentionally incites another person to perpetrate a criminal offence. The essence of incitement is that one intentionally influences another person to make a decision or reaffirm a decision to perpetrate a criminal offence. If another person has already made a decision to perpetrate a criminal offence, then no incitement occurs but possibly the unsuccessful incitement or psychological assistance. It is essential that the incited person has not previously made the final decision to perpetrate a certain criminal offence. Incitement has to be directed at a certain person or group of persons and the commission of a specific criminal offence. It can be *direct a*nd *indirect,* depending on whether the inciter directly incites the perpetration of a criminal offence or incites the perpetration through a third person. The inciter will be punished for incitement as for a criminal offence which he himself committed if the offence has been perpetrated. The inciter will be punished for an attempt to comit a criminal offence if he incites another person to commit an offence for which the sentence of three-year-imprisonment can be imposed, even if there has been no attempt of perpetration. Our criminal code lays down the following actions by which the incitement is done: pleading, persuading or prompting, portraying benefits of the perpetration of a criminal offence, giving or promising gifts, abuse of the state of subordination or dependency, bringing or keeping a person to/in the state of real or legal error. If the inciter voluntarily prevents the perpetration of a criminal offence which he once incited, he can be granted exemption from punishment. Our criminl code recognizes incitement as an independent criminal offence too.

**1.1.2.1. Use of undercover investigators and incitement**

A special issue, which can be a very contentious one, is the role of *undercover investigator* in relation to the legal concept of incitement. The Criminal Procedure Code of Bosnia and Herzegovina, speaking about special investigative actions, envisages the use of undercover investigators as an independent action. Although there are legal systems in the world which, under certain conditions, allow for undercover investigators to provoke certain criminal actions of some persons, especially if those persons are members of criminal organizations, such a behaviour of an undercover agent would be penalized in our country following the provisions on the incitement of the perpetration of a criminal offence. What may be controversial, on the other hand, is that the police institution has high, very often unrealistic expectations of the police investigator, which in due time imposes psychological pressure on the investigator in deciding whether to take certain actions as part of an *undercover operation,* which can be characterized as *intentionally inciting the perpetration of a criminal offence.*

One can similarly treat the issue of the use of informants i.e. persons who on a voluntary basis cooperate with the police and provide police officers with useful information on organized crime. The handling of informants by the police is governed by special laws and by-laws. It is generally known that in most of the cases the informants who provide information about organized criminal groups are members of those criminal organizations. Yet, one may raise the issue of the police working with those persons. Bearing in mind the incitement-related provisions, and specially taking into account the fact that the incitement can be done indirectly as well, (through a third person), the informant should in no way be assigned the tasks meant to create or strengthen the will within a criminal organization to perpetrate criminal offences.

**1.1.2. Helping**

It is stated in Article 31 of the Criminal Code of BiH that the accessory 'is a person who intentionally helps another to perpetrate a criminal offence'. The accesory contributes to the perpetration of an offence but does not perpetrate the offence even partially, since he would be considered as an accomplice in that case (Srzentić, Stajić, Lazarević 1980). Helping in the perpetration of a criminal offence involves the activities by which one intentionally stimulates, supports, encourages and makes it easier for one to perform a criminal offence (Čepek, Modly, Posavac, Veić 1993). The following actions are considered as helping in the perpetration of a criminal offence: giving advice or instructions as to how to perpetrate a criminal offence, supplying the perpetrator with tools for perpetrating a criminal offence, removing obstacles to the perpetration of a criminal offence, and promising, prior to the perpetration of a criminal offence, to conceal the existence of the criminal offence, to hide the perpetrator, the tools used for perpetrating the criminal offence, traces of the criminal offence, or goods acquired by perpetration of the criminal offence. Helping involves either *physical* or *psychological*  assistance, depending on the character of an action. It can be *direct* and *indirect*, and also *previous, simultaneous and subsequent.[[11]](#footnote-11)*

With regard to helping in the commission of a criminal offence, it is very important for police officers to be adequately prepared – properly trained in the criminal law field, so that they do not enter the zone in which they are subject to a penalty i.e. that they do not take such actions that can be regarded as acts of helping.

**1.2. Associating for the purpose of perpetrating criminal offences**

As regards 'associating for the purpose of perpetrating criminal offences', it should be noted that it is envisaged as a separate criminal offence[[12]](#footnote-12) by the Criminal Code of BiH, which consists of an act of organizing a group of people[[13]](#footnote-13) with the aim of perpetrating criminal offences prescribed by the Criminal Code of BiH. The perpetration involves the acts of *organizing a group[[14]](#footnote-14)* or *becoming a member of the group for perpetration of criminal offences.[[15]](#footnote-15)*. The criminal offence is completed by merely organizing the group or becoming a member of the group[[16]](#footnote-16) (Petrović 2005).

The concept of 'organised criminal group' is defined in Article 1 of the Criminal Code of BiH, where it is stated that it is a group of at least three or more persons existing for a period of time and acting in concert with the aim of perpetrating one or more criminal offences for the purpose of gaining material benefits, for which a punishment of imprisonment of three years or a more severe punishment may be imposed. The Criminal Code of BiH, Article 250, establishes organised crime as a separate criminal offence. A criminal offence is realized by the perpetration of any criminal offence from the Criminal Code of BiH by members of an 'organized criminal group' (paragraphs 1 and 2) or by organizing or directing an organised criminal group which at least attempts to perpetrate any of the criminal offences stipulated by the Criminal Code of BiH (paragraph 3), or by merely becoming a member of an organised criminal group which at least attempts to perpetrate any of the criminal offences prescribed by the Criminal Code of BiH (paragraph 4). As a stimulating measure stated in paragraph 5, a member of the group who exposes the organised criminal group may be released from punishment.

**2. Procedural law considerations on the investigation into organised crime with a special focus on special investigative actions**

Following the Criminal Procedure Code of BiH, it is the Prosecutor who has exclusive competence to carry out the investigation. The Prosecutor, when there are grounds for suspicion that a criminal offence was committed, will issue an *Order to carry out an investigation.* With this arrangement the police is not taken away its powers to detect and prosecute the perpetrators of criminal offences, but the prosecuter at an earlier point in time becomes involved in the activities of detection and prosecution of perpetrators, which provides for a direct supervision of the prosecutor over the work of authorized persons, which, ultimately, provides for legality of police work and additional protection of fundamental human rights. The Criminal Procedure Code of BiH rests on a number of fundamental and commonly accepted principles which provide the framework for the procedure to be conducted.[[17]](#footnote-17) The principle of all principles of the Criminal Procedure Code is *the principle of legality.* The Criminal Procedure Code of BiH, Article 2, reads: *'The rules set forth in this Code shall provide for an innocent person to be acquitted, and for a perpetrator of a criminal offence to be pronounced a criminal sanction in legally prescribed proceedings under the conditions provided by the Criminal Code of BiH and other laws of BiH that prescribe criminal offences'.[[18]](#footnote-18)* It is evident from this Article that there are two tendencies of the Criminal Procedure Code of BiH:

1. First tendency – *providing efficiency of the criminal procedure in the efforts to fight crime* (that any perpetrator of a criminal offence is apprehended and penalized following the rules of substantive criminal law)
2. Second tendency – *tendency to protect human rights and freedoms* (protection of citizens against unjustified criminal proceedings and judgement requires the legislator to follow dynamic developments in the field of protection of fundamental laws and freedoms and the powers of criminal procedure authorities to narrow down just in those cases when, following the requests to act efficiently, the interests of the state are above the interests of an individual, when it is necessary to exclude arbitrariness, self-will and efforts jeopardizing fundamental human rights and freedoms) (2005).

Very important for the training of police officers who are involved in the investigations into organised crime is *the principle of innocence presumption*[[19]](#footnote-19) (*in dubio pro reo)* and *the principle of evidence legality*[[20]](#footnote-20). Article 10 of the Criminal Code Procedure of BiH refers to the principle of legality evidence. According to the provisions of the Code, *'It shall be forbidden to extort a confession or any other statement from the suspect, the accused or any other participant in the proceedings'* where the legislator refers to the so-called *extorted confession* or *any other statement.* This includes the cases when a confession or statement was obtained by use of force, threat, deception, compulsion, bluff or by means of any other forbidden action toward a person who participates in the proceedings. (Čolić H.S, Hadžiomeragić M.,Jurčević M., Kaurinović M., Simović M., 2005) It is stated in the same Article, Para 2 (Criminal Code Procedure of BiH) that *'the Court may not base its decision on evidence obtained through violation of human rights and freedoms prescribed by the Constitution and international treaties ratified by Bosnia and Herzegovina, nor on evidence obtained through essential violation of this Cod*e*[[21]](#footnote-21)*'*,* while Paragraph 3 shows how 'fruits of the poisonous tree' are treated in our our legislation, stating that '*the Court may not base its decision on evidence derived from the evidence referred to in Paragraph 2 of this Article*[[22]](#footnote-22)'.

**2.1. Actions aimed at obtaining evidence and special investigative actions**

In this part we will just touch upon the actions aimed at obtaining evidence according to the Criminal Procedure Code of BiH. They are as follows: 1) Search of dwellings or other premises and persons; 2) Temporary seizure of objects and property; 3) Procedure of dealing with suspicious objects; 4) Questioning of the suspect; 5) Examination of witnesses; 6) Crime scene investigation and reconstruction of events; 7) Expert evaluation.

Bearing in mind the principles of CPC, and especially the *principle of legality, principle of innocence presumption and principle of evidence legality,* it is clear that police officers, when taking any of these actions, have to conform to the legal framework, since any improvisation could lead to a negative epilogue at the court.

The same applies to the acting of police officers in cases when they implement special investigative actions, which are as follows:

a) Surveillance and technical recording of telecommunications,

b) Access to computer systems and computerized data processing,

c) Surveillance and technical recording of premises,

d) Covert following and technical recording of individuals and objects,

e) Use of undercover investigators and informants,

f) Simulated purchase of certain objects and simulated bribery,

g) Supervised transport and delivery of objects of criminal offense.

Special investigative actions have a special role in the efforts to fight organized crime. By taking, let us call them '*ordinary investigative actions“* (evidence collecting actions), it is not possible to achieve so good results in fighting those crimes. Hence, the states prescribe '*special'* investigative actions, which encroach to a large extent on human rights and fundamental freedoms of citizens, so that police officers, bearing in mind both tendencies of criminal proceedings, and the ultimate goal, which is the judgement with legal force for members of a criminal group, have to literally stick to the letter of the law.

It is exclusive jurisdiction of the court to determine special investigative measures, which implies that special investigative techniques are applied only with a prior consent of the court and are conducted under its supervision. The competence for initiating the stated measures rests with the prosecutor, while the establishment of measures can be approved only by the court, which retains control over legality of the application of undercover investigative measures (Šikman M. 2007).

For the court to issue an order to conduct any of the stated special investigative actions following the Criminal Procedure Code of BiH, certain requirements have to be met. Firstly, it is stated in the specific case, following Article 116, Para 1 of the CPC BiH, that these actions can be taken against persons for whom there are *grounds for suspicion* that they have perpetrated or perpetrate some of the criminal offences listed in Article 117 of the CPC BiH,[[23]](#footnote-23) and secondly that evidence cannot be obtained in any other way or, otherwise, obtaining the evidence would be linked with disproportional difficulties[[24]](#footnote-24) (Čolić and others, 2005).

As regards some of the special investigative actions, it is important to note that a failure to act in compliance with the law may cause police officers, inter alia, to face criminal responsibility. As we already underlined, criminal responsibility of an undercover investigator can be established in case of the incitement to perpetrate a criminal offence, which also applies to authorized official persons who handle informants. Moreover, *unauthorized wiretapping and audio or video recording* is laid down as a separate criminal offence in our CC, whereby the legislator highlights *the human right to privacy and the right to respect for private and family life*.[[25]](#footnote-25) The main reason for this is that, apart from the persons covered by some of the special investigative actions, even a third person with whom the defendant is in contact may be affected by it.

**Conclusion**

Wrong moves that may be taken by either police officers or prosecutors when investigating organized crime cases can be a very high price to pay in an multidisciplinary context. An error in the course of an investigation can lead to the refutation of an indictment. By taking actions that are not in compliance with an Order, i.e. with the provisions of the Criminal Procedure Code, the police officers themselves can be subject to punishment and be held responsible for such actions at the court.

A lot of time, efforts and material and technical resources are put into such operations, so that a lack of knowledge of procedural provisions is inacceptable. In the context of criminology, the refutation of an indictment or the issuance of a judgement of acquittal would make the citizens fell less safe and less trustful of the state institutions, which might at the same time be a motivating element for members of organized criminal groups to continue the perpetration of criminal offences.

Therefore, an unavoidable conclusion that comes up is that all stakeholders involved in the investigation should be concerned with the study of criminal law, either substantive or procedural law.

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1. Branko Vukoja, Director of the Agency for Education and Professional Training of BiH, Ministry of Security of BiH [↑](#footnote-ref-1)
2. Elvir Velić, Assistant Director for Training in the Agency for Education and Professional Training of BiH, Ministry of Security of Bosnia and Herzegovina [↑](#footnote-ref-2)
3. Suggested here is the use of Informants and Undercover Investigators who, following the positive legislation of BiH, must not, when conducting their activities, incite the perpetration of criminal offences. [↑](#footnote-ref-3)
4. The theory speaks about complicity in the narrow sense (inciters and accessories) and wide sense ( and co-perpetrator). [↑](#footnote-ref-4)
5. Such a concept of perpetrator, the so-called single concept of perpetrator, has been accepted in the Austrian Criminal Code. [↑](#footnote-ref-5)
6. It happens in criminal organizations, very often becaue of the already established 'rules of the game', that their members commit criminal offences upon order of the 'Boss' of the organized criminal group, although they lack a willing element. [↑](#footnote-ref-6)
7. E.g. When a husband gives the forged money to his wife to buy something in the store, without her being aware that the money is forged [↑](#footnote-ref-7)
8. E.g. Use of opiates [↑](#footnote-ref-8)
9. E.g. A doctor of medicine prescribes a medication to a mother to give it to her child although the medication is not necessary [↑](#footnote-ref-9)
10. E.g. Inciting another person to commit suicide [↑](#footnote-ref-10)
11. If promised in advance [↑](#footnote-ref-11)
12. Article 249, CC BiH [↑](#footnote-ref-12)
13. Three or more persons [↑](#footnote-ref-13)
14. Graver form of the criminal offence [↑](#footnote-ref-14)
15. Lighter form of the criminal offence [↑](#footnote-ref-15)
16. Becoming a member of a group involves a consent of a person to be a member of the group [↑](#footnote-ref-16)
17. Principle of legality, acting fairly and legally in the conduct of criminal proceedings, presumption of innocence and *in dubio pro reo, ne bis in idem*, protection of personal freedom, right to defence, use of language and script, legality of evidence, compensation of damage due to unjustified judgement or deprivation of freedom, right to a trial without undue delay, equal tratment, free assessment of evidence, accusation and legality of criminal prosecution [↑](#footnote-ref-17)
18. The right to a fair trial in the criminal proceedings, as one of the fundamental human rights and freedoms, is guaranteed by the provisions of Article 14 of the International Covenant on Civil and Political Rights and Article 6 of the European Convention for the Protection of Human Rights. The Constitution of Bosnia and Herzegovina (Annex 4 of the Dayton Peace Agreement) guarantees to all persons on its territory the rights and freedoms contained in the European Convention for the Protection of Human Rights and Fundamental Freedoms. The stated Convention with its protocols will be applied directly in Bosnia and Herzegovina and these documents will supersede all other laws (Article 2). Bosnia and Herzegovina will stay as or become a foreign signatory of international treaties. All of the government institutions in BiH will provide unlimited access to all international mechanisms for monitoring of human rights. [↑](#footnote-ref-18)
19. See more in the commentary of the Criminal Code Procedure of 2005 where it is clarified '*that the presumption of innocence is a constitutional principle (Article 6, paragraph 2 ECPHRF), and that one is considered innocent until proven guilty in a judgement with final force and effect. It applies also to all activities of the authorized state authorities through which information is collected on a criminal offence committed and its perpetrator in the course of the entire criminal proceedings, until the judgement comes into effect. The presumption of innocence is the so called provisional presumption which applies until proven othervise. Because of it the defendant is exempted from the burden of proof and is entitled to a privilege against sef-incrimination. The burden of proof is upon the prosecutor. The detention treatment, just because of the presumption of innocence, must not have the characteristics of criminal punishment'* [↑](#footnote-ref-19)
20. Article10 of the Criminal Procedure Code of BiH [↑](#footnote-ref-20)
21. E.g. the cases when evidence was collected by way of application of special investigative actions, if those actions were taken without an order issued by the preliminary proceeding judge or if they were implemented beyond the framework of the order (when actions of police officers are in contradiction with the order) [↑](#footnote-ref-21)
22. In other words, the evidence collected in a lawful manner, of which one learned through evidence that was originally collected in an unlawful manner, is considered to be legally invalid – see the Judgement of the European Court for Human Rights in case Gafgen v. Germany. [↑](#footnote-ref-22)
23. It is about criminal offences against the integrity of BiH, crimes against humanity and values protected by international law, crimes of terrorism and other criminal offences for which a sentence of at least three-year imprisonment or a severe sentence can be pronounced. [↑](#footnote-ref-23)
24. Here it is about the principle of *subsidiarity,* which implies that other evidence collection methods have to be previously used [↑](#footnote-ref-24)
25. *An official or responsible person in the institutions of Bosnia and Herzegovina who, by using special devices, without an authorization, wiretaps or audio records a conversation or statement not intended for him to hear it or who enables an uninvited person to learn about a conversation or statement that was unlawfully wiretapped or audio recorded, or who unlawfully wiretaps or audio records other people's messages in the computer system, shall be punished by imprisonment for a term not exceeding five years. (Article 147, Para 1, Criminal Code BiH)*

    *The punishment from Para (1) of this Article shall be imposed on an official or responsible person in the institutions of Bosnia and Herzegovina who takes a photograph, film or another visual recording of another person or his personal premises, without his authorization, or who hands over or displays such a photograph to a third person or enables the third person in some other way to have a direct access to the photograph* (Article 147, Para 2, CC BiH) [↑](#footnote-ref-25)