

CRIMINALISTIC PLANNING OF SEARCHES AS A PREREQUISITE FOR THE SUCCESS OF THE EVIDENCE PROVING PROCESS

MA Đorđe Šešum¹

Abstract: Searches are an evidentiary action, but we consider them as a criminal-procedural criminalistic action because in Bosnia and Herzegovina, they are directly carried out by police officers under the supervision of the prosecutor, usually based on a court order. The formal framework consists of imperative criminal-procedural norms, while the substance is directly determined by criminalistics through its implementation. A search is a coercive action, often urgent, which interferes with human rights protected by the Constitution and Article 8 of the European Convention on Human Rights. A lawful search is conducted when the legitimate purpose cannot be achieved through a less repressive action. It must not be carried out impulsively, unplanned, or without method, as such an approach will either fail to achieve its intended purpose or only achieve it partially. Poorly, partially planned, or unplanned searches endanger both police officers and the persons being searched, as well as their property and other citizens, leaving the consequences to chance, with the best-case scenario being only the potential failure of the search.

This paper highlights the importance of criminalistic planning of searches. It addresses the application of principles related to searches, criminalistic planning in both broader and narrower terms, examining the needs, challenges, and specificities of planning searches in BIH, depending on the subject of the search with a written court order, an oral court order, or in cases of searches without a warrant and without witnesses. The paper aims to support its findings

¹ European Defendology Center, Banja Luka
e-mail sesum.djordje@gmail.com

with scientific-theoretical positions from criminal-procedural law and criminalistics, positions of the European Court of Human Rights, and examples of challenges from practice, while also offering the key elements that a written criminalistic search plan should include in potential planning for a search.

Keywords: evidence proving process, search, police officer, authorized official, criminal planning.

INTRODUCTION

Search and seizure is a formal criminal-procedural evidentiary action in Bosnia and Herzegovina (BIH). Due to the country's complex state structure, four parallel Criminal Procedure Codes (CPCs) exist and are applied in BIH, all of which regulate search and seizure almost identically.² Legislators in BIH have categorized searches based on the subject of the search into searches of premises, other spaces, and movable objects, as well as personal searches (searches of individuals). A common feature is the mandatory fulfillment of material conditions. A search can only be carried out when there is sufficient evidence to suspect that immovable or movable items contain the perpetrator, accomplice, traces of a criminal act, or items important for the criminal proceedings. In the case of personal searches, they can only occur when it is likely that the person has committed a criminal offense or that objects or traces important to the criminal proceedings will be found.

In addition to the mandatory fulfillment of material conditions, all four CPCs in BIH generally require the fulfillment of a formal condition, i.e., a court order in the form of a written and reasoned search warrant. Unlike the mandatory material condition, there are exceptions in which searches can be conducted without the formal condition being fully met, but in accordance with the provisions of the CPC (Article 128 of the RS CPC; Article 64 of the BIH CPC; Article 78 of the FBIH CPC; and Article 64 of the BD BIH CPC).

2 The Criminal Procedure Code of the Republic of Srpska (hereinafter: CPC RS); The Criminal Procedure Code of BIH (hereinafter: CPC BIH); The Criminal Procedure Code of the Federation of BIH (hereinafter: CPC FBIH); The Criminal Procedure Code of the Brčko District of BIH (hereinafter: CPC BD BIH).

The existence, fulfillment, and satisfaction of the conditions for a lawful search are the responsibility of the active participants in the search, namely the police officers/authorized officials (hereinafter: AO)³, the acting prosecutor, and the investigating judge, who in BIH acts as a control body ensuring the legality of the search. The aforementioned parties are obligated to continuously ensure the legality of the search so that the right to private and family life, home, and correspondence, as guaranteed by Article 8 of the European Convention on Human Rights (ECHR), is not violated through unlawful searches.

While a search is a criminal-procedural action, in BIH it is directly carried out by AO under the provisions of the CPC and the rules and experience of criminalistics, making it also a criminal-procedural criminalistic action. As such, search and seizure is inseparable from the operational criminalistic actions of the AO in the specific case, as long as the procedural legality is not questioned. Criminalistic actions are generally divided into criminal-procedural and operational criminalistic actions (Aleksić and Škulić, 2011, p. 34), and they share the common feature that their implementation should be planned with predefined objectives.

There is no perfect plan. It is impossible to predict all possible situations that may affect the execution of procedural actions and perfectly plan the methods and means to prevent them. However, this does not mean that a search should be a haphazard, unplanned action; rather, it is an imperative to plan the procedural action carefully. Planning a search in a broader sense can be viewed as the overall planned criminalistic procedure of the authorized officials (AO) from the moment they become aware of the grounds for suspicion that a criminal offense has been committed. This leads to a series of actions culminating in the need for a search, but only when there are sufficient grounds to suspect that the search will lead to the discovery of the perpetrator, an accomplice, traces of the criminal

3 Since the criminal procedure reforms implemented in BIH in 2003, the term “authorized official” has a broader meaning than just police officers. Considering that searches in BIH are directly conducted by authorized officials of police agencies, in this work, “authorized officials” refers specifically to officers of police agencies who, in accordance with the provisions of the relevant laws at the state, entity, cantonal, and/or Brčko District level, are authorized to perform police duties and act as authorized officials in accordance with the provisions of the relevant Criminal Procedure Code, in line with actual and territorial jurisdiction.

act, or items important for the proceedings. This should only occur if a less intrusive evidentiary action, as outlined in Article 8 of the European Convention on Human Rights (ECHR), could not have achieved the same result. We will now focus on the narrower sense of search planning and the significance of criminalistic planning for the execution of the search as an evidentiary action by the AO, as a prerequisite for its successful realization and achievement of its goals. We aim to highlight the specificities and challenges of planning searches influenced by the nature of the items being searched for, the items believed to be found, and the individuals being sought or discovered at the scene. Criminalistic planning of searches should, as a rule, be covert. Initially, it should only be known to the AO officers handling the case and their supervising managers. After the written plan is created, approved, and presented, it should remain confidential, even among the AO officers involved in the search. It is imperative to prevent any “leakage of information” to avoid compromising the purpose of the search, such as the destruction or concealment of items being sought, or the escape of individuals sought.⁴

Regardless of the type of search based on the subject of the search in a given case, planning always includes both a personal (individual) and a material component. The personal component involves determining the necessary number of engaged authorized officials (AO), in accordance with their expertise and abilities, based on objective assessments of the needs for the search. This includes AOs within the decision-making chain of the police. The material component of the plan ensures that the AOs have the necessary material and technical resources (MTR) available during the search to achieve the objectives of this evidentiary action in the specific case.

PRINCIPLE OF METHODOLOGY AND PLANNING

Criminal-procedural principles are fundamental rules of the criminal procedure that serve and protect basic human rights and the achievements of the rule of law, ensuring fairness and justice throughout the

⁴ It is possible and planned, deliberately allowing the “leak” of information in order to achieve another procedural and/or criminalistic goal.

procedure (Buha, 2021, p. 11). A search is also a criminalistic action, for which authorized officials (AO) apply criminalistic principles. The basic criminalistic principles are derived partly from criminal-procedural norms, but also from other sources and provisions, such as those regulating human rights and their protection (Pavišić, Modly, and Veić, 2006, p. 127). These principles guide the application of criminalistic practices, ensuring that searches and other investigative actions are carried out in accordance with legal standards, with due regard for the protection of individual rights and liberties.

A lawful and successfully conducted search by authorized officials (AOs) is inseparable from criminalistic principles such as legality, objectivity, methodology and planning, operational efficiency, speed, thoroughness and persistence, proportionality, unified leadership, coordination, and cooperation, among others. The application of the principle of methodology and planning during the execution of a search is imperative. This principle ensures the fulfillment of other criminalistic as well as criminal-procedural principles. Methodology encompasses the obligation to meticulously plan activities. A search that is unplanned or insufficiently planned may result in searching the wrong premises or individuals, even if the material conditions are met and a search warrant has been issued in accordance with the provisions of the criminal-procedural law. The European Court of Human Rights (ECHR) has established through its case law that in such cases, human rights protected by Article 8 of the European Convention on Human Rights (ECHR) are violated.⁵ Also, first an unplanned and then a non-methodical search leads to the failure to achieve the objectives that were the reason for conducting the search. A

5 In the case of *Keegan v. the United Kingdom* (Application No. 28867/03), by judgment of July 18, 2006, paragraphs 29-36, the European Court of Human Rights (ECtHR) held that there had been a violation of Article 8 of the European Convention on Human Rights (ECHR), because the police had not conducted an adequate check regarding the current residents of a residential property planned for a search. The authorized officials forcibly entered the applicant's property and carried out the search, mistakenly believing that an armed member of a criminal milieu was living in the house. The Court accepted that the reasons presented to the competent court before the search were relevant and legally valid for conducting the search. However, it considered them insufficient due to the failure to conduct proper preliminary checks and the lack of an adequate level of precaution. For the ECtHR, it was not significant that the police acted without "bad intentions," but rather the insufficient checks that had been made.

non-methodical and unplanned search may result in the failure to find, or only partially finding, items important for the criminal procedure or the sought individuals. This principle is also evident in cases where important items are found but, due to the unpreparedness of the AOs (resulting from the lack of planning), are then illegally temporarily seized, improperly and untimely stored, and as such cannot be used as evidence in the criminal procedure. Unplanned searches endanger the safety of the acting AOs, as well as the individuals found at the search site and other citizens (poorly planned searches with the aim of finding explosive devices, highly toxic narcotics, dangerous fugitives, etc.).

Planning and methodology go “hand in hand” and are a prerequisite for the success of criminalistic actions. A well-planned search allows the AOs who directly conduct it to be methodical. Timely planning of the required number of executors, MTM, ensuring the presence of witnesses (in sparsely populated areas), engaging specialized police units (commonly referred to as “special forces”), etc., enables the methodical approach of the acting AOs. This eliminates potential problems that could hinder the AOs during the search, affect the duration of the evidence-gathering action, and/or completely prevent the search. In practice, it is possible to have methodical searching without prior good planning, as well as the reverse. It happens that AOs are methodical, but due to the size of the searched object or the lack of appropriate MTM, they cannot be fully successful. Due to an insufficient number of search executors for larger premises resulting from poor planning, the search lasts longer, hindering the efficiency and methodical approach of the AOs due to fatigue. Practice also records cases of formally (written search plan) well-planned searches that were not successfully carried out due to unforeseen problems and situations.⁶ The search plan must be implemented in the actual situation and depends on its immediate execution in the field, i.e., the human factor. Engaging unmotivated or insufficiently qualified AOs will result in a lack of methodical approach, and thus, the expected outcome. Methodicalness is influenced by both subjective and objective human factors. Lack of motivation is a subjective human factor, while lack

⁶ The search plan must not be “rigid,” meaning it should be flexible and adaptable as necessary.

of expertise is an objective human factor affecting methodicalness. The AOs who draft the search plan should particularly pay attention to these aspects of the human resources involved. The responsibility for approving and instructing the creation of the plan (if not creating it themselves) should lie with the supervisory staff of the police unit responsible for conducting the search (considering the pyramid structure and hierarchy in the decision-making chain based on police ranks, and thus the level of responsibility depending on the position of the individual AOs within this structure).

The principle of methodology and planning is also in a synergistic relationship with the principles of efficiency and economy of the procedure. By planning the personal and material components necessary for a successful search, the efficiency of the engaged human and material resources is ensured, as well as the economical execution of the procedure.⁷

CRIMINALISTIC PLANNING

Planning is inseparable from the basic tasks of authorized official persons (AOs) in preventing the commission of criminal offenses, detecting and prosecuting perpetrators. Gros (1914) emphasized that creating a criminalistic action plan allows a comprehensive approach to solving a specific case and prevents spontaneous and chaotic actions. Criminalistic action can be divided into traditional and modern approaches to organizing and planning the overall criminalistic activity of a police authority. Regarding the time of response to the commission of a crime, the traditional approach is reactive, while the modern approach is proactive. The proactive approach has rightfully prevailed, enabling the prevention of crimes before socially negative consequences occur. Modern criminalistic planning is divided into strategic and tactical planning. Strategic planning analyzes the conditions and causes of certain types of crime, as well as crime as a whole, and measures taken to prevent it (Simonović, 2002).

7 Engaging an excessive number of AOs and unnecessary MTM violates the principle of economy. By planning according to objective needs, economy during the search is ensured without compromising efficiency.

Tactical planning involves planning the activities of AOs engaged in the prevention, detection, and resolution of criminal offenses, analyzing the factual situation, and taking appropriate criminalistic actions (both operational and criminal-procedural) with the goal of gathering lawful evidence in criminal proceedings (Simonović & Matijević, 2007, p. 65). The fundamental principles of criminalistic planning are concreteness, individuality, and dynamic planning. Tactical planning consists of planning actions in a specific case as a whole, as well as planning individual criminalistic actions (in our case, searches).

Planning a search is a phase of action by AOs that precedes the actual search procedure. As such, planning is one of the prerequisites for a successful search. No search in practice is identical, and it can never be stated with certainty that all possible situations have been anticipated in the plan. However, timely and proper planning can determine the required number of AOs for executing the search and AO engaged in securing the immediate and, if necessary, broader search location, establish a hierarchy of search leaders at each location (as well as in the case of multiple searches within operational actions), determine the chain of communication to inform supervisory AOs of the activities undertaken, notify the acting prosecutor, engage and assist “special forces,” as well as specialized staff from other relevant services, and foresee a sufficient number of criminalistic technicians, etc. Planning also involves forecasting the use and ensuring the availability of the necessary material-technical means (MTM) for a successful search, from specialized tools for opening entrances, cameras and scanners for inspecting hard-to-reach spaces, the use of specially trained tracking service dogs, securing an adequate number of transportation vehicles, to communication tools (phones, radio communication, encrypted devices, etc.), and other necessary tools according to the specific needs.

Planning of the criminal-procedural criminalistic action of a search based on a written court order for a search⁸

Search is an evidentiary action under the Criminal Procedure Code (CPC). It is undertaken only when a “less intrusive” procedural action (with less interference in protected human rights) cannot achieve the purpose of finding the perpetrator or accomplice of a criminal offense and/or evidence and objects important for the criminal procedure. As such, it should be the result of meaningful and carefully planned actions by law enforcement officers (AOs), under the supervision of the competent prosecutor and, as a rule, by court order, with the goal of resolving the specific criminal case. A search must not be a spontaneous action that is an end in itself, in which case it would be illegal. This particularly applies to searches conducted under a written court order, which the court issues based on the prosecutor’s reasoned request or the AOs request, with prior approval from the prosecutor (Article 117, para. (2) CPC RS; Article 53, para. (2) CPC BIH; Article 67, para. (2) CPC FBIH; Article 53, para. (2) CPC BD BIH). The mandatory deadline for executing a court order for a search in BIH is 15 days from the date of issuance. Within these 15 days, preparatory activities for conducting the search, planning the search, and creating the plan must be completed, followed by the execution of the search order.

Search planning cannot be carried out without preparatory activities, which are interdependent with the nature and purpose of the search, as well as the time available. Preparatory activities are a phase in the execution of the search by the AOs. These activities are inseparable from the immediate planning process. Preparation involves gathering information about the object and person to be searched, in order to determine

8 In cases of searches based on an oral order and searches without a formal search plan order, there is no time for preparation, as these are urgent actions that cannot be delayed. In such cases, certain preparatory activities can be carried out to a limited extent. However, this does not mean that such searches should be spontaneous. Even in these situations, they must be carried out by respecting the principles of methodicalness and planning, based on legal and subordinate legal acts, as well as the criminalistic experience, knowledge, and skills of the acting law enforcement officers, their mutual criminalistic coordination, and the available material and technical resources.

the real needs regarding the number of officers, specific specializations and expertise of the officers, and the required material and technical resources (MTM). AOs often already have such data, collected during the investigation prior to the issuance of the search order, and some of this is outlined in the request for the search order.

Both in domestic and international police practice, it is common for AOs to first encounter the location to be searched just before the search takes place. In these cases, the address is usually determined by reviewing the database of general citizen data maintained by the competent authority, by reviewing outdated operational databases of criminally interested individuals, or sometimes even just based on operational intelligence gathered through friendly or informant networks (the quality of such intelligence is often questionable). In the case of searches under a written court order, this is unforgivable and may lead to:

- violations of citizens' human rights (e.g., searching the wrong property or person);

- endangering AOs and citizens (e.g., a police raid on the wrong property that eliminates the element of surprise);

- indirectly facilitating the escape of the person to be searched, or the destruction or concealment of items intended to be found in the search.

Upon issuing the order, it is desirable to thoroughly compare it with the actual situation on the ground in order to prevent situations that could undermine the legality of the AOs and the search itself.⁹ Vajngart (1905, p. 79-86) outlined the basic questions for successful search planning, which are still theoretically and practically recognized today:

- 1.) What or whom should be searched for;
- 2.) From whom should it be searched for;
- 3.) When should it be searched for;

⁹ Due to errors caused by the human factor, there may be discrepancies in the data, which need to be checked as part of the preparatory activities for the search carried out by AOs. For example, verifying the addresses specified in the order against those in the request (which should be identical and accurate), the identification details of the person to be searched, etc. In cases where discrepancies are found, we recommend notifying the prosecuting attorney and the court that issued the order, and issuing an amended/updated search order.

- 4.) How is it most useful to search for;
- 5.) Where should it be searched for;
- 6.) With what equipment and how many officers should it be searched for.

We believe that the aforementioned questions should also be used when drafting a reasoned request for the issuance of an order, which the prosecutor or the AO submits to the court, with prior consent from the competent prosecutor. Courts in BIH issue an order based on the request and the information provided in the request, which they use to interpret the validity of the request. The actions of the AOs are limited by the order.

Legislators at all levels in BIH have made a basic distinction regarding the subject of the search and its specifics, dividing it into searches of apartments and other premises (including seized movable items), searches of individuals (personal searches), and searches of movable items suitable for storing digital data (computers, servers, hard drives, USB drives, mobile phones, etc.). Planning in a specific case is determined by the nature and characteristics of the object being searched, and in most cases, the search includes both immovable property and individuals, as well as devices for storing digital data. In any case, criminalistic planning of the search is a prerequisite for a successfully conducted search.

Planning the search of apartments and other premises

The planning of the search of immovable property is based on the content of the order, the data and information gathered during preparatory activities, and other available information such as:

- the exact geographical location of the immovable property;
- the purpose of the search, i.e., what is specifically being sought during the search;
- specifics of the immovable property (apartment in a residential building, family house, or other types of residential buildings such as a mobile home, exact floor and apartment number, size, access, type of entrance doors and used locks, possible entries through windows, etc.);

- household members, their number, age, and gender of individuals expected to be present, and their tendencies toward resistance, violent behavior, etc.;

- legal specifics regarding searches of official premises, religious and military buildings, and law offices, which particularly affect planning.

The geographical location of the property to be searched and the exact distance from the starting position of the AOs to the search location influences the planning of the required travel time for the AOs to the search location. When conducting multiple searches (within operational actions), this allows for a synchronized start of all searches. By law, searches are generally conducted between 6:00 AM and 9:00 PM, and in practice, searches usually begin at 6:00 AM. Criminalistic tactics determine that the best time to begin a search is in the early morning hours, when it is expected that resistance from those being searched will be minimal, and that the search is more effectively carried out in daylight, while searching at night is more difficult. The possibility of error is also avoided, such as the AOs not knowing which object to search, which can lead to both unlawful actions by the AOs and tactical errors, delays in starting the search, compromising the safety of officers and citizens, etc. Svrha pretresanja esencijalno određuje planiranje pretresanja.

Depending on the purpose, the use of the appropriate technical equipment (MTM) will be planned, as well as the number of AOs who, with their knowledge and skills, can carry out the search. For example, when searching for narcotic drugs (which are easily concealable), it is necessary to plan the use of suitable MTM to access hard-to-reach areas, such as tools for disassembling furniture parts, wire cameras, probes for viewing inaccessible spaces, scanners, and appropriate chemical reagents that can perform preliminary chemical analyses on-site, etc. It is essential to plan the use of suitable and safe packaging when temporarily seizing narcotic drugs and storing them in accordance with the CPC, the court's order for the search, as well as the applicable legislation in BIH that regulates the seizure, storage, and destruction of narcotic drugs.¹⁰ The

¹⁰ Knowledge of the legal frameworks that define the obligations when acting by AOs is a factor

planning of the engagement of adequately trained AOs, familiar with the proper and safe methods of searching, recognizing, temporarily seizing, packaging, and storing narcotic drugs, is imperative to avoid jeopardizing their own safety and the safety of others present during the search, while ensuring that the integrity of evidence is not compromised. This also applies to searching for military equipment, weapons, explosives, and other dangerous items, materials, and substances, especially if the actions are regulated by special regulations. In principle, the purpose of the search itself determines the planning of which AOs to engage and which MTM to use.¹¹

Considering the specifics of the immovable property in terms of the size of the object, the appropriate number of AOs to carry out the search and their individual capabilities will be planned. If the property is large, a proportionally larger number of AOs should be planned. On the other hand, if it is a smaller property (e.g., a small studio apartment), fewer AOs will be planned (never fewer than two AOs) in order to meet the principles of efficiency and economy in actions, as well as to avoid disturbing citizens with an unnecessary number of AOs on-site. When planning the engagement of multiple AOs, it is also necessary to consider the factor of interpersonal relationships between AOs within the search teams. Although legality and professionalism should be the foundation of their actions, AOs are still human beings. It is reasonable to

that must be considered when planning a search. AOs must be familiar with and act in accordance with the provisions of the CPC, but often in practice, their actions are also determined by special laws, with whose norms not all AOs, especially those on the “line of work” in the police department, are necessarily familiar, or not to a sufficient extent. For example, the Law on Prevention and Suppression of Abuse of Narcotic Drugs in BIH and the Regulation on the Storage and Destruction of Seized Narcotic Drugs, Psychotropic Substances, Plants from Which Narcotic Drugs Can Be Obtained, and Precursors more specifically define the handling of narcotic drugs. Therefore, when planning a search in which the discovery of narcotic drugs is expected, it is necessary to consider the engagement of AOs familiar with these norms or plan additional familiarization with the obligations for non-specialized AOs who are not regularly engaged in detecting and preventing criminal offenses related to narcotic drugs. .

- 11 For example, if the search is conducted to find money suspected of being counterfeit, it is necessary to engage AOs who are familiar with how to recognize counterfeit money. Alternatively, if there are multiple locations to search, which may prevent the engagement of a sufficient number of trained AOs, it is necessary to ensure that the engaged AOs are familiar with the characteristics they need to observe in money suspected of being counterfeit.

expect that the effectiveness of the search will be higher within a team where interpersonal relations are good and undisturbed (although this is not necessarily a rule). AOs, based on previous actions, develop professional preferences for working with certain colleagues, and based on the success of the actions taken, their suggestions about team compositions should be taken into account. It is important to always remember that the search is not an end in itself¹², it must also not be conducted with the aim of increasing the statistical performance of the police. In accordance with legal procedures, the issued search order specifies the purpose for which the search is being conducted. The search must be carried out in a way that minimizes the violation of human rights, both for the individuals being searched and for other citizens (neighbors, bystanders, etc.).

The approach to the object (e.g., a remote mountain road, forest road, etc.) as well as information about the entry points into the building (bars on doors and windows, armored doors, etc.) affect the planning. If the building is inaccessible or approached via a road in poor condition, the use of suitable motor vehicles (off-road vehicles) and AOs who are trained to operate them should be planned. If vehicles cannot be approached, AOs must be capable of accessing such a property, including, if necessary, the engagement of “special units.” Having information about the characteristics of the entry points into the object to be searched allows for the planning of the necessary MTM for opening and entering the building using appropriate tools or the engagement of AOs trained to handle such tools. A property secured with armored doors, bars, and other entry barriers can be an insurmountable obstacle for an ordinary AO, especially those who do not have the appropriate MTM for entry or the expertise to handle them.

By having basic demographic data on population density, the nearest neighbors, or potential witnesses to the search, it is possible to plan for AOs to bring witnesses to the search or know where they can be found, in cases where it is expected that they will be impossible to locate at the scene or their discovery would involve difficulties and take a lot of time.

12 It is unacceptable and illegal to conduct a search based on the cliché: “We will search, and we will surely find something.”

With information and knowledge about the individuals expected to be found at the search location and their behavior in contact with AOs, it is possible to plan a sufficient number of AOs to ensure a lawful, successful, and safe search. If a larger number of individuals is expected, a larger number of AOs should be engaged, especially if the individuals are prone to attacking or resisting the AOs. In such cases, the engagement of “special units” will also be planned to assist the searchers (to control the individuals present and ensure conditions for an undisturbed and safe search). When planning the number and gender of the AOs to be engaged, it is also necessary to consider the gender composition of the individuals expected, in accordance with legal provisions regarding gender identity during searches of individuals, which will be addressed later.

If, during the search of an immovable property, there is an expectation of finding victims of human trafficking, victims of pedophilia, individuals in poor health, minors without parental accompaniment, foreign nationals, etc., the engagement of specialists from social welfare centers, psychologists, doctors, the Service for Foreign Nationals, etc., will be planned, or their subsequent notification will be planned in case such individuals are found. For this, it is necessary to determine the communication methods and chain of command in a timely manner. These officials do not participate in the evidentiary act of the search but act within their powers to protect the individuals in need and provide expert assistance to the AOs.

The timing of the search is an essential aspect of planning the search. The timing is constrained by criminal procedure norms in BIH (Article 123 of the CPC RS; Article 59 of the CPC BIH; Article 73 of the CPC FBIH; Article 59 of the CPC BD BIH). The law in BIH imperatively stipulates that a search must be conducted within 15 days of the issuance of the order. Searches are usually carried out between 6:00 AM and 9:00 PM, unless the order explicitly authorizes execution at any time of day or night in accordance with the law. Within these limits, planning involves determining the most appropriate time to begin the search to achieve the purpose of the search, which depends on the case. For example, if there is information that the sought items or individuals are not currently at the targeted property, it is necessary to plan the search to begin at the most

tactically favorable moment upon receiving “reliable tip-off” or verified information that the items sought are present at the location. Otherwise, the AOs arriving at the location and conducting the search could indirectly alert the “target or targets” not to come to the location or not bring the items sought, thereby preventing the purpose of the search from being achieved. In practice, police surveillance of the property planned for the search, as well as coordination with AOs involved in conducting special investigative actions such as “simulated purchase and simulated bribery,” “covert surveillance,” “use of undercover investigators,” and “use of informants,” etc., are often planned, and the timing of the search will depend on the relevant intelligence and data.

The term “other rooms” in all criminal procedure laws in BIH includes, in addition to various living spaces (barracks and huts), official rooms, religious and military objects, and law offices, which determines the planning specifics of searching such immovable properties. When searching official premises, instead of witnesses to the search, the superior or head of the official premises is called to attend the search, with the same rights and obligations (Simović, Simović, & Govedarica, 2021, p. 200). It is necessary to plan for the presence of the head by ensuring contact information in advance or by planning the search at a time when their presence in the searched premises is expected. Legislators in BIH have specified the specifics for searching military and religious objects. In these cases, it is necessary to plan for the search order to be delivered in a timely manner to the military authorities or the competent religious community, which will appoint a person to attend the search. Criminal procedure provisions at no level in BIH have prescribed the specifics of searching a law office. However, positive regulations on advocacy in BIH¹³ stipulate the specifics of searching a law office, which cannot be carried out without the presence of an authorized representative from the relevant bar association (Article 37, para. (3) of the ZOA RS; Article 28 of the ZOA FBIH). When planning the search of a law office, it is necessary to plan for the AOs to understand and emphasize that searching a law

13 The Law on Advocacy of Republika Srpska (hereinafter: ZOA RS) and the Law on Advocacy of the Federation of BIH (hereinafter: ZOA FBIH).

office is not the same as searching an ordinary business premises, and that it may potentially jeopardize the confidential relationship between the client and the lawyer. Moreover, only the items/documents specified in the court order should be sought. The European Court of Human Rights in the case *Robathin v. Austria* on July 3, 2012 (Application No. 30457/06) held that a general and unrestricted search of a law office is illegal and that searches and temporary seizures must be proportional to the specific needs (Pisarić, 2019, p. 63).

Planning of searches of persons (personal searches)

Personal search is a material investigation of the body, clothing, footwear, and personal luggage of a particular individual when it is likely that this individual is the perpetrator of a criminal offense or when it is likely that the search will yield items or traces of a criminal offense that are important for the specific criminal proceedings. Personal search is a mandatory investigative action when an individual is deprived of liberty, and when it is likely that the individual has weapons or tools for assault or intends to dispose of, hide, or destroy items that need to be temporarily seized. Personal search is often inseparable from the search of premises and other areas, and generally, the same principles apply to this search. Criminal procedural provisions in BIH (BIH) provide additional protection of the right to privacy of the searched individual, which should be especially considered when planning (Article 116, para. (2) CPC RS; Article 52, para. (2) CPC BIH; Article 66, para. (2) CPC FBIH; Article 52, para. (2) CPC BD BIH). Personal search has a special rule of gender identity for both the active and passive actors, meaning that the search must be conducted by individuals of the same gender, with witnesses of the same gender as well (Škulić, 2022, p. 248). Accordingly, whenever possible, planning the personal search should properly assess the gender composition of the engaged AOs, while considering one of the tactical rules that personal searches should be conducted by at least two AOs. While one AO performs the search, the other observes, acting preventively to deter possible attacks and/or prevent escape. If there are no AOs on-site who meet the gender identity rule, their engagement should be ensured.

As with the search of premises, planning must also take into account the necessary post-search actions to be taken after the search is concluded.¹⁴

During the search of a person, the aforementioned Weingart's question about successful search planning, "What or whom should be sought?" becomes particularly relevant. The search of a person emphasizes both the objective and subjective traits and skills of the engaged AOs. Based on the available information and previous police experiences regarding the person to be searched, it is necessary to plan the involvement of capable AOs to successfully achieve the purpose of the search. For individuals prone to resisting, fleeing from AOs, discarding or destroying objects, it is essential to plan the engagement of a proportional number of psycho-physically capable AOs to prevent such actions and achieve the search's purpose, minimizing potential risks to the safety of the engaged AOs, the individual, and other citizens. This should be done by using the least repressive methods proportionate to the perceived threat. Although an AO must act professionally, they are still human, not a robot. Their reactions to provocations can be influenced by current life circumstances (family, health, financial issues, lack of career advancement, etc.). Supervisory officers (AO superiors) should evaluate these circumstances on a case-by-case basis when assigning personnel for all types of searches, especially searches of individuals.

In practice, some AOs, out of laziness (avoiding the preparation of official records), may choose not to conduct the procedural action of searching a person but instead perform an inspection. Within its scope, an inspection is not as formal as a procedural search. This can lead to two unfavorable situations, among others. In the first case, during the inspection, the AO fails to find the sought object, even if the object, for example, is hidden in the individual's underwear. In the worst case, the undiscovered object could be used for an attack on the AO, self-harm, escape, taking hostages, etc. In the second case, during an action labeled as an inspection (exceeding the bounds of an inspection and practically conducting a search), the AO finds nothing, but the individual later accuses

¹⁴ For example, bringing the individual to official premises for questioning, handing the individual over to the acting prosecutor, etc.

the AO of conducting an unlawful search without an official record. The individual might also have “witnesses,” such as household members (if present) or selected witnesses to the search, whose presence is often erroneously entrusted to the searched individuals themselves (usually their associates) who will testify against the AO. Both situations can lead to disciplinary and even criminal liability for the AO.

Planning the Search of Movable Items Suitable for Storing Digital Data

The definition of movable items in the true sense of the term is not provided by any CPC in BIH but rather by property laws. The search of an apartment and other premises also includes the search of movable items found therein. The search of a person includes the search of their clothing and personal luggage. However, when it comes to searching computers and computer systems, devices for storing computer and electronic data (USB drives, hard drives, etc.), and/or mobile phones, this must be carried out with the assistance of an expert (Article 115, para. (2) and para. (3) of the CPC of RS; Article 51, para. (2) and para. (3) of the CPC of BIH; Article 65, para. (2) and para. (3) of the CPC of FBiH; Article 51, para. (2) and para. (3) of the CPC of BD BIH). Such devices may contain data relevant to the specific criminal proceeding, referred to as digital evidence. The collection of digital evidence must be conducted with the assistance of an expert to ensure the integrity of the evidence is not compromised due to unprofessional handling (Ivanović & Žarković, 2019, p. 426). If the search warrant for an apartment, other premises, and movable items includes the search of devices for storing digital data, experts may conduct the search on-site, depending on the time and available technical equipment. In such cases, it is necessary to plan the engagement of AOs who hold expert status. In practice, police agencies in BIH have organizational units within their internal structures that employ experts for collecting digital evidence. When a police agency lacks experts or sufficient numbers of them, it is possible to engage experts from other police agencies, which must be stipulated in the court order for the search and subsequently agreed upon and jointly planned between different agen-

cies. If, for any reason, the search of devices for storing digital evidence cannot be conducted on-site, the search will be carried out later at the premises of the police agency by an expert. In such cases, the search is usually conducted in the premises of the internal organizational unit of the police agency responsible for these tasks. Interestingly, legislators in BIH have not prescribed the presence of two independent witnesses as a prerequisite for such searches of movable items (Article 124, para. (4) of the CPC of RS; Article 60, para. (4) of the CPC of BIH; Article 74, para. (4) of the CPC of FBiH; Article 60, para. (4) of the CPC of BD BIH).

Search Plan (Formal Planning)

A search plan as a formal act of planning should be prepared whenever objective conditions allow. The plan is the result of analyzing available information and data that define the specificities of the particular search, including the contents of the search warrant and the normative framework. The plan addresses organizational, tactical, and technical issues such as the start time of the search, the number of required AOs with specific assignments (leadership, site surveillance, direct searching, etc.), their arrangement into search teams (in cases of multiple coordinated simultaneous searches), the designation of a supervisor/coordinator for activities during extensive operations, logistical needs for criminalistics, such as the required technical equipment, including the use of tracking dogs, and other matters depending on the circumstances (Aleksić & Škulić, 2011, p. 61).

The search plan is not a universal written document but is tailored for each specific case. In drafting the search plan, it is essential that the AOs responsible for the specific case (most familiar with the case) participate, as well as their supervisory officers, respecting the pyramid structure and hierarchy within the decision-making system of the police agency, depending on the complexity of the case (seriousness of the criminal offense, number of searches, complexity of the case, involvement of multiple organizational units or police agencies, etc.). This approach distributes the immediate responsibility for all foreseen and unforeseen circumstances, as outlined in the plan, from the acting AOs to their su-

pervisors. In cases involving operational actions (a large number of simultaneous coordinated searches and other criminalistics activities), it is our opinion that supervisory officers should draft the plan and bear the primary responsibility for its lawful implementation as coordinators and leaders of the operation. In practice, however, the plan is often drafted by the acting AOs, while supervisory officers approve the plan. The AO most familiar with the specific case is typically designated as the coordinator for the search. In addition to the coordinator role, this AO often serves as the team leader at one of the search locations (a demanding, responsible, and complex activity). If “not everything goes according to plan,” the coordinator AO is held accountable, despite not holding a rank or position within the police agency that involves responsibility for managing a larger number of AOs and/or multiple organizational units and their activities, nor for urgent verbal correspondence and coordination with the competent prosecutor’s office. This portion of the “burden” should be borne by supervisory officers in accordance with their rank and position within the police hierarchy.

The plan, as well as the search itself, should be based on the principles of legality, objectivity, methodology and planning, operationality and speed, thoroughness and persistence, proportionality, unified leadership, coordination and cooperation, economy, and procedural efficiency. In addition to the aforementioned, the search plan must also be based on:

- The principle of concreteness in planning, which is achieved by analyzing the actual situation within the legal framework, setting deadlines for execution, defining the duties of supervisory officers and executors, engaging AOs based on the required knowledge, skills, expertise, and specialization,¹⁵ necessary technical equipment, etc;

¹⁵ When drafting the plan, it is essential to assess the current subjective attitude of the AO towards their work and engagement. As a human being, the AO is susceptible to the effects of stress caused by personal, health, family, financial, and/or any other problems (including professional dissatisfaction due to the disproportionate nature of their duties, work results, and personal abilities on one hand, compared to, for example, stagnation in their career progression on the other), which can affect their motivation during the search, and consequently, the effectiveness of achieving the purpose of the search at the location where they are engaged.

- The principle of individuality in planning, meaning that the plan is created in accordance with each specific search and its characteristics;

- The principle of dynamism in planning, which means that the plan, once drafted, is not absolutely final but can change within the legal and regulatory framework, based on the emergence and/or collection of new or expanded knowledge that may affect this procedural action, or the occurrence of unforeseen circumstances (Luzgin, 1963, pp. 5-7; Simonović and Matijević, 2007, p. 66).

Based on the above, the written search plan should include the following elements:

- The name of the police authority and the internal organizational unit where it is drafted;

- A brief description of the measures and actions taken so far, as well as the grounds for suspicion against the suspects;

- The preparatory activities prescribed by the plan as a phase in planning the search ordered by the court (collecting information about the object and person to be searched);

- An assessment of the security situation, with a detailed review of available data and facts about the individuals whose properties and/or items are being searched, in relation to their tendencies for attacks and resistance towards AOs, flight, destruction, disposal, or concealment of items, and based on this, an assessment of the need for appropriate specialized police units;

- Activities that precede the immediate execution of the search order and those to be undertaken after the search, with specific deadlines for execution and assigned AOs for each activity (forming search teams, including reserve teams as needed, timely sending requests for the engagement of AOs from other organizational units and police authorities, planning activities following the searches in accordance with agreements and instructions from the acting prosecutor—interrogating suspects, transporting them to the prosecutor, etc., submitting the search report and temporarily seized items to the court, and submitting reports on the actions taken to the acting prosecutor, etc.);

- Information about the search team(s) or more teams (team names by serial numbers) with the names of engaged AOs and appointed team leaders, assigned technical equipment, and specific team duties in accordance with the order and plan, including criminal investigative actions beyond the search, such as surveillance, monitoring individuals, arresting individuals, conducting Special investigative actions, coordinating and working with “specialists,” etc.;

- In accordance with the search order, the purpose of the search, i.e., the items and/or persons being sought through the search, and for which the search is being conducted;

- Planned and expected technical equipment needs;

- The planned date and time of the search initiation;

- Appointment of an AO responsible for reporting from the team leaders on the activities undertaken to implement the search order and plan, and designating an AO to coordinate the actions of the search teams;

- Procedures after the completion of the search (submission of temporarily seized items to the court for storage, etc.);

- Notifying the management of the police authority about the actions taken and the relevant internal organizational unit for public notification and media relations;

- Other items that, depending on the circumstances of the specific case, need to be considered and planned.¹⁶

- The names and signatures of AOs who created the plan, gave consent, and/or approved it.

Planning Searches Based on an Oral Warrant and Searches Without a Warrant and Witnesses (Informal Planning)

The criminal procedure reform of 2003 in BIH introduced a novelty in the form of an oral court warrant for a search (Article 120 of the CPC RS; Article 56 of the CPC BIH; Article 70 of the CPC FBIH; Article 56

¹⁶ For example, during the COVID-19 pandemic, the use of appropriate protective equipment (masks, rubber gloves, face shields, suits, etc.) was planned to protect AOs, searched individuals, and other citizens, i.e., to prevent the spread of infection.

of the CPC BD BIH).¹⁷ An oral order is preceded by submitting an oral request by the AO (with prior oral consent from the competent prosecutor) for the issuance of an order by the judge for the preliminary procedure when there is a concrete risk of delay. The legislators have not defined “risk of delay,” so it is assessed on a case-by-case basis. If the judge for the preliminary procedure grants the AO’s request, the AO will independently draft the order, which will then be read aloud to the judge to confirm that such an order was issued. Without further discussion, we can conclude that this is an action where the critical element is urgency, which cannot be delayed. In this case, the AO objectively does not have enough time to satisfy the formal procedure for issuing a written search warrant.

On the other hand, a search without a warrant and witnesses represents a deviation from the rule of having a formal condition in the form of a court order, justified by urgency (Škulić, 2022, p. 245). A search without a warrant is not a novelty in BIH, and it is regulated by all criminal procedural laws in BIH in nearly identical ways (Article 128 of the CPC RS; Article 64 of the CPC BIH; Article 64 of the CPC FBIH; Article 64 of the CPC BD BIH). A search without a warrant, according to the provisions of substantive criminal law, obligates the AO to prevent the commission of crimes, detect and report crimes, and seize items that should be seized in accordance with the law. These provisions are embodied to prevent and avoid any passive behavior by the AO, who could become “accomplices” in concealing a crime or traces and evidence (Buha, 2023, p. 127). In exceptional circumstances provided by law, the AO can enter an apartment and other premises without a warrant and carry out a search when the tenant of the apartment wishes it, if someone calls for help, if it is necessary to apprehend a perpetrator caught in the criminal act, or for the safety of people and property. A search can also be conducted if a person is present in the apartment or another room who, by court order, must be detained or forcibly brought, or who has taken refuge there to avoid prosecution. A search of a person can be carried out in the same manner when executing a detention order, during an arrest, if there is

17 The Criminal Procedure Code of the former SFRY prescribed searches based on a search warrant and warrantless searches, which were carried out by AOs in accordance with the provisions of Article 210, paragraph (1). In comparative law, neither the Republic of Serbia nor the Republic of Croatia allows for searches based on an oral order issued by the court.

suspicion that the person possesses a firearm or cold weapon, or if there is a danger that they will hide, destroy, or discard items that need to be seized and used as evidence in the criminal procedure.

In both cases, these are urgent procedural actions that cannot be delayed. There is no time for the regular legal procedure of issuing a warrant because delaying the search would undermine its purpose. The AO does not have the time in which to prepare a formal written search plan. If the search were delayed until the plan was prepared and approved, the urgency of the situation would be questioned. This could potentially provide a valid defense argument to challenge the legality of the search, emphasizing that if there is time to prepare a search plan, there is also time for the regular procedure of issuing a court order. In the case of a search without a warrant and without witnesses in BIH, the entire burden of assessing the fulfillment of legal conditions rests on the AO directly conducting the search. This does not mean that such searches should be spontaneous, unmethodical, or conducted entirely without planning. The plan is not formally prepared before the operation but informally immediately before and during the search, in accordance with criminal procedural provisions, criminalistic rules, the knowledge, abilities, and experience of the acting officers, available MTM, and other factors. The planning, dynamics, and order of the search are determined on the spot and must be legal, reasonable, and logical, taking into account the safety of the acting AO, the person being searched, other citizens, and their property. In these searches, which are by nature urgent and unavoidable, personal abilities of the AO, derived from previous criminalistic experiences (the number of searches conducted during their police career), as well as knowledge of criminal procedural provisions and criminalistic rules, are especially important. Depending on the specific situation and the hierarchical structure within the police agency, a leader for the search team is determined on the spot, providing directions and oral orders to other AOs (if present).¹⁸ The

18 In practice, it often happens that the leader of the search team is not the AO with the highest rank at the scene, but rather the AO with real authority (not administrative) among the other engaged AOs. The AO with real authority is often informally chosen as the leader of the team or imposes themselves as such, taking responsibility for leading the search from a higher-ranked AO whose abilities and knowledge do not justify their position in the police hierarchy.

team leader is responsible for informing the supervisory officers of the organizational unit from which they belong about the conducted search and, if necessary, requesting reinforcements or the provision of required MTM. This represents informal planning during the operation. The leader ensures compliance with the legal obligation to prepare the appropriate written documents and submit them to the court or the competent prosecutor's office for the purpose of informing them, further actions, and assessing the legality.

Conclusion

Searches represent one of the most important and complex investigative actions in BIH, as they always entail a risk to the rights to privacy, family life, home, and correspondence. All current criminal procedural laws in BIH prescribe the mandatory fulfillment of material conditions and the existence of formal conditions, generally in the form of a court order for the search. Although the immediate execution of searches by authorized police officers is part of their professional routine, this does not mean that searches should be conducted routinely based on the mindset of "How will we do it? It's easy!". By discussing criminal investigative planning in a narrow and broad sense in relation to taking investigative actions in criminal proceedings in BIH, applying the principles and rules of criminalistics limited by strict criminal procedural provisions, and emphasizing the specifics of formal search planning based on the subject matter of a written court order or informal planning based on oral orders or searches without orders, this paper has sufficiently highlighted the importance and necessity of criminal investigative planning as a prerequisite for success in achieving the purpose of this investigative action. The arguments presented have been supported by scientific and theoretical perspectives of criminal procedural law and criminalistics, opinions from the European Court of Human Rights, and the practical challenges faced by authorized officials. We have outlined the essential elements that a written criminal investigative plan for a search should contain, in order to create the necessary conditions for achieving the goal and success of the search by anticipating objective needs and possible obstacles.

Through planning, it becomes possible to ensure the proper qualitative and quantitative personal involvement of those executing the search, who will have access to the necessary material-technical resources and/or expert assistance in accordance with their specific expertise, all within strict mandatory deadlines. This enables the success of the search and the achievement of the purpose for which the search is conducted in the first place. By anticipating and planning objective needs, the principles of economy and efficiency in criminal proceedings are respected. By involving adequate personnel and material components, the search is conducted economically without reducing the effectiveness of the procedure, while avoiding unreasonable, unjustified, and unnecessary increases in procedural costs.

Absolute planning does not exist, nor is there a perfect search plan. Unforeseen situations and circumstances will always arise; they should be anticipated and dealt with as they occur, based on the engaged and potentially available human factor (personal knowledge, skills, mutual coordination of authorized officers, etc.) and the use of suitable material-technical resources.

It can be concluded that unprepared and unplanned searches leave their success to chance, and that search planning is an unavoidable phase in the actions of authorized officers in BIH, which precedes the immediate execution of this investigative action as a prerequisite for the success of the search. However, the plan must not be rigid and absolutely final; it should be flexible and adaptable. The success of a search, which is conditioned by high-quality planning, will ultimately be assessed in court proceedings, particularly if the results of the search are considered lawful evidence upon which the court decision and resolution of the specific criminal case are based.

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Paper received: 23.12.2024

Paper accepted: 14. 4. 2025