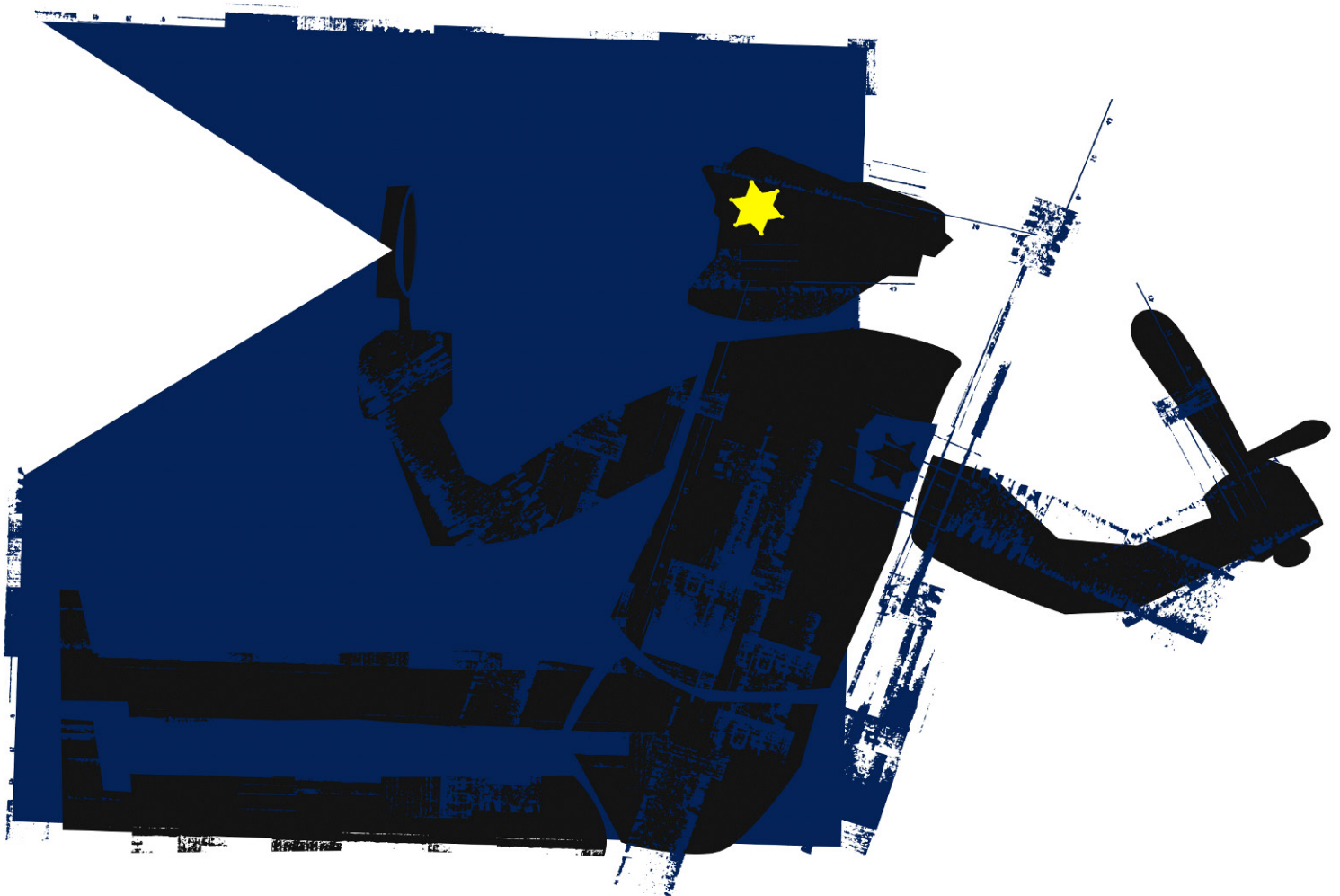


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# COLLECTION OF POLICY PAPERS ON POLICE REFORM IN SERBIA



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Saša Đorđević  
Nevena Dičić Kostić  
Jan Litavski

The views expressed herein are those merely of the three researchers and do not necessarily reflect the official position of the OSCE Mission to Serbia.

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## Content:

### BUILDING A SAFE COMMUNITY (SAŠA ĐORĐEVIĆ)

ABSTRACT: .....	6
RECOMMENDATIONS: .....	7
SAFE COMMUNITY: DUAL POLICE ROLE .....	9
WHAT HAS BEEN TALKED ABOUT FOR TEN YEARS?.....	11
1. "Awakening" guided from outside .....	12
2. "Sleeping" without support.....	14
3. "Walking quickly" forward .....	15
TECHNIQUES: BUILDING A SAFE COMMUNITY .....	16
TOGETHER: CRIME PREVENTION AND COMMUNITY POLICING .....	17
1. What is "SARA"?.....	18
2. What is the "problem resolving process"?.....	23
3. How does "5I" technique work? .....	25
CHALLENGE: BUILDING A PARTNERSHIP .....	26
BIBLIOGRAPHY:.....	28

### POLICE STATUS ACCORDING TO THE NEW CRIMINAL PROCEDURE ACT (NEVENA DIČIĆ KOSTIĆ)

ABSTRACT: .....	31
RECOMMENDATIONS: .....	32
BASIC CHANGES INTRODUCED BY THE NEW CRIMINAL PROCEDURE CODE AND CHANGES TO THE ROLE OF THE POLICE MADE ACCORDINGLY .....	34
THE MOST IMPORTANT INNOVATIONS INTRODUCED BY THE CRIMINAL PROCEDURE CODE .....	34
INTRODUCTION OF THE PROSECUTORIAL INVESTIGATION .....	34
CHANGE OF THE ROLE OF THE COURT .....	36
THE ROLE OF THE JUDGE FOR PRELIMINARY PROCEEDINGS .....	37
THE ROLE OF THE POLICE IN CRIMINAL PROCEEDINGS .....	38
Special evidentiary actions and the role of the police in their execution .....	39
Secret surveillance of communication .....	40
Secret monitoring and recording .....	43
Simulated business services.....	43
Computer search of data .....	44
Controlled delivery.....	45
An undercover agent.....	46
POLICE ACTIONS IN PRELIMINARY PROCEEDINGS.....	48
DETENTION OF A SUSPECT BY THE POLICE .....	48
COLLECTING INFORMATION.....	48
SEARCH OF PERSONS AND APARTMENTS WITHOUT A WARRANT .....	49
THE RIGHT TO BE INFORMED ABOUT REASONS FOR PERSON'S ARREST AND CHARGES .....	51
BRINGING THE SUSPECT BEFORE THE JUDGE AS SOON AS POSSIBLE AND THE RIGHT TO A TRIAL OR RELEASE FROM DETENTION WITHIN A REASONABLE PERIOD OF TIME .....	51

EXAMINATION OF THE SUSPECT .....	52
THE STATUS OF THE LAW ENFORCEMENT OFFICER AS A WITNESS .....	52
COMPARATIVE SOLUTIONS .....	53
FRANCE.....	53
ITALY .....	55
GERMANY .....	55
MACEDONIA .....	56
CROATIA .....	56
BIBLIOGRAPHY:.....	57

**PROFESSIONAL CULTURE, ETHICS, ERRORS AND POLICE ACCOUNTABILITY (JAN LITAVSKI)**

ABSTRACT: .....	57
RECOMMENDATIONS: .....	58
FRAMEWORK OF THE PROBLEM .....	60
PROFESSIONAL ETHICS AND POLICE CULTURE .....	63
CITIZENS' AND POLICE PERSONAL DATA PROTECTION.....	66
POLICE AND MINORITY GROUPS .....	67
POLICE CORRUPTION .....	68
THE ROLE OF POLICE EDUCATION IN BUILDING OF AN ETHICAL BEHAVIOUR OF POLICE OFFICERS .....	70
THE SELECTION PROCESS AND RECRUITMENT INTO THE POLICE SERVICE .....	71
MODEL OF POLICING .....	71
CONTROL AND POLICE ACCOUNTABILITY IN SERBIA.....	72
FINAL CONSIDERATIONS.....	77
BIBLIOGRAPHY:.....	77

# BUILDING A SAFE COMMUNITY

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## ABSTRACT:

Common goal of crime prevention and community policing is to create a safe community that assumes partner work with different actors at the local level to improve the quality of human life. The concept of crime prevention and development of community policing are partly included in an appropriate strategic framework of the police reform in Serbia. In the Development Strategy on of the Ministry of Interior until 2016 it is well observed that for the development of this area it is necessary to improve the preventive forms of policing and to enhance the practice of community policing. As a result of strategic planning, the Ministry of Interior is obliged to adopt two more strategic documents for the development of crime prevention and community policing.

However, there is no obligation to adopt an action plan for the crime prevention strategy, while the Initial Framework of the National Crime Prevention Strategy provides also for the creation of the National Crime Prevention Council, whose role has not been fully defined. An action plan for the implementation of MoI Development Strategy has not been adopted yet either, even though the deadline passed in June 2011. This created a gap between the two conceptually and practically related policies that build on each other. What creates further uncertainty is also the previous practice of community policing. Police officers in Serbia are not familiar enough with the techniques of building a safe community, and they do not fully implement them. In addition, there are no established guidelines in the development of community policing and local safety councils. Autonomy of territorial organizational units of the police is insufficient in the decision-making process. Having in mind the unstable economic situation in the country, finding the right funding has always been a challenge. On top of it there is a worrying attitude of police officers that legal restrictions on police conduct hinder effective policing.

The policy study analysed the development of police work in Serbia on prevention activities through community policing after the year 2000. The aim of the study is to show the

relationship between crime prevention and community policing and to present the state of development of the new philosophy of policing, then to present three problem-solving crime prevention techniques ("SARA", "problem solving process" and "5I knowledge management framework"). The techniques are guidance for police officers in the implementation of prevention activities and community policing. In the end, possible ways to build partnerships between police and citizens were identified.

## RECOMMENDATIONS:

### **Strategic planning:**

01. Action plan for the implementation of the MoI Development Strategy until 2016 should be adopted as soon as possible.
02. It is necessary to change the current logic for the adoption of strategic documents in the internal affairs, so that the action plan should be an integral part of the community policing development strategy and crime prevention strategy at the time of the adoption.
03. Community policing development strategy in Serbia should be project-oriented with clearly defined activities, deadlines, responsible bodies and material and financial resources.
04. Community policing development strategy in Serbia should define an identical way of creating local safety councils in Serbia, as well as to determine the mandatory character of their decisions.
05. It is essential that the MoI, in particular the Department for Organization, Prevention and Community Policing Operation in cooperation with the Bureau for Strategic Planning continue the work on design and adoption of the National Crime Prevention Strategy.

### **Building a safe community:**

06. Police officers assigned to community policing in all 27 police departments along with the department of the City of Belgrade should focus on the implementation of actions in cooperation with local partners in order to create a safe community, and that it is their primary task.
07. It is necessary to continue the work on networking of local safety councils up to the level of district as is done in practice of the South Banat District.
08. Local police services together with safety councils should respond not only to the outside environment and solving problems in certain infrastructure hotspots, but also find models for solving social causes of the problems.
09. In the process of developing projects on crime prevention and community policing the partners should employ one problem-solving crime prevention technique ("SARA", "problem solving process" or "5I knowledge management framework") or combine them. It is always necessary to tailor them to the situation in the local community.

10. After the realization of the project of crime prevention and community policing it is necessary that partners prepare the assessment report measuring the success rate of the change after the implementation of the project, and to present the report to the public and other local communities.



## SAFE COMMUNITY: DUAL POLICE ROLE

Policing environment in the USA changed in the eighties, due to the increased number of committed criminal acts, fear of crime and lack of trust of the citizens in the police work (Braga, Weisburd 2007). Therefore, the police intensified their participation in the creation and implementation of the concept of crime prevention in cooperation with government authorities, and later with other social actors. For the most part it was done through inventing a new philosophy of policing – community policing, which was soon adopted in many Western European countries.

The common goal of crime prevention activities and community policing is creation of a safe community (see: Table 1). It assumes active partnership between different actors at local level to combat violence, disorder and criminal activities, and enhance the quality of life. Thus the police obtained its new role.

In the UK, community safety is a positive outcome of crime prevention, an aspect of a new quality of life. In such a positive environment, people, individually and collectively, are protected as far as possible from hazards or threats that result from violence or criminal acts, and institutions are equipped to cope with the security problems. The International Crime Prevention Centre defines community safety in a similar way as those in the UK. These are the activities of crime prevention and safety is perceived as a public good. Community safety is an active process, or process in which key organizations of a community join together to work in partnership to achieve a safer environment for all. The World Health Organization defines community safety as all injury prevention, including intentional injuries such as violence, crime and suicide, as well as unintentional injuries, such as traffic and other accidents, fires and natural disasters. The unintentional injuries are caused by the activity of the society and people.

Community safety assumes active <b>partnership</b> between different actors at <b>local</b> level to combat violence, disorder and criminal activities, and enhance the <b>quality of life</b> .	
<b>Local community</b>	Specific social environment which could be distinguished by its qualitative characteristics (different level of economic, cultural, educational development and knowledge about the security culture) and quantitative characteristics (population numbers and size of the territory). The following synonyms are used: city, municipality, local community, village, community, quarter and street.
<b>Partnership through cooperation</b>	Established relations between various stakeholders in the local community for a social change that: <ul style="list-style-type: none"> <li>▪ encourages to action and strengthens community;</li> <li>▪ connects people in decision-making to improve the quality of life;</li> </ul>

	<ul style="list-style-type: none"> <li>▪ uses different types of communication – direct talks or in groups, using information technologies, or through the media;</li> <li>▪ encourages the development of democratic principles;</li> <li>▪ allows the views of other and different groups to be heard and respected.</li> </ul> <p>The process of communication and the contents are controlled by community representatives.</p>
<b>Threats</b>	Identification of community environment and infrastructure, economic, socio-political and security situation.
<b>Quality of life</b>	<p>Creating a subjectively-defined life satisfaction index, which covers the following areas of life:</p> <ul style="list-style-type: none"> <li>▪ standard of living;</li> <li>▪ health;</li> <li>▪ achievements;</li> <li>▪ relations;</li> <li>▪ security;</li> <li>▪ social cohesion;</li> <li>▪ safe future.</li> </ul>

TABLE 1: WHAT IS THE COMMUNITY SAFETY? (UNODC 2009; UNODC 2010; STANAREVIĆ, NIKOLIĆ 2007: 205-310)

Police service played a major role in building a safe community. Law enforcement agencies have a dual role – representing both the repression mechanism for solving the already committed crimes and service to the citizens for improving security. This means that the role of the police is not only the control of criminal activities, but also the creation of a viable partnership with the community for preventive activity in building a secure environment. This makes crime prevention one of the police tasks although it assesses itself through elements of control and reduction of crime in practice (Bayley 1994: 102). Preventive action can be realized only through the continuous improvement of cooperation with the community, the organizational culture in the police, and knowledge-based police working methods.

Crime prevention and community policing in Serbia is associated with the second phase of the police reform process in Serbia (Stojanovic, Downes 2009: 73-74) after the year 2000. However, community policing elements existed also in the old system of national defence and social protection, in the so-called sector policing. In this system, the cooperation with the population was maintained over local communities as parts of local government. Unlike the community policing where the safety of citizens is the main interest of the police service, sector policing was aimed at the protection of the state and public order, so that the police was not perceived as a service to citizens (Čutura et al. 2010: 20).

The policy study analysed the development of policing in Serbia on prevention activities through community policing after the year 2000. The aim of the study is to show the connection between crime prevention and community policing; to present the development of community policing in Serbia; to present three techniques of crime prevention to address the problems as guidance for police officers in the implementation of prevention activities and community policing. In the end, possible ways to build partnerships between police and citizens were identified.

## **SITUATION: COMMUNITY POLICING IN SERBIA TEN YEAR LATER**

The concept of crime prevention and the development of community policing that are working together to improve community safety is partly set in an appropriate strategic framework for the development of police in Serbia.

The second of the four strategic pillars of the Ministry of Interior until 2016 is preservation and building of security of individuals, communities and the state. It is well observed in the strategy document that it is necessary for the development of this area to improve preventive forms of policing and improve the practice of community policing. As a product of strategic planning, the Ministry of Interior is obliged to adopt two more strategic documents, which are crucial for the further development of crime prevention and community policing. Adopting these documents means accepting the UN guidelines on which the crime prevention action should be based (Economic and Social Council 1995/9).

However, according to the Development Strategy of the Ministry of Interior until 2016, there is no obligation to adopt an action plan for crime prevention strategic plan, while Initial Framework of the National Crime Prevention Strategy, apart from the adoption of a strategic document provides for the creation of the National Crime Prevention Council. This creates a gap between the two conceptually and practically related policies that build on each other. Besides, the action plan for the implementation of the MoI Development Strategy has still not been adopted even though the deadline passed in June 2011, what made the uncertainty. The practice of community policing so far have created even additional uncertainty.

What has been talked about for ten years?

After ten years of implementing the concept of community policing in Serbia, it is reasonable to ask about its current state, the results and achievements. The main driver of the activity is still the international community regardless of a decade of work on the development of community policing in Serbia. This means that the police in Serbia are still not ready to start independently to improve security at the local level.

The reasons are the lack of established operational guidelines; lack of autonomy of territorial organizational units of the police in decision making; finding adequate financial resources; underdeveloped police culture which is reflected in the fact that only three per cent of citizens believe that police officers are polite and courteous (BCBP 2011: 12). All these factors influence on the slowness and uncertainty in the future development of the concept of community policing in Serbia.

The values and goals of the community policing concept have been discussed for ten years – formally and informally, and for different purposes. The point is that the police officer accepts and then implements the following principles: (1) provide services through consent, not coercion, (2) build partnerships with citizens and agencies at the local level to detect the needs of my community; (3) provide a quality service based on the needs of citizens (Mathias et al. 2006: 4).

Thus, the last year, when the implementation of the project "Community Policing" was started in Požarevac, the head of the police station in this city said that the goal is for the citizens to "realize that the police officer is a friend and that the police and the citizens have a common interest in improving safety" (RTS 2011). At the same time, greater police powers are sought (Politika 2011). It is possible that the implementation of the concept of community policing is only a "cover" for the new police powers because, for example, there are three possible reasons for the increasing trend of using means of coercion by police officers: (1) poor training of police officers, (2) inadequate economic and social status of employees, (3) increased number of incidents in the past years (Đorđević 2012).

The situation is perhaps clearer when such a position is associated with the belief of police officers that the limitations provided by law in a democratic society can adversely affect the efficiency of the police in combating crime (Zekavica 2010: 52). The purpose of the law is exactly to protect citizens against excessive police powers, while problem-oriented policing has just emerged as a mechanism for deterring the illegal use of police powers, and as such is a major factor in crime prevention and community policing.

In December 2011, 60 police officers from all 27 regional police directorates in Serbia have successfully completed training on community policing. On that occasion, the idea of drafting the National Strategy for the Community Policing Development was repeated (Blic 2011). The document has been unofficially discussed for several years, and officially since December 2010, when the MoI Development Strategy until 2016 was adopted.

Because of this situation it is not clear when the strategic plan for the community policing development should be adopted, although it is one of the priorities of the Ministry of Interior. An additional difficulty is the current logic of the adoption of strategic documents in Serbia separately from action plans that have been waited for at least six months, and it often happens that this deadline is not met. This further slows down the implementation process.

Community policing development strategy should respond to practical problems in this area in the past ten years that can be divided into three phases: (1) "awakening" guided from outside, (2) "sleeping" without support, (3) "walking quickly" forward. Also, the strategy has to be project oriented with clearly defined activities, deadlines and responsible bodies.

#### *1. "Awakening" guided from outside*

Actors who started the last training of police officers in December last year are the same ones who started the implementation of the community policing concept in Serbia ten years ago – the international community. It was in the last decade that they have provided financial and technical assistance for the implementation of the concept, which made the whole process of implementation of community policing in Serbia to be guided from outside.

In 2002, the idea of the project "Police in a Local Community" in Serbia was launched. Implementation started the following year in four municipalities (Vrnjačka Banja, Kragujevac, Zemun and Novi Bečej) with the support of the OSCE Mission to Serbia, Department for International Development (DFID), the National Police of Norway and the Swiss Agency for Development and Cooperation (CIDA). In 2003 and 2004, the number of municipalities has increased by three (Bačka Palanka, Novi Sad, Požega). The activities were carried out also in three municipalities in the southern Serbia (Preševo, Medveđa, Bujanovac), as well as in Sombor, Zrenjanin, Kikinda and Niš (Mellish, Djurdjevic, 2004: 215-236).

Serbia has chosen the harder way for the implementation of the concept of community policing. In Croatia and Montenegro, the "contact officer" method was used where police played the main role (see: Note 1). In Serbia, the decision was made to create multiagency bodies – the local safety council, which involves participation of different actors that can contribute to improving security. This model is also closer to the concept of crime prevention. The role of advisory bodies is to coordinate the efforts of all participants in the process of building safe communities. They were formed as permanent or temporary bodies depending on the interests of the local community.

The main factor in the implementation of community policing in Croatia and Montenegro is the introduction of a "contact police officer", in Croatia and a "police officer for prevention" as a low-level management position. Currently in Croatia there are about 700 contact police officers and 50 police officers for prevention. In Montenegro, this number is around 130. Contact police officers have been established to improve the trust relations with citizens what expanded the task of a police officer. Its task is not only the detection and resolution of criminal acts, but also the identification and solution of various problems that are not necessarily criminal in character. Contact police officer is a direct link between the police and the citizens in a particular area and he is released from duty of going to interventions.

**BOX 1: HOW COMMUNITY POLICING IS IMPLEMENTED IN CROATIA AND MONTENEGRO?**

Until today, more than 100 councils were formed, only half of which are working. Also, the intensity of activities among the councils is different, so that some of them are working on their mutual networking (e.g. South Banat district), while others stopped working. In addition to working to improve local security in general, safety councils have been formed also to increase the road safety and safety in schools, prevention of addiction diseases and juvenile delinquency.

The main problem in the work of local safety councils is their sustainability, or finding the human and material resources for their permanent work. Surely this is one of the reasons why more than half of the bodies do not work. Another problem relates to the advisory nature of the work of the body, so that the decisions are not binding on the institutions at the local level. Nevertheless, the implementation of the decisions is possible because the body includes also representatives of the local institutions in addition to the representatives of the police. Finally, there is no unique form for establishment of local safety councils where they operate as a part of the executive or legislative branches in the unit of the local government. Local elections, like those in May, can change the composition, and thus the work of the council, which produces further uncertainty.

Training of police officers in human rights, problem-oriented policing in the local community and communication with members of minority communities and vulnerable groups is another factor which was insisted on in the past ten years. Currently, education on community policing accounts for only four per cent of the total hours of training in the Centre for Basic Police Training.

The first stage of "awakening" was completed in 2005. The results in the pilot municipalities promised the larger number of applications submitted by citizens to the police, especially in areas where bullying was obvious. The Vision of the Ministry of Interior from 2003 also stresses the improvement in communication between police and the citizens in preventing and solving the problem of collecting better information on activities of the criminal groups.

The then idea was that the activities in the pilot municipalities should be carried out also in other municipalities in Serbia. However, it never happened.

## *2. "Sleeping" without support*

Adoption of the Law on Police in 2005 was the beginning of the second phase in the implementation of the concept of community policing in Serbia.

The delay in the further development was due to a different set of priorities. These are, above all, the changes in the Law on the Internal Affairs and establishing of a new organizational structure of the ministry and the police, and also the lack of financial support and exit of donors. Only the Norwegian National Police and the OSCE Mission in Serbia continued the support through training of police officers on the concept of community policing. This has delayed the implementation of the concept in all municipalities in Serbia.

The Law on Police made a significant step in the "legal" approximation between the police and the citizens, and by changing from the vocabulary of "militia" to that of "police". The goal is to "abolish" or at least "mitigate" the militarized character of the police. A police officer, in exercising his duty, is obliged to serve the community and protect all persons against illegal activities, and to always act professionally, responsibly and humanely, and finally to respect human dignity, reputation and honour of all persons and their other rights and freedoms.

Obligation which followed after the adoption of the Law on Police in 2005 is the adoption of the Code of Police Ethics, which was adopted next year. However, until December 2011, when the amendments to the Law on Police were adopted, police officers were not legally obliged to adhere to the Code, but only morally.

The Code of Police Ethics has precisely regulated the principles of community policing. When developing and improving the internal organization of the police it is necessary to promote good relations between the police and the citizens, and to develop the police culture. This is the only way for the police officers to be able to recognize the social, cultural and local community issues. The professional development should be tailored to the specific conditions in the local community.

In institutional sense, a special unit to plan and implement a model of community policing has been formed within the Police Department.

The second phase of "sleeping" was completed in 2008. The activities that were carried out during the realization of projects in the pilot municipalities were missing, nevertheless the legal and institutional basis was built up. The course of action has still been unclear, and the police was involved only later in the individual projects that strengthen "partnerships" for the implementation of community policing.

### *3. "Walking quickly" forward*

Work and involvement of the police in individual projects that strengthened partnership with local community or specific groups in the society began in 2008. The "School without violence" project started in 2006, and the MoI joined in 2008, together with the Ministry of Youth and Sports. The following year, the project "Drugs are zero – life is one" was launched. The projects "Safe Childhood" and "Stop violence – violence cannot stop all by itself" commenced in 2010.

Individual projects are largely aimed at increasing the safety culture of the youth and they are associated with the objectives of the community policing concept, although it has not been defined anywhere in this way. However, the share of local safety councils in these projects remained unclear, but the projects restarted the debate on community policing in Serbia.

Thus, the MoI Communication Strategy was adopted in 2010, laying down the goals of developing proactive relationship with the citizens by providing timely and consistent information, and promoting a sense of security and satisfaction with the members of the MoI. That same year a public debate of the MoI strategic development plan began and it was adopted in December.

According to the MoI Development Strategy until 2016, to improve the security of individuals, communities and the state it is necessary to develop the concept of community policing and therefore to adopt an appropriate strategy and action plan. In addition, the strategic goals are also the development of police training on communication with minority and disadvantaged groups, and the protection of human rights. Just like in the Communication Strategy, the goal of improving the confidence of the citizens in policing is repeated here.

Because of so defined objectives in the MoI development strategy framework in Serbia, it is unnecessary that the development strategy of community policing is a general document that will reiterate the democratic orientation of the development of the police service. On the contrary, the strategic plan should present specific activities through a group of projects to improve safety in the local community. Finally, it should be realistic in accordance with the financial resources and estimates of the allocated budget and possible donations.

Development Strategy for Community Policing should upgrade the frameworks that were set up by Initial framework of the National Crime Prevention Strategy. In practice, the crime prevention activities and community policing should operate together where it is possible to

use some of the policing techniques to build safe community that connect crime prevention and community policing.

Finally, the community policing development strategy should address the problems that are currently visible in community policing. For the police officers working in all 27 police departments community policing is a job that has not been formally assigned to them, and they cannot focus solely on the implementation of actions in cooperation with the local partners to create a safe community.

## TECHNIQUES: BUILDING A SAFE COMMUNITY

Techniques for building a safe community are a part of the work on crime prevention and community policing. In practice of the law enforcement authorities, mainly three techniques of crime prevention are applied in the countries of Western Europe, the USA and Australia and they are described below. Before that, there will be represented common characteristics of crime prevention, community policing and problem-oriented policing.

Together: crime prevention and community policing

Crime prevention was considered as a guiding principle in the implementation of community policing in Chicago police during the nineties of the twentieth century. Implementation of the Chicago Alternative Policing Strategy (CAPS) has started in 25 different quarters of the city. This was the beginning of a functional application of the principle that the most effective prevention policies are the ones that are implemented at the local level.<sup>1</sup>

It is possible to define six common and two different features between the crime prevention and community policing (see: Note 2) (Palmiotto 2011: 151-178).

### What is common?

1. The goal of crime prevention and community policing is to build a safe community for all citizens.
2. Each seeks to address underlying causes of problems, rather than merely responding to its manifestations.
3. While implementing plans to improve safety in the community it is necessary to respond not only to the outside environment and solve problems in some infrastructure hotspots, but also to find models for solving social causes of the problems. In practice, it means, for example, that it is necessary to increase the number of preventive patrols in a certain part of the community and speak directly to its residents about their security needs.
4. Crime prevention and community policing require active involvement by community residents in identifying and solving problems. Crime prevention policies provide information on the methods for involvement of the community, while the practical community policing is the way to spread this knowledge to various social actors.
5. The emphasis is on building partnerships between different actors. It involves the formation of different coordination bodies such as local safety councils in Serbia.

<sup>1</sup> For more information see: ClearPATH, <https://portal.chicagopolice.org>.



6. Crime prevention and community policing are models to address the security situation in the local community from which to develop techniques and methods for providing services. It is therefore essential that the techniques of crime prevention and community policing are tailored to specific communities.

#### What is different?

1. Community policing is a technique (method) of police work on rendering services to the citizens in order to improve community safety. Crime prevention is an approach that influences on the causes of crime and other threatening events in order to reduce the risk of their recurrence or damage. While the police in crime prevention is just one of the actors involved in building a safe community, in community policing the police officers are leading actors.
2. During the realization of the crime prevention concept it is necessary to include law enforcement, while community policing is the purpose of the policing where other actors are also involved.

#### BOX 2: CRIME PREVENTION AND COMMUNITY POLICING: COMMON AND DIFFERENT

Crime prevention and community policing share not only the common goal of enhancing public safety, but they also share common roots. Community policing arose out of the nations' crime prevention experiences (mainly in the USA). The experiences showed that direct cooperation and communication between law enforcement and community members can reduce the intensity of crime and residents' fear of crime, or citizens' sense of insecurity. The community policing has accepted the principle that works in crime prevention policies that addressing the cause of a concrete problem is preferable to simply reacting to it (National Crime Prevention Council, 1997). This created a separate police crime prevention technique that has been included in community policing – problem-oriented policing.

In Serbia, the problem-oriented policing are seen as an element of community policing.<sup>2</sup> However, the technique has still not been fully strategically and practically applied in everyday police work.

Activities of law enforcement addressing the problem mainly follow after the event that caused significant consequences, and it is possible that a similar thing appears in several hotspots in the local communities. Thus, for example, after the tragedy in the building of "Contrast" in Novi Sad in April 2012, law enforcement started a preventive control of security of catering and accommodation facilities in Serbia.<sup>3</sup> Before that, the safety in catering and accommodation facilities was not defined as a problem that needs to be addressed, although there were similar situations in the past, even in the same city during 2008.<sup>4</sup> Defining security problem which should be addressed is the first step in applying the technique of problem-oriented policing (Cordner 2010: 21).

<sup>2</sup> Statement by the Chief of the Department for Prevention, Organization and Community Policing at the panel discussion "Where are we now and the way ahead: Community Policing in Serbia", organized by the Belgrade Center for Security Policy and the Belgrade Centre for Human Rights, 6 July 2011.

<sup>3</sup> After the fire broke out in the facility "Contrast" in Novi Sad, where more than 350 guests were present, six people were killed.

<sup>4</sup> Seven people were killed and three seriously injured in a fire that broke out at the coffee shop "Lounge" in Novi Sad.

Contemporary work of the police service requires appropriate and timely response to a variety of behaviours in the community (Goldstein 1979: 242), which can potentially endanger the security of an individual and influence on the appearance of fear of crime, but also the work on their prevention. Therefore, it is imperative that law enforcement acts efficiently and effectively through the collection, exchange and processing of data to identify problems and develop appropriate response in partnership with other actors. The goal of problem-oriented policing is a direct response to the problem which completely changed the role of law enforcement. Thus, the mission of the work of police officers is not just law enforcement, but also preventive action against the causes of security problems, so they are not only the "guardians of the rights, but also those who are responsible for the network of actors that influence on the safety as a public good" (Eck 2006: 117).

Problem-oriented policing has emerged as a mechanism for deterrence against excessive police powers and highlighting the fact that it is not only possible to do it only by making changes in management of the service. If the police service is directed at solving problems and knows in detail the security needs of citizens, police officers will know how to use their powers because they should solve specific, pre-identified problems and thereby reduce the possibility of exceeding authority. Identifying the problems, the police service may determine the methods of management in accordance with the decision they predict (Eck 2006: 116; Goldstein 1979: 243).

Implementation of the theoretical part of the problem-oriented policing requires a practical technique. In practice, application of three techniques has been established: (1) SARA (scanning, analysis, response, assessment) (Eck 2006: 121) that became synonymous with problem-oriented policing, then (2) "problem solving process", and (3) "5I knowledge management framework" (intelligence, intervention, implementation, involvement, impact) (Sutton et al. 2008: 28). It should be noted that in practice law enforcement authorities do not follow the strict application of techniques as the theory dictates (Braga, Weisburd 2006: 134), but they use them in accordance with the resources available. The techniques are ideal type constructs that are to be tailored to the situation in the local communities.

### 1. What is "SARA"?

In the practice of addressing local security issues, the most commonly used model is SARA.<sup>5</sup> It is useful in preventing crime and in building cooperative relations between the police and local-level actors. The implementation of this model provides identification of problems to include ensuing actions in resolving them and taking measures for their long-term elimination. SARA comprises four phases (see: Table 2).

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<sup>5</sup> In practice, besides the SARA model there is other one in use, which is called *CAPRA* (*clients, analyse, partnership, response, assessment*). See resources on: <http://www.popcenter.org>.

Phase:	Question:	Description:
<b>I. SCANNING</b>  <b>(Collecting data on the situation in a local environment, regular monitoring of the situation)</b>	What is the problem at local level?	Detailed description of the problem that should include an individual's or a social group's behaviour, and place and time.
	How does this problem concern the community?	Identify the actor who has raised the issue (an individual, community, local government), and the frequency of the security problem occurrence.
	Are there any other sources of information regarding the problem that concerns the community?	Collecting additional information to prove that the threat is real.
	Why does the security issue pose a threat?	Identify specific features (price, cost, perception) to distinguish this security problem from others.
	Who is to blame for causing the security problem?	There are a large number of actors that should address the security problem, but there is only one culprit.
<b>II. ANALYSIS</b>  <b>(Processing the collected data to produce a hypothesis on the cause that lie behind the problem and on a model to address it, and regular situation analysis)</b>	Who?	Identify and understand the behaviour of the actor involved and of his/her motive for causing the security problem to happen, and/or analyse the environmental conditions.
	What?	Processing the collected data in order to determine the cause, type and consequences of the security problem.
	When?	Understand the very moment - why the security problem occurred at that moment precisely.
	Why?	Compare the behaviour of the actors that caused the security problem and identify the major characteristics for the given community.
	Where?	Determine what distinguishes the local community in question from others.
	How?	Presentation of possible solutions to the problem to include restrictions related to their application to the given local community.
<b>III. RESPONSE</b>  <b>(Producing appropriate recommendations an solutions)</b>	What is the desired outcome to achieve?	Determine the initial and final desired goal to achieve by carrying out appropriate actions.
	How to choose the right solution?	Find the methods used by other local communities to address similar issues in order to determine the related costs and make a choice among the offered options in accordance with material and human resources.
	Have some actions already been implemented?	Identify the past activities carried out in the given local community, with either positive or

		negative outcomes.
	Who is responsible?	Pursuant to a plan, appoint the competent and responsible individuals/structures for implementation based on corresponding criteria.
<b>IV. ASSESSMENT</b>  <b>(Achieved results valuation)</b>	Have the goals been reached?	Measure activity performance.
	Which activities have been carried out and which have not?	Collect data on the results of the activities and identify the reasons for failure to perform some of them.
	Have the actors performed the assigned tasks?	Collecting data on the activities of the local community actors involved and evaluation of their performance.
	What actions should be taken in the future? WAY AHEAD	Based upon the activity evaluations, draw a conclusion on the extension of the activities.

TABLE 2: PATTERN FOR USING THE SARA MODEL

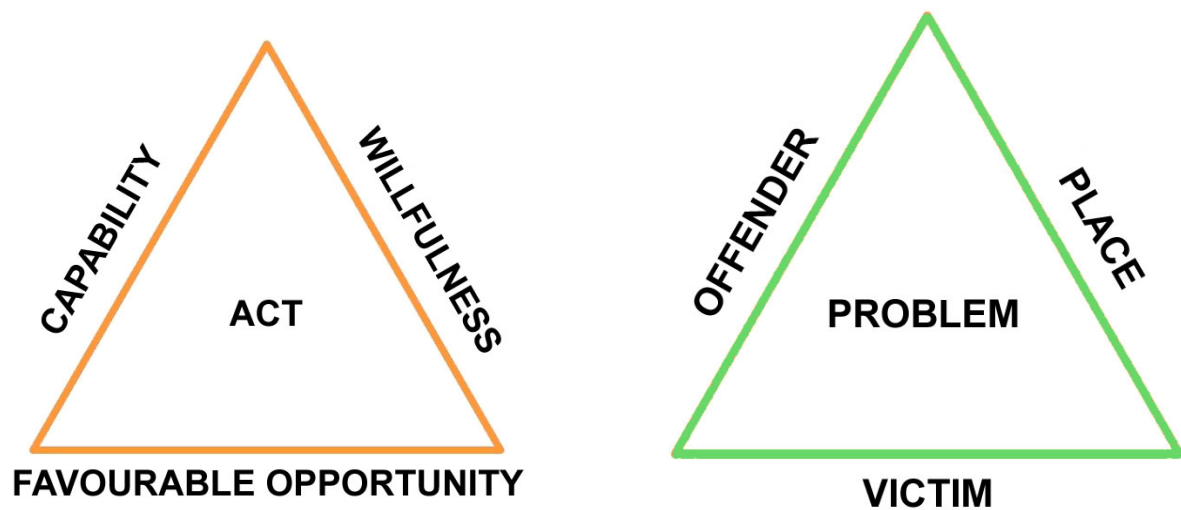
At the beginning, a security problem in a local community that may jeopardise the citizens' security is identified. This process is called „scanning“. A security problem should be determined within one local environment (quarter, street). A predetermined typology of problem defining should not be used because it limits the situation analysis, (phase II) and it is necessary to take into account other sources of information in addition to statistic information collected by law enforcement agencies. In defining a problem, it is necessary to identify “a cluster of similar, related or recurring incidents rather than a single incident; a substantive community concern; or a unit of police business” (Goldstein 1990: 66). In addition, with a view to defining a problem properly and its categorisation, more common forms of criminal offences should be linked with specific forms of criminal acts (Clarke 1997). It is thereby easier to predict the activities of the police, the prosecution authorities and the judiciary, and/or to develop specific tasks (phase III).

In defining a problem, law enforcement authorities may use several sources or methods of control if they possess foreground information (Braga, Weisburd 2006: 135-136). Informal and direct contacts with the population certainly represent the first and foremost method for defining the security needs of the citizens of a local community. The second method implies organising consultations with the representatives of the local community or other governmental authorities. Another one includes considering the contents of the telephone calls that the police receives from citizens. In the past ten years, the crime mapping method was particularly used for defining a security problem in a local community (Chainey, Tompson 2008) primarily its criminal trouble spots.

The identification of a problem is followed by a situation analysis, an analysis of the cause of the problem based upon the data collected through the scanning process. The second phase of the SARA model represents the slowest part in the implementation of the said technique (Braga, Weisburd 2006: 136). The primary goal of the situation analysis is to predict a possible crime scene, and an individual who is likely to get involved in a criminal activity. A normal police procedure resulting from such an analysis includes the increased visibility of police officers in a certain local environment, which manifests itself through

making patrols and investigating recidivists' activities for whom there is a grounded suspicion that they are involved in a criminal act. The aim of the situation analysis is much higher than a mere situation assessment of a local environment, hence this part of the SARA model and the part of the generally problem-oriented policing requires the largest number of changes (Scott 2000). Most frequently, the situation analysis rests on the data held by law enforcement.

The development of a crime triangle has mitigated the problem existing in making a situation analysis. The crime triangle is a tool for deliberations on criminal acts and incidents recurring within a particular period of time. (Centre for Problem-Oriented Policing 2012). As per the crime triangle, a criminal activity or incident potentially jeopardising the citizens' security occurs at the moment when offenders, who are most likely recidivists, are committing a crime against a victim in a particular point of time and on a particular place where there are no visible law enforcement agents. The three main elements of the crime triangle indispensable to any criminal activity are capability, wilfulness and a favourable opportunity (see: Graph 1). The first two elements relate to the offender, while the third one refers to the victim of a crime and warns about the vulnerability of certain persons at a given moment and on a given place by using a geographic information system (Vellani 2010: 12).<sup>6</sup> One of the basic goals of crime prevention is to eliminate and decrease the number of favourable opportunities for committing crimes.



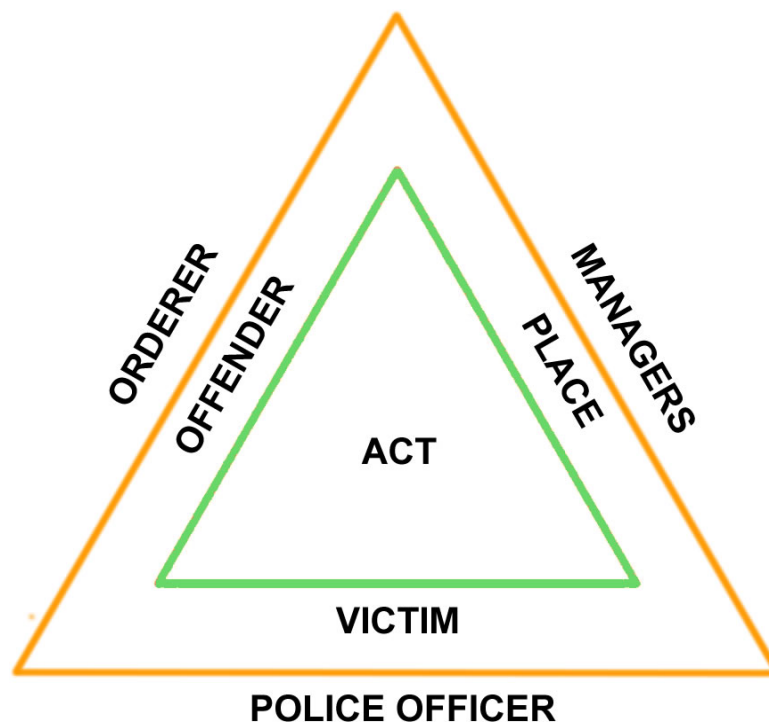
GRAPH 1: BASIC CRIME TRIANGLE MODEL (FELSON 2002)

The whereabouts and behaviour of an offender and victims are additional elements of the advance *crime triangle* model (see: Graph 2). This is aimed at determining the cause of a criminal act and the identification of all actors that might affect the outcome – law enforcement (managers and police officers) and orderers (persons requiring the perpetration of a crime). This provides police officers with new elements for the situation analysis that could to a great extent alter the solution (phase III), particularly if there is the intention to

<sup>6</sup> Geographic information system is an information technology combining the geographic locations of natural and artificial objects (mountains, rivers, woods, roads, buildings, bridges) and other details for producing interactive visual maps and reports.

respond to the cause of a problem in compliance with problem-oriented policing. In the given case, these are the orderers of the crime. According to the advanced crime triangle model, the security jeopardising act appears due to the insufficient capacity of police enforcement to react, i.e. when police officers are limited to exercising crime control. (Sutton et al. 2008: 19).

If the situation analysis is made on the basis of the crime triangle, its integral parts are as follows: (1) behaviour pattern is similar in several incidents; (2) incidents occur in similar places; (3) certain profiles of persons that are identified as the perpetrators and victims of a criminal act; (4) incidents happen at similar intervals (Centre for Problem-Oriented Policing 2012).



GRAPH 2: ADVANCED CRIMINAL TRIANGLE MODEL (ECK 2003)

Once the problem has been identified and the situation analysis made, there follows the phase of developing an appropriate solution to the security problem. The effectiveness of the solution largely depends on the quality of the situation analysis, since the analysis identifies the prospective orderers and perpetrators, and the victims of a criminal act. The effective implementation of the solution mostly depends on the actual involvement of other actors in addition to police officers.

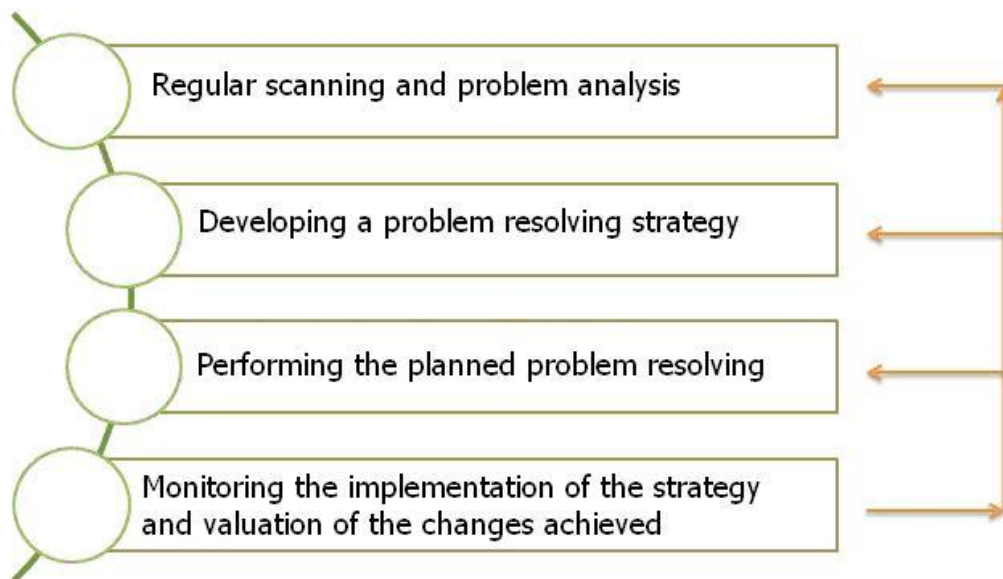
The policing practice in a Serbian community, primarily in the area of the execution of individual projects, which, for example, influence the security culture of the youth, lacks the realisation of the crucial phase of the SARA model. We are talking about the valuation of the effectiveness of the change ensuing after the solution has been implemented. The realisation of the two final phases is significant for two reasons. Law enforcement agents prove to be accountable for their work and for the exploitation of human and material resources. The

execution of the last phase ensures the acquisition of necessary experience, because both good and bad practices in resolving specific security issues are identified. (Braga, Weisburd 2006: 144).

## 2. What is the "problem resolving process"?

The foundation of each crime prevention strategy involving the law enforcement participation lies in addressing the cause of a security problem. The execution of the "problem resolving process" rests on (1) the identification of the problem based upon the collected data, including law-enforcement processed sources; (2) setting the goals for problem resolving; (3) performing activities in partnership, and (4) the valuation of the change arisen (Eck 2006). While the problem-oriented policing handles the police capacities in order that they perform a task at operational and managerial levels, the problem resolving process is confined to finding out the ways to perform problem-oriented work (Scott 2000: 3). The problem resolving process is a crime prevention technique for the execution of problem-oriented policing.

The implementation of the problem resolving process technique commences in the same manner as in the SARA model – by regular scanning (see: Graph 3). Unlike the SARA model, where the situation analysis is the second step in implementing the technique, in the problem resolving process, regular scanning and problem analysis are the steps that are carried out simultaneously.



GRAPH 3: PROBLEM RESOLVING PROCESS (HOUGH, TILLEY 1998: 7)

In the problem resolving process, the first phase represents the critical step in the implementation of the technique. Without any previous knowledge of the existence of a security problem or of the possibility of its occurrence, it is real that preventive activities do not achieve the set goal and the desired change. Moreover, without a systematic analysis of the cause of and damage inflicted by a security problem, the efforts on its resolving are ill

focused (Hough, Tilley 1998a: 7). A correct situation analysis may certainly influence the reestablishment and concretisation of a security problem and its cause. It is also possible to use the crime triangle here in the situation analysis.

On the basis of the situation analysis, a strategy for the resolution of a security problem is formulated, and an Action Plan makes an integral part of the strategy. At this point, it should be noted that strategic documents for the resolution of a security problem at local level are in terms of their contents different from national strategies whose main goal is the implementation of a certain public policy, although the structures of these documents are similar. The integral parts of a strategic document are: (1) the defined goals to be achieved by law enforcement agencies and local governments' units; (2) the set goals to be reached by other partners (3) long-term and short-term indicators of effectiveness to serve as a possible basis for measuring a change ensuing after the implementation of a strategic document. (Hough, Tilley 1998b: 32).

In addition to defining a common goal for the partners in the implementation of the document such as, for example "We wish that Valjevo in the period to come be a safe place to live in, where all the citizens and stakeholders (actors) of the local community will assume the responsibility for their own and common future" (The Valjevo Security Enhancement Strategy 2008: 6), it is also necessary to set specific goals and classify them by priority (*see*: Table 3). Based on the previous practice in executing the local plans for the resolution of security problems, the number of priorities should range from five to seven (Hough, Tilley 1998a: 34).

Criteria	Description
Geographic area (city/town quarter, street)	<ul style="list-style-type: none"> <li>▪ decreasing the number of offences committed in the Municipality of Rakovica on private-owned areas</li> </ul>
Type of a criminal act	<ul style="list-style-type: none"> <li>▪ decreasing the number of (armed) robberies</li> </ul>
Victim's features	<ul style="list-style-type: none"> <li>▪ decreasing the number offences committed against small and medium enterprises</li> </ul>
Offender's features	<ul style="list-style-type: none"> <li>▪ reducing the level of recidivism</li> </ul>

TABLE 3: PRIORITY CLASSIFICATION CRITERIA

The efficient and effective implementation of the Action Plan is the following step in the problem resolving process. One of the major prerequisites for the achievement of the desired change is to locate corresponding material and human resources. The police services' executives at local level should possess adequate knowledge and skills in resource management. Moreover, the strategic document should be adaptable to the situation in a local community and thus possible to amend in accordance with the obtained findings of the situation analysis.

The execution of the Action Plan requires the compliance with the following principles that accord with the theoretic principles of a Strategic Action Plan and yet tailored to the nature of policing activities in a community: (1) law enforcement agencies accept crime prevention as the main goal of policing; (2) it is necessary to provide the police officers actively involved in crime prevention and policing in a community with sufficient corresponding resources for



the execution of tasks; (3) partnership work in developing and implementing the strategic and action plans; (4) introducing the executives to the significance of crime prevention; (5) establishing a system of accountability, transparency and rewarding; (6) joint planning of goals, structures responsible for the performance of activities and financial resources (7) providing appropriate training.

The final phase in the problem resolving process technique consists of the valuation and assessment of the achieved change.

### 3. How does “5I” technique work?

This technique was for the first time presented to the *European Crime Prevention Network* in 2002, as a new method for harmonising the crime prevention good practices information across the EU member states. The main purpose of the “5I” technique is to clarify the contents of a security problem at local level thus enabling the stakeholders to choose good practice models corresponding to the circumstances in their local community. Then there follows the adaptation of the good practices to the local environment.

The logic that lies behind the use of the “5I” technique is similar to that of the previous one with a significant difference that manifests itself in a more detailed security problem resolution processing (see: Table 4) (Eklblom 2011: 3). Three phases (intervention, realisation, inclusion) within the “5I” technique constitute part of process of developing a security problem resolution in contrast to the SARA model where there is only one phase.

This technique is primarily aimed at providing the practitioners with a method for enhancing preventive activities in building a safe community. It is mainly used for spotting, assessing, consolidating and applying the good practices serving for developing the resolutions to security problems. The “5I” technique has a dual purpose. Firstly, it serves the practitioners in preventing crime as a framework for collecting crucial information in different crime prevention related projects for their use in developing preventive actions within a particular local community. Secondly, it provides the practitioners with support in the circumstances when there are no ready-made solutions by combining the existing knowledge and categorising this knowledge into certain principles that should be followed in the phase of implementing crime prevention actions.

Phases:		Description:
Intelligence	Intelligence	<ul style="list-style-type: none"> <li>Collecting and processing the information related to criminal activities and incidents that may jeopardize the security of the citizens and the identification of the problem cause, and determination of the existing risks or protection factors affecting the occurrence and visibility of the problem (e.g. corruption).</li> </ul>
Intervention	Intervention	<ul style="list-style-type: none"> <li>Considering all available methods that might lead to a halt, disruption and weakening of the security problem cause.</li> </ul>
Implementation	Implementation	<ul style="list-style-type: none"> <li>Developing the available techniques into specific practical methods for resolving a security problem. These practical methods should: (1) accord with and respect the needs of the</li> </ul>

		members of the local community; (2) be targeted on the offenders, victims and infrastructure of the local community; (3) be planned, managed, organised and directed by the local community's stakeholders; (4) be regularly monitored while being implemented ; (5) use ethical standards.
Involvement	Involvement	<ul style="list-style-type: none"> <li>▪ Involvement of the members of the local community in the implementation of a practical method through partnership and determining the roles and responsibilities for each of the actors involved.</li> </ul>
Impact	Impact/Change	<ul style="list-style-type: none"> <li>▪ Valuation and assessment of the change (impact) ensuing after the implementation of the practical method for the security problem resolution.</li> </ul>

TABLE 4: WHAT IS THE "5I" (SUTTON ET AL. 2008: 28)

## CHALLENGE: BUILDING A PARTNERSHIP

Building a partnership between the police and a community is actually the synonym for policing (Carty 2008). On the basis of the presentation of the three crime prevention techniques, it is noticeable that all the steps in the implementation thereof rest on the partner relation between the police and other social actors disregarding the fact that in some of those steps, police officers play a decisive role. The greatest challenge lies in establishing communication and an appropriate level of confidence among the actors involved. Building a partnership is not a task that concerns one party solely.

The reasons why the citizens distrust the police may be diverse. Having in mind the militarised character of the police in Serbia during the nineties of the twentieth century (Bakić, Gajić 2006), due to their personal bad experience, the parents taught their children not to trust police officers. The existence and visibility of "dirty" policemen or the involvement of the service in corruption activities, and the excessive employment of force may bring about a decreased level of confidence in policing. These created difficult circumstances in terms of establishing communication. The opposing views on the security problem resolution that the citizens and the police have may also affect their mutual communication. Perceiving the communication between the police and the citizens as part of public relations represents an impeding factor because communication does not serve only to preserve the reputation of the institution, but also for the more efficient provision of services, participation in joint activities and direct contact with citizens.

In the past ten years, there was a significant progress made in the communication between the police and the citizens that manifests itself in a large number of training courses concerning the protection of human rights of the citizens. The human rights awareness training of police officers is largely focused on enhancing the communication with the members of the minorities and vulnerable populations in Serbia. The 2008 Police Officer Professional Advancement Training Programme includes an instruction unit addressing the issue of policing with the marginalised, minority and socially vulnerable groups. The 2010 Programme includes instruction in the topics addressing communication skills and conflict management, protection of human and minority rights, policing with vulnerable populations and the treatment of juveniles. Special attention is paid to the enhancement of the

communication with the members of the Roman minority. Thus, in 2009, about twenty policemen employed within the Police Department in Kikinda attended a Basic Course in the Roman Language. One of the objectives was to encourage the members of the Roman population to apply for the vacancies in the police. The Judicial Academy has regularly provided the training in the human rights standards for police officers. During 2009, the members of the Police Internal Control Sector participated in three seminars on policing and the human rights protection, hearing and interrogation techniques, and the treatment of persons taken and remained in police custody. The evidence that the job has not been completed yet is possible to obtain on the basis of the public opinion poll: "What do the citizens think about their own and the security of Serbia?" conducted in April 2011.

More than a half of the questioned citizens notice that the most important "criterion" of discrimination manifesting itself in the unequal behaviour of the police actually is the issue of money, because more than a half of the questioned population assess that the police do not treat equally the citizens of different material statuses. The majority of the questioned citizens think that the police do not discriminate on grounds of religion, nationality, sex and sexual orientation. Yet, it should not be neglected that a fifth or a quarter of the citizens that took part in this survey spotted discrimination in treating these groups. In addition, it is necessary to mention the limitation that the most numerous views in the sample were those of the majority population in Serbia, therefore it not possible to draw conclusions on the stances of the member of different groups on the basis of this survey. More than a half of the questioned citizens think that the police equally treat the citizens of different religion, nationality, sex and sexual orientation. One fifth of them think that there is discrimination on grounds of religion, and approximately a quarter of them think that there is discrimination on grounds of nationality (23%), sexual orientation and sex (26%). It is interesting that less than a half of the total number of the questioned citizens believe that the police equally treat the citizens of different sexual orientation, and there is a growing number of those who do not know or refuse to reply to this question (even 35%).

Several methods on the basis of which it is possible to enhance policing, and hence the communication with the partners in a local community, have been determined in practice. (Ross 2012: 124). In case the police authority is misused or exceeded, it is necessary that the police service executives release to the public the true details of such a situation and express the intention to rectify the faults. This intention is necessary to be put in practice, because in the opposite case, it is possible to get an outcome that is adverse to the desired one. In this manner, further politicization or any misuse of the situation are rendered impossible.

Another advice relates to the need that police officers continuously provide training for different social groups. This ensures direct communication with the citizens and an insight in their real needs and demands. The training may represent an excellent source for the analysis of the security situation in a local community. The police service executives at local level should constantly insist on the organisation and planning of activities. The right places for such a kind of activity are definitively multi-agency bodies operating at local level. The examples of good practices in Serbia are certainly the local security councils in Valjevo, Leskovac and Bečeju. In addition, it is necessary to conduct surveys on the changes achieved through policing in a community and disseminate the findings on the good and bad practices across the country.

## BIBLIOGRAPHY:

- Adam Sutton et al. 2008. *Crime Prevention: Principles, Perspectives and Practices*. New York: Cambridge University Press.
- Anthony A. Braga, David L. Weisburd. 2006. „Problem-oriented policing: the disconnect between principles and practice“, *Police Innovation: Contrasting Perspective*, Anthony A. Braga, David L. Weisburd, eds. New York: Cambridge University Press, str. 133-154.
- Anthony A. Braga, David L. Weisburd. 2007. *Police Innovation and Crime Prevention: Lessons Learned from Police Research over the Past 20 Years*. Paper presented at the National Institute of Justice (NIJ) Policing Research Workshop: Planning for the Future, Washington, DC, November 28-29, 2006. Available at: <https://www.ncjrs.gov/pdffiles1/nij/grants/218585.pdf>.
- BCBP. 2011. *Šta građani Srbije misle o svojoj i o bezbednosti Srbije*. Beograd: Beogradski centar za bezbednosnu politiku. Available at: <http://www.bezbednost.org/Svi-projekti/553/Javnost-Srbije-o-bezbednosti.shtml>.
- Blic. 9. decembar 2011. *Nacionalna strategija o radu policije u lokalnoj zajednici*. Available at: <http://www.blic.rs/Vesti/Hronika/294767/Nacionalna-strategija-o-radu-policije-u-lokalnoj-zajednici>.
- Branka Bakić, Novak Gajić. 2006. „Police Reform in Serbia: Five Years Later“, *Balkans Series*, 6/21. Swindon: Conflict Studies Research Centre. Available at: [http://www.ssrnetwork.net/uploaded\\_files/4187.pdf](http://www.ssrnetwork.net/uploaded_files/4187.pdf).
- Centre for Problem-Oriented Policing. 25. maj 2012. *The Problem Analysis Triangle*. Available at: <http://www.popcenter.org/about/?p=triangle>.
- Čutura et al. 2010. *Rad policije u zajednici u Bosni i Hercegovini: priručnik*. Sarajevo: Švicarski ured za saradnju u BiH. Available at: <http://www.psa.gov.ba>.
- Dave Mellish, Zoran Đurđević. 2004. „Rezultati evaluacije projekta policije u lokalnoj zajednici i bezbedna zajednica u Srbiji“. *Nauka, bezbednost, policija*, 9(2-3), str. 215-236.
- David H. Bayley. 1994. *Police for the Future*. New York: Oxford University Press.
- Economic and Social Council. 1995/9. *Guidelines for the prevention of urban crime*. New York: United Nations. Available at: <http://www.un.org/documents/ecosoc/res/1995/eres1995-9.htm>
- Gary Cordner. 2010. *Reducing Fear of Crime: Strategies for Police*. Kutztown: COPS. Available at: <http://www.popcenter.org/library/reading/pdfs/ReducingFearGuide.pdf>.
- Graham Mathias, David Kendrick, Gordon Peake. 2006. *Filozofija i principi policije u zajednici*. Beograd: SEESAC. Available at: [http://www.seesac.org/uploads/studyrep/CBP\\_BCS\\_3rd\\_edition\\_FINAL.pdf](http://www.seesac.org/uploads/studyrep/CBP_BCS_3rd_edition_FINAL.pdf)
- Herman Goldstein. 1979. „Improving Policing: A Problem-Oriented Approach“, *Crime and Delinquency*, 24, str. 236–258.
- Herman Goldstein. 1990. *Problem-oriented policing*. New York: McGraw-Hill.
- Jeffrey Ian Ross. 2012. *Policing Issues: Challenges and Controversies*. London: Jones & Bartlett Learning International.
- John E. Eck. 2006. „Science, values, and problem-oriented policing: why problem-oriented policing“, *Police Innovation: Contrasting Perspective*, Anthony A. Braga, David L. Weisburd, eds. New York: Cambridge University Press, str. 117-132.

- Karim H. Vellani. 2010. *Crime Analysis or Problem Solving Security Professionals in 25 Small Steps*. Houston: Threat Analysis Group, LLC. Available at: <http://www.popcenter.org/library/reading/pdfs/crimeanalysis25steps.pdf>.
- Kevin Carty. 2008. *Dobra iskustva u izgradnji partnerstava između policije i šire društvene zajednice*. Beč: Organizacija za evropsku bezbednost i saradnju. Available at: <http://polis.osce.org/library>.
- Michael Hough, Nick Tilley. 1998a. „Getting the grease to the squeak: Research lessons for crime prevention“, *Crime Detection and Prevention Series Paper*, 85. London: Home Office Police Research Group.
- Michael Hough, Nick Tilley. 1998b. „Auditing Crime and Disorder: Guidance for local partnerships“, *Crime Detection and Prevention Series Paper*, 91. London: Home Office Police Research Group.
- Michael J. Palmiotto. 2011. *Community Policing : a police-citizen partnership*. New York: Routledge.
- Michael S. Scott. 2000. *Problem-Oriented Policing: Reflections on the First 20 Years*. Washington DC: U.S. Department of Justice, Office of Community Oriented Policing Services. Available at: <http://www.popcenter.org/library/reading/pdfs/reflectionsfull.pdf>.
- National Crime Prevention Council. 1997. *Designing Safer Communities: Crime Prevention Through Environmental Design Handbook*. Washington, DC: NCPC. Available at: <http://www.popcenter.org/tools/cpted/PDFs/NCPC.pdf>.
- Paul Ekblom. 2011. *Crime Prevention, Security and Community Safety Using the 5Is Framework*. Hampshire: Palgrave Macmillan.
- Politika. 1. novembar 2011. *Veljović: Veća ovlašćenja policiji*. Available at: <http://www.politika.rs/vesti/najnovije-vesti/Veljovic-Veca-ovlascenja-policiji.lt.html>.
- Radomir Zekavica- 2010. „Stavovi pripadnika kriminalističke policije PU Beograd o najznačajnijim pitanjima demokratske reforme policije – rezultati istraživanja“. *Bezbednost*, 52(2), str. 41-73.
- Ronald V. Clarke, ed. 1997. *Situational crime prevention: Successful case studies*. New York: Harrow and Heston.
- RTS. 7. decembar 2011. *Policija u lokalnoj zajednici*. Available at: <http://www.rts.rs/page/stories/sr/story/57/Srbija+danas/1004024/Policija+u+lokalnoj+zajednici.html>.
- Saša Đorđević. 2012. „Zaštita ljudskih prava“, *Godišnjak reforme sektora bezbednosti u Srbiji*, Miroslav Hadžić, ur. Beograd: Beogradski centar za bezbednosnu politiku. (to be published soon).
- Sonja Stojanović, Mark Downes. 2009. „Policing in Serbia: negotiating the transition between rhetoric and reform, *Policing Developing Democracies*, Mercedes S Hinton, Tim Newburn, eds. London: Routledge, str. 73-98.
- Spencer Chainey, Lisa Tompson, eds. 2008. *Crime Mapping Case Studies: Practice and Research*. West Sussex: John Wiley & Sons Ltd.
- Strategija za unapređenje bezbednosti Valjeva. 2008. Available at: [http://mail.valjevo.rs/spolja/strategije/strategija\\_bezbednosti.pdf](http://mail.valjevo.rs/spolja/strategije/strategija_bezbednosti.pdf)
- Svetlana Stanarević, Vesna Nikolić. 2007. „Bezbednost u lokalnoj zajednici“, *Stanje ljudske bezbednosti u Srbiji: izveštaj za 2005-2006*. Beograd: Fond za otvoreno društvo, str. 205-310. Available at: [http://www.fosserbia.org/view\\_file.php?file\\_id=331](http://www.fosserbia.org/view_file.php?file_id=331).

- UNODC. 2009. *Crime Prevention Assessment Tool*: New York: United Nations. Available at: [http://www.unodc.org/documents/justice-and-prison-reform/09-82502\\_Ebook.pdf](http://www.unodc.org/documents/justice-and-prison-reform/09-82502_Ebook.pdf).
- UNODC. 2010. *Handbook on the Crime Prevention Guidelines: Making them Work*. New York: United Nations. Available at: [http://www.unodc.org/documents/justice-and-prison-reform/crimeprevention/10-52410\\_Guidelines\\_eBook.pdf](http://www.unodc.org/documents/justice-and-prison-reform/crimeprevention/10-52410_Guidelines_eBook.pdf).

# POLICE STATUS ACCORDING TO THE NEW CRIMINAL PROCEDURE CODE

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## ABSTRACT:

The New Criminal Procedure Code has introduced many drastic changes which will greatly affect both the course of proceedings as well as the role of all the participants. Even though the primary change, introduction of the prosecutorial investigation, does not refer directly to the police, the new role of the prosecutor shall affect police work. The role of the police remains one of the key roles, particularly in terms of collecting evidence and preliminary investigation proceedings, however, changes related to other participants will also affect future work of the police. For this reason, it is necessary to view an analysis of the police status under the new CPC through the range of changes which includes: introduction of the prosecutorial investigation, the new and changed role of the court, and the role of the judge in preliminary proceedings.

In the future, the relation between the public prosecutor' office and police will be particularly important because the prosecutor is now, *inter alia*, responsible for collecting evidence which shall help him or her decide whether an indictment will be raised against a person, and for managing preliminary investigation proceedings. The new relation between the police and the prosecutor will be one of the biggest challenges in the implementation of the CPC. According to provisions of the new CPC, police work shall not be finished, as before, in preliminary investigation proceedings, moreover, the police shall become an indispensable partner and the public prosecutor's associate until an indictment has been raised. It is very

important that cooperation between the prosecutor and the police is intensive from the earliest stages of proceedings.

Traditional operating-tactical measures and actions from previously preliminary criminal and now preliminary investigation proceedings are still within the competence of the police. In addition, the police is now authorised to independently carry out specific evidentiary actions in preliminary investigation proceedings whose results may be used in criminal proceedings. The police has a particularly important role in criminal proceedings, in carrying out evidentiary actions. The public prosecutor who now manages preliminary investigation proceedings may order to the police to take certain actions to detect crimes and find suspects, and the police is obliged to execute the public prosecutor's order as well as to regularly inform him or her of actions taken.

In addition to the analysis of specific innovations introduced by the CPC, this study shall also deal with parts of the law determining the role of the police, which have not been amended, but which in the amended context have a new meaning.

## **RECOMMENDATIONS:**

01. Improve cooperation between the public prosecutor's office and police to prevent possible problems related to the implementation of the new Code by a joint analysis;
02. Organise trainings where changes in police work, due to amendments to the law, shall be considered;
03. New activities should be conducted with full respect of human rights, both of persons the police is in contact with during its work and of police members themselves;
04. Fully respect and understand the principle of proportionality in the application of various measures;
05. In further work, it is necessary to emphasise importance of respect of the right to privacy, and of other potentially jeopardised rights;
06. Cooperate with the courts competent for issuing orders for the implementation of measures, in order to make them clear, complete and in order to avoid potential violation of the law by members of the police i.e. the body that bears the responsibility for the lawful application of these measures.



## BASIC CHANGES INTRODUCED BY THE NEW CRIMINAL PROCEDURE CODE AND CHANGES TO THE ROLE OF THE POLICE MADE ACCORDINGLY

Amendments to the procedural law will certainly to some extent affect the role of the police in criminal proceedings. This role continues to be one of the key roles, particularly in terms of carrying out actions of collecting evidence, however, changes concerning other participants will also affect future work of the police. For this reason, it is necessary to make a short overview of the role and position of the public prosecutor's office, court and judges for preliminary proceedings.

## THE MOST IMPORTANT INNOVATIONS INTRODUCED BY THE CRIMINAL PROCEDURE CODE

Important reforms made in the criminal law commenced with the adoption of the Criminal Procedure Code (CPC)<sup>1</sup> in 2001, which did not radically break up with the basic concept which previously served as a basis for the procedural law.<sup>2</sup> Amendments to the Code from 2001 were many and conditioned by social changes such as the fight against organised crime, war crimes, corruption, human trafficking, and cyber-crime. In addition, Serbia has in the meantime become a member of the Council of Europe, taking many responsibilities with the membership, as well as a country which aspires to join the European Union. With the adoption of the new Constitution in 2006, the right to a fair trial was given constitutional importance (Art. 32 of the Constitution). In the same year the CPC was adopted which to a certain extent deviated from decisions valid at that time.<sup>3</sup> Development of the new CPC commenced in 2008, it was adopted on 26 September 2011, and it will come into force on 15 January 2013, except in the case of proceedings related to organised crime or war crimes, for which it came into force on 15 January 2012.<sup>4</sup>

### Introduction of the prosecutorial investigation

The law has introduced many long-awaited innovations which have created an opportunity for criminal proceedings to be fairer and more efficient, and made a radical break up with previous laws on criminal proceedings.<sup>5</sup> Certainly, the most important innovation is introduction of the "prosecutorial investigation", which will greatly affect the status and authorisations of all the participants in the proceedings. This investigation model has for a long time been typical for the states of the Anglo-Saxon legal system, however, in recent decades it has become increasingly dominant in Europe and in the world. Countries in the region such as Montenegro, Croatia, Bosnia and Herzegovina, Macedonia, and others, as well

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<sup>1</sup> Official Gazette of SRY, No. 70/2001

<sup>2</sup> *Criminal Procedure Code*, Foreword: G. Ilić, S. Beljanski, M. Majić, Official Gazette 2011

<sup>3</sup> *Official Gazette of RS*, Nos. 85/2005, 88/2005 - amended, 107/2005

<sup>4</sup> *Official Gazette of RS*, Nos. 72/2011 and 101/2011

<sup>5</sup> Opinion on the draft Criminal Procedure Code of the Republic of Serbia, Directorate for Cooperation within the Directorate General of Human Rights and Legal Affairs, p. 5, Opinion: CRIM - SRB/185/2011, 2011, available at: [www.legislationonline.com](http://www.legislationonline.com)

as many EU countries, including France, Germany and Italy, have been complying with the model for several years now.

In the new CPC, an initiative of providing evidence has been entirely transferred to the public prosecutor, which means that the burden of proving an allegation now rests on the prosecutor (Art. 15 p. 2 of the CPC). According to the new investigation concept, the prosecutor shall be responsible to collect evidence which will help him or her decide whether an indictment shall be raised against a person. This has changed the previous practice according to which the court presented evidence *ex officio*. In addition, the Code envisages that the public prosecutor shall manage preliminary investigation proceedings, decide on not conducting or delaying prosecution, conduct an investigation, conclude a plea agreement and a testimony agreement with the defendant, and he or she shall also be authorised to file an appeal and apply extraordinary legal remedies. An investigating judge, as the body in charge of criminal proceedings, shall be replaced by a judge for preliminary proceedings who shall have considerably different authorisations (Art. 43 of the CPC).

Introduction of the prosecutorial investigation was preceded by many years of debating and presenting a large number of arguments against the new concept of investigation. Some of the most commonly used arguments for and against the new concept shall be provided herein, without a detailed analysis of those arguments not directly connected to police work. One of the opinions is that the prosecutorial investigation does not solve the problem of tardiness and inefficiency of the judicial system, and that it provides an opportunity for creating fundamental inequality between the parties in proceedings because it is difficult to expect that the prosecutor will present evidence in favour of the defense, as envisaged by the Criminal Procedure Code.<sup>6</sup> Also, one may argue against provisions granting the right to the defense to collect evidence during a prosecutorial investigation and suggest to the prosecutor which evidence to present, as there is fear that these provisions are only an illusion of equality between the parties (the prosecutor and the defense) throughout the proceedings. One of the arguments against the prosecutorial investigation is that it creates a number of potential problems in cooperation between the public prosecutor's office and the police.

During the investigation, evidence may be collected both by the prosecutor and the defense. According to provisions of the CPC, the prosecutor should present evidence after the order for the execution of the investigation has been issued, and the defense may also collect evidence during the investigation and suggest to the prosecutor to present them. If the prosecutor disagrees with the proposal of the defense, the final decision shall be made by the judge for preliminary proceedings in accordance with the proposal of the defense.

According to provisions of the new CPC, the prosecutor shall no longer be obliged to prove the guilt but rather to shed light on a case.<sup>7</sup> For this reason, it can be expected that with proper application of the CPC, both sides in the proceedings may be equally equipped with arguments, as the prosecutor is not interested in proving statements from his or her allegation by all means, but to shed light on a specific case as much as possible, taking into consideration rules of the procedure.

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<sup>6</sup> Sidetracks of new criminal proceedings, newspapers "Politika" 25 May 2012, available at: <http://www.politika.rs/rubrike/Hronika/Stranputice-novog-krivcnog-postupka.lt.html>

<sup>7</sup> Criminal Procedure Code, Foreword: G. Ilić, S. Beljanski, M. Majić, Official Gazette 2011

A proposal of the defense to present specific evidence during an investigation including, inter alia, various kinds of expert's reports, is only one of the possibilities for the defendant to control in some way actions undertaken by the prosecutor. When the prosecutor determines that expert's evaluation should serve as an evidentiary action, the defendant shall have the right to engage a professional consultant (Art. 125 of the CPC). This shall be a person with the same or similar expert profile as the expert designated by the prosecutor. In this manner, the defense and engaged professional associate shall be in a position to considerably control expert's findings and opinion.

### **Change of the role of the court**

After amendments made to the CPC, the role of the court has become much more passive in the opinion of the opponents of the decision, and, consequently, it has lost the necessary obligation to find the truth, i.e. evidence and its value, as the prosecutor holds enormous power.

On the other hand, the prosecutorial investigation should in practice ensure constitutionally guaranteed impartiality of the court (Art. 32 p. 1) as it is based on the principle according to which the court, as an impartial body, has a corrective and controlling role. With the introduction of the prosecutorial investigation, the court will no longer be in a position to present evidence ex officio in case of an inactive prosecutor, which shall stand in favour of the indictment, and thus step out from its impartial role.<sup>8</sup> Nevertheless, the practice will show in what manner the court uses its authorisations as, for example, with a wider use of its exceptional authorisations, as a rule, it would abandon the area of a fair trial and fail to maintain its impartiality. However, overtly strict use of authorisations may create a big problem if it proves that the court does not respond in a sufficient number of cases and leaves the ignorant party in a completely subordinate position in relation to the prosecutor.<sup>9</sup>

Although court's authorisations have been reduced, e.g. it does not participate in evidentiary actions, there are still exceptions, therefore, if it finds that presented evidence is contradictory or vague, and that it is necessary for the case, the judge will have the right to issue an order to the party in the proceedings to propose additional evidence, or exceptionally, to determine by himself or herself presentation of such evidence (Art. 15 p. 4.) What is not clear in provisions of the Code, and what will be the most important issue for the case law in the future, is whether the court will be able to introduce absolutely new evidence or whether its intervention possibilities will remain in the domain of clarifying already existing evidence. This could in practice mean, for example, that the court may again require for expert's evaluation, if it has already been carried out at the request of other participants in the proceedings, or for the presentation of other evidence to clarify evidence already presented, however, it cannot initiate all these actions on its own.

Taking over a leading role of the prosecutor in an investigation has its logical background if taken into consideration that the basic objective of the investigation should be collecting evidence for the purposes of making a decision on raising an indictment, therefore, it is

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<sup>8</sup> *Human Rights in Serbia 2011*, Belgrade Centre for Human Rights, 2010, p. 216

<sup>9</sup> *Ibid.*

logical that this should be done by the prosecutor himself or herself and not by the investigating judge on his or her behalf.

The prosecutorial investigation will be a big challenge and responsibility for prosecutors as their new role also includes a responsibility to guarantee respect to human rights of participants in criminal proceedings, and the court will still have an important role of control and guarantee of respect of human rights throughout criminal proceedings. In the course of investigation proceedings, the guarantor will be the judge for preliminary proceedings, and at the stage of the main hearing, the guarantor will be judges. The role of the court at the beginning of proceedings is crucial because only an indictment confirmed by the court could serve as a basis for the main hearing, which will be an additional filter for unsubstantiated charges and efficient control of prosecutor's work. Thus, the court will be able to decide that there are no grounds for an indictment if it determines that there is insufficient evidence of any reasonable suspicion that the defendant committed an offense (Art. 338 p. 3). Also, after it has determined that better understanding of the matter is needed for examining merits of the indictment, the court will order further investigation or collection of specific evidence (Art. 337 p. 3), so, it will decide, inter alia, on specific actions carried out by the police such as search (Art. 152 p. 3), secret monitoring and recording (Art. 172 p. 1), simulated business services (Art. 174), computerised search of data (Art. 179), secret surveillance of communication (Art. 165), engagement of undercover agents (Art. 183), and electronic surveillance of a person leaving an apartment (Art. 190).

### **The role of the judge for preliminary proceedings**

The judge for preliminary proceedings shall decide in preliminary investigation proceedings and an investigation in cases envisaged by the Code. The investigating judge has in the prosecutorial investigation concept turned into the judge for preliminary proceedings and he or she shall ensure protection of freedoms and rights of persons against whom proceedings are conducted, and also decide on the limits of the freedoms and rights, and approve or prohibit some activities of the public prosecutor affecting the rights. A person arrested without a court decision, i.e. a person arrested on the basis of a court decision who has not been questioned, must be brought before the competent judge for preliminary proceedings without delay, and no later than 48 hours, and if this does not happen, the person must be released (Art. 69 of the CPC).

The judge for preliminary proceedings will be able to participate in presenting evidence in exceptional circumstances when the defense requires for collection of specific evidence, and the prosecutor refuses to do this (Art. 302 paragraphs 2 and 3 of the CPC). Thus, the judge for preliminary proceedings shall decide on allocation of a defense counsel ex officio (Art. 77 of the CPC), on determining the status of a protected witness during an investigation (Art. 108 of the CPC), on the appeal of the defendant or his or her defense counsel regarding refusal of the public prosecutor to enable expert evaluation during proceedings (Art. 117 of the CPC), on the placement of the defendant in a health care facility, if necessary for the purposes of medical expertise (Art. 122 of CPC). In addition, at the proposal of the public prosecutor, the judge for preliminary proceedings shall: determine with a reasoned order supervision of suspicious transactions or their suspension (Art. 145 of CPC), determine secret surveillance of communication, extension or suspension (Art. 167 of the CPC), determine secret monitoring and recording (Art. 172 of the CPC), issue an order for the

conclusion of simulated business services (Art. 175 of the CPC), order for computerised search of data (Art. 179 of the CPC), order for the engagement of an undercover agent (Art. 184 of the CPC), decide on a restrain order and measures that prohibit meeting or communication with a specific person (Art. 197 of the CPC), and decide on house arrest (Art. 199 of the CPC).

The judge shall also decide on determining, revocation or cancellation of a bail during an investigation (Art. 205 of the CPC), home arrest (Art. 209 of the CPC), detention during an investigation may be determined, extended or terminated with a decision of the judge for preliminary proceedings (Art. 214 of the CPC), and he or she shall also decide on visits and correspondence of detainees, as well as on disciplinary actions ( Art. 219-221 of the CPC), a plea agreement (Art. 313-319 of the CPC), a testimony agreement concluded with the defendant (Art. 320-326 of the CPC) or the convicted (Art. 329 of the CPC).

According to provisions of the law, the public prosecutor or authorised officers of the police shall be obliged to submit a report to the judge for preliminary proceedings, when they are searching an apartment and other premises or persons without a search warrant, who shall decide on whether condition for search have been met (Art. 160 of the CPC).

### **The role of the police in criminal proceedings**

According to provisions of the new CPC, the police does not finish its work in preliminary proceedings as before, moreover, the police shall become an indispensable partner and public prosecutor's associate until an indictment has been raised. It is very important that cooperation between the prosecutor and the police is intensive from its earliest stages of proceedings. Such cooperation the CPC defines through appropriate solutions which primarily relate to the obligation of the police to inform the public prosecutor about actions taken in the short period of 24 hours, as well as to its obligation to obey the demands of the prosecutor. The public prosecutor, who now manages preliminary investigation proceedings, may order the police to take certain actions in order to detect crimes and find suspects (Art. 285 of the CPC). In preliminary proceedings, the police shall be obliged to execute the public prosecutor's order and to regularly inform him or her of actions taken (Art. 287 of the CPC). This does not mean that the prosecutor will take over police activities, as provisions relating to police actions were not reduced in any of their parts.

Traditional operating-tactical measures and actions from previously preliminary criminal, and now preliminary investigation proceedings, are still under the competence of the police. In addition, the police is now authorised to independently carry out specific evidentiary actions in preliminary investigation proceedings whose results may be used in criminal proceedings (Art. 286 of the CPC). The police has a particularly important role in criminal proceedings in conducting evidentiary actions.

According to the CPC, court decisions cannot be based on the evidence that is in its nature, or in the manner it was obtained, contrary to the Constitution, national laws and generally accepted principles of the international law (Art. 16). In addition, it is prohibited to use evidence obtained by torture, inhuman and degrading treatment, by force, threat, coercion, deception, medical procedures and by other means which may affect freedom (Art. 9 of the CPC).

The police may: ask for information from the citizens, carry out necessary inspection of vehicles, passengers and luggage, limit movement in a particular area for a necessary period of time, call for a search of a person and objects being traced, investigate specific objects and premises of state authorities in the presence of a responsible person, as well as companies, shops and other legal entities, gain insight into their documents and seizes them, if necessary. A record or an official record shall be made about facts and circumstances determined in taking specific actions, which may be of an interest for criminal proceedings, as well as about objects that have been found or seized. This should be complemented with a possibility for the prosecutor to assign to the police, at the investigation stage, carrying out of certain evidentiary actions, e.g. examination of a suspect (Art. 289 of the CPC).

### ***Special evidentiary actions and the role of the police in their execution***

Amendments made to the new CPC, in comparison to the previous CPC, greatly affect the overview of the Code, and one of them is in the part referring to special evidentiary actions. It is stated in introductory provisions and in the title that these special evidentiary actions refer primarily to organised crime and corruption, and to “extremely serious crimes”. Although they were itemised in the previous CPC, in the new CPC they are laid out in much clearer way.<sup>10</sup> Elimination of all unnecessary provisions has been made in terms of defining organised crime. All crimes marked with “organised” now fall under the competence of the Special Prosecutor’s Office for Organised Crime, so, a committed murder, or robbery, or assault on the constitutional order, if supported by an organised, hierarchically regulated criminal organisation, such as an organised criminal group, shall automatically fall under the competence of the Special Prosecutor’s Office for Organised Crime, therefore, it is no longer necessary to make a long list of items. Also, after establishment of the Special Prosecutor’s Office for War Crimes, all acts referring to this shall fall under paragraph 1 item (1) of Article 162 of the new CPC, and there is no need to elaborate on what acts are included here, as it was the case with the previous version of the CPC. Conditions for conducting special evidentiary actions are mentioned only in Article 161, and do not repeated for every separate evidentiary action, as it was the case in the previous version of the CPC.

In the new CPC, Articles 161 to 188 regulate the field of special evidentiary actions which include secret surveillance of communication (Art. 166 of the CPC), secret monitoring and recording (Art. 171 of the CPC), simulated business services (Art. 174 of the CPC), computer search of data (art. 178 of the CPC), controlled delivery (Art. 181 of the CPC) and engaging an undercover agent (Art. 183 of the CPC), which are in cooperation with the prosecutor and judge for preliminary proceedings carried out with the assistance of police authorities.

The first condition that must be met for carrying out these activities is existence of reasonable suspicion that the suspect had committed or is about to commit one or more criminal offences which in the opinion of the legislator deserves to be the subject of special evidentiary actions (Art. 161 of the CPC). These include some of the most serious crimes such as: crimes related to the activities of organised criminal groups, corruption, crimes against the constitutional order and security of the Republic of Serbia, and some other serious crimes (Art. 162 of the CPC).

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<sup>10</sup> Unnecessary explanations of specific terms, such as the term “organised crime”, are excluded, considering that the term has already been explained in the Criminal Code (i.e. the Law on Amendments to the Criminal Code, Article 25 added paragraph 35).

The list of crimes is closed, which means that crimes not specified on the list cannot be the subject of special evidentiary actions. The increasing number of computer crime, fraud, access to strictly confidential government information (state and official secrets), sabotage of computer programs and websites of state institutions, forced the legislator to add to this group crimes such as causing damage to computer data and programs, computer sabotage, computer fraud and unauthorised access to a protected computer, computer network and electronic data processing.

Not all special evidentiary actions are appropriate and allowed for each of the specified crimes, thus, for example, an evidentiary action which implies acting of an undercover agent shall be suitable only for activities falling under the competence of special public prosecutor's office for organised crime and special public prosecutor's office for war crimes (Art. 162 para. 2 of the CPC).

Each evidentiary action must be appropriate and expedient and carried out in such a manner to achieve the necessary objective (collecting evidence for the purposes of prosecuting a suspect for the criminal offenses listed in Article 162 of the CPC).

Reasons for implementing the measure may be divided into preventive and repressive. Preventive means to prevent crime execution, and repressive means to detect and find the perpetrator who already committed a criminal offense.

When conducting evidentiary actions, an important condition is the principle of proportionality, i.e. limitation of a right to the extent necessary for achieving an objective. Also, the objective that is to be achieved must not be less important in its significance than restricted goods and an invaded right. If there are more means of achieving this objective, the least damaging one must be used, the one that least restricts the right.<sup>11</sup>

When conducting evidentiary actions, it is necessary to keep in mind that every evidentiary action also means invading the right of a suspect guaranteed by the Constitution, laws and international treaties. Particularly affected may be the right to privacy. Any interference in this and all other rights must be envisaged by the law, i.e. legal, and not arbitrary. In addition, any restriction of human rights, including the right to privacy, must be supported by a legitimate objective that is to be achieved with the restriction. Restriction of a right must be necessary, therefore, special evidentiary actions may be carried out only if otherwise collecting evidence of a person who is reasonably suspected of having committed a criminal offense or a person who is reasonably suspected of preparing to commit a criminal offense, would be much more difficult, or even impossible, or the criminal offense could not be detected, prevented or proved, as well as if they would cause great difficulty and danger (Art. 161 of the CPC, para. 1 and 2).

### ***Secret surveillance of communication***

The use of technical resources in the fight against some types of crimes has simply become a necessity since it is clear that without the use of these resources, it would be impossible to detect specific organised criminal groups. In some cases, when there is no possibility of obtaining in any other, more appropriate manner, specific information crucial for

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<sup>11</sup> The Principle of proportionality in the more narrow sense contained in Article 20 para. 3 of the Constitution of RS

determining reasonable suspicion that a person committed a criminal offense, or reasonable suspicion that a person is prepared to commit a criminal offense, it is necessary to carry out secret surveillance of communication of such persons.

Protection of confidentiality of letters and other means of communication is guaranteed by the Constitution. Deviations may occur for a specific period of time, if necessary for conducting criminal proceedings or protecting security of a state, provided that the decision on supervision is adopted by the court (Art. 41 of the Constitution).

This is in accordance with Article 8 of the ECHR which guarantees everyone the right of respect of private and family life, home and correspondence. If any of the rights classified in the category of rights to privacy is restricted, the ECHR states that the restriction must also be prescribed by the law (see Malone and Klass cases).<sup>12</sup>

Provisions referring to secret surveillance and recording of telephone and other conversations or communications using other technical devices by a person reasonably suspected of having committed one of serious criminal offenses, or, in exceptional cases, if there are grounds to reasonably suspect that a person prepares to commit any of the criminal offenses, are in line with international standards and similar to both the old and the new version of the CPC.

However, importance of this evidentiary action in revealing the most serious criminal offenses, but on the other hand, also a possibility of violating human rights with its execution, requires adequate attention at all times. This evidentiary action may be extremely important in terms of protection of national security, fight against organised crime and war crimes. Security services have great authorisations in this field which, as a rule, with a court's order, can secretly collect evidence, however, some provision in laws regulate operations of security services which authorise specific persons to decide on the implementation of specific measures without a court's order. Thus, for example, a provision of the Law on Electronic Communications<sup>13</sup> is debatable, envisaging that an operator is obliged to keep data about electronic communications for the purposes of investigation, detecting criminal offences and managing criminal proceedings, in accordance with the law governing criminal proceedings, as well as for the purposes of protecting national security and public safety.

Secret surveillance of communication shall be, at the proposal of the public prosecutor, and at court's approval (by an order), awarded to security authorities such as the police, Security Information Agency (BIA, *Bezbednosno-informaciona agencija*) or Military Security Agency (VBA, *Vojnobezbednosna agencija*) (Art. 168 of the CPC). These institutions shall be obliged to conduct surveillance of communication in accordance with the law and other relevant regulations, respecting to the necessary extent values that are in this manner violated and affected, e.g. first of all, the right to privacy. This implies that the above mentioned principle of proportionality must be adhered to.

When the police is conducting secret surveillance of communication of a suspect, it shall do this with prior approval of the judge for preliminary proceedings (by means of a special order

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<sup>12</sup> Malone case (Malone v. the United Kingdom), ECHR, App. no. 8691/79, judgment of 2 August 1984 and Klass and other case (Klass and others v. Germany), ECHR, App. no. 5029/71, judgment of 6 September 1978

<sup>13</sup> Official Gazette of RS, 44/10



– Art. 167 para. 1 of the CPC). The police may carry out the following types of communication interception: wire communication interception (by placing devices on telephone or telegraph wires); interception of direct, regular voice communication between interlocutors (in the street, at a public meeting, tape and optical recording); interception of electronic communication, as a mean of transfer of non-voice messages, by possessing different information transmission systems, not including wire and ordinary voice communications. An order forwarded to the police shall be confidential, and it shall contain available information about the person who will be subjected to secret surveillance, legal name of the criminal offense, marked telephone number and address of the suspect who is reasonably suspected of using it, reasons underlying suspicion, method of implementation and duration of the measure implemented (for the contents of the order see Art. 167. para. 3 of the CPC). From this it is clear that when the police acts, it acts precisely, in accordance with a judge order, within specified limitations. The police shall not be authorised to execute measures alone, nor it can freely chose a person it will surveil, nor how long a measure will be applied, nor what form of a measure shall be applied. The police shall be responsible for legal application of a measure, and any abuse of granted authorisations must be determined, and a responsible person punished.

For this reason, police work constantly has to be monitored, both by the judge and by the prosecutor. The police shall be obliged to submit to the judge and the prosecutor daily reports, recordings of communications, letters and parcels (Art. 168 para. 3 of the CPC). Postal, telegraph and other companies involved in the transfer of information shall be obliged to cooperate with the police in taking this measure (Art. 168 paragraph 2 of the CPC). If during the investigation, it is determined that the suspect started using other telephone numbers or address, the police shall be obliged to inform the public prosecutor about this without delay, and to request from him or her to extend the measures of secret surveillance to the new number and address. The proposal shall be forwarded by the prosecutor to the judge for preliminary proceedings, and he or she shall urgently decide on the proposal, within 48 hours (Art. 169 of the CPC). The issue of extension of the number of persons to which the measure would apply is relevant. Very often, suspects use someone else's phones, or other technical devices, and also, there is a possibility that another person mediates between the suspect and other persons. Such explicit provisions are not contained in the CPC.

Duration of the measure determined by the court cannot exceed three months. Due to the necessity of further evidence collection, the period may be extended for at least three months, and for activities under the competence of special public prosecutor's offices, such as the prosecutor's office for organised crime and the prosecutor's office for war crimes, the period may be extended twice for the maximum of three months (Art. 167 para. 3 of the CPC). Upon completion of secret surveillance of communication, the police shall submit to the judge for preliminary proceedings recordings of communication, letters and other parcels, and a special report containing: the time of commencement and completion of the surveillance, information about an officer conducting the surveillance, a description of used technical devices, the number and available data about persons included in the surveillance and evaluation of the appropriateness and results of the surveillance. The judge and the prosecutor shall in this manner be able to see whether the content of the submitted material contains facts that could be used in criminal proceedings (Art. 170 of the CPC).

### ***Secret monitoring and recording***

Secret monitoring and recording, which may be carried out for the same reasons as secret surveillance of communication (Art. 161 of the CPC), was not envisaged as a separate activity in the previous version of the CPC.

Members of the police, BIA or VBA (Art. 173 of the CPC) shall carry out the operation of monitoring a suspect in order to determine his or her habits, usual routes, persons he or she meets, or in order to determine location of an object of a criminal offense, or traces of some other criminal offense referred to in Art. 162 of the CPC. Members of the police and other security services shall, according to authorisation contained in the order of the judge for preliminary proceedings (Art. 172 paragraphs 1 and 2), have the right to place different types of recording and monitoring technical devices (e.g. GPS) in vehicles, places with limited access or in the premises which the suspect is visiting, but not in the suspect's apartment (which is regulated in Article 171 paragraph 1 item (1) of the CPC). Officers shall be obliged to submit daily reports and recordings to the judge for preliminary proceedings and to the public prosecutor competent for managing investigation, at their request, for reasons of control of their work (article 173 of the CPC). Secret monitoring and recording may last three months, and due to the necessity of further collection of evidence, it may be extended for a maximum of three months. If this concerns criminal offences that fall under the competence of special public prosecutor's offices (war crimes and organised crime), secret monitoring and recording may be exceptionally extended two more times for a maximum of three months. Monitoring and recording shall be terminated as soon as reasons for their application no longer exist (Art. 172 paragraph 3 of the CPC). After completion of secret surveillance of communication, the police or another competent security body (BIA or VBA), shall submit to the judge for preliminary proceedings recordings of communication, letters and other parcels and a special report with necessary data about persons included in the surveillance, and evaluation of the appropriacy and results of the surveillance (art. 170 paragraph 1 of the CPC).

### ***Simulated business services***

Simulated business services are special activities of collecting evidence carried out by members of the police, which are used worldwide as an effective form of fight against crime. The CPC envisages two types of simulated business services – simulated purchase, sale or provision of business services and simulated provision (receiving) of bribe (art. 174 of the CPC). Simulated purchase (sale, service provision) consists of the purchase of objects that are the result of a criminal offense, or may serve as a tool for committing a criminal offense, and purchase is made by an undercover police officer, or another person trained by the police for this purpose. A simulated activity is suitable for detecting criminal offenses related to trafficking in drugs and other psychoactive substances, stolen works of art, cars, weapons, peoples, and similar things. Things offered for sale, or purchased, may be permitted or prohibited, i.e. on or out of the market (drugs, weapons, and people). Simulated provision or reception of bribe shall also imply an activity of a police officer, or a person trained by the police (who receives instructions by the police to act), and such simulated activity is suitable for detecting criminal offences related to corruption. In these actions, the police will use marked bills, or install video surveillance and wiretap the room where the transaction is to take place. The police officer or another person trained for this shall not bear a criminal

liability for such an activity. The only thing to be taken into consideration, to avoid such responsibility, is that the person agreeing to carry out such a simulated service may only express his or her intention to do this, without any further initiation, or, as stated in the law, incitement to conclude the business (receive bribe, sell drugs, and similar actions). Incitement is punishable (Art. 176 para. 3 of the CPC).

This evidentiary action must also meet the conditions referred to in Article 162 of the CPC, and to be approved by the order of the judge for preliminary proceedings, at the initiative of the prosecutor. The order must be appropriate, contain legally prescribed content, in order to set limits for actions of police authorities. The order shall contain data about the suspect, legal name of the criminal offense, reasons underlying suspicion, manner of carrying out activities, recording, documenting, scope and duration of special evidentiary actions. During implementation of simulated business services, the police (VBA and BIA) shall be obliged to create daily reports and to submit them together with other materials to the judge for preliminary proceedings and to the public prosecutor (Art. 175 para. 1 of the CPC). Upon completion of simulated business services, the police shall submit to the judge for preliminary proceedings all the documents about a conducted special evidentiary action, optical, voice or electronic recordings and other evidence and a special report which shall contain: the time of completion of simulated business services, information about the person who performed simulated business services, unless they were performed by an undercover agent, a description of technical devices used, and the number and available data about persons included in the simulated business activities (Art. 177 of the CPC).

### ***Computer search of data***

Computer search of data about citizens is a modern investigative action used for checking databases of public and other services, according to specific control features – characteristics (rasters)<sup>14</sup> with the aim of finding clues or important information that could lead to a perpetrator of a specific criminal offense.<sup>15</sup> This investigative measure enables comparison of different registered facts in police and other databases, and results obtained by the application of this measure help indentifying the perpetrator.

The measure implies comparison of personal data of citizens processed in appropriate databases, with the data and registers in police records. Information about a specific person entered in a personal data register shall be compared to other databases containing information about the suspect.<sup>16</sup> When conditions from Article 162 of the CPC are met, the public prosecutor shall send a reasoned proposal to the judge for preliminary proceedings who, in case after examining allegations in the proposal determines that the proposal is founded, shall issue an order for the computer search of data. The order shall be executed by the police (VBA and BIA, customs, tax and other bodies and services with public authorisations – Art. 180 of the CPC). The police shall be responsible to act within the framework set by the order consisting of: the data about the suspect, the legal name of the criminal offense, a description of information necessary to be searched and processed by the computer, and the scope and duration of a special evidentiary action (Art. 179 para. 2 of the

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<sup>14</sup> This measure is also called raster.

<sup>15</sup> Tatjana Lukić, "Activities of collecting evidence in criminal proceedings", Novi Sad 2011, p. 100

<sup>16</sup> Ibid.

CPC). Everywhere in the world the police and other bodies use this measure to successfully detect and fight against terrorism, organised crime, tax evasion, etc.

Access to computer systems and computerised automatic processing of data limits the security and confidentiality of personal data. The right to protection of personal data is guaranteed by the Constitution (Art. 42 of the Constitution of RS) and, accordingly, such invasion of the right must be carried out through a legally prescribed procedure (legality), by the competent authority (the police in this case), with strict control by the court and public prosecutor, and due to justified (legitimate) reasons such as carrying out criminal proceedings and protecting security of the Republic of Serbia. The principle of proportionality must also be adhered to. Protection of personal data is described in Article 8 of the ECHR as part of the right to privacy.

This activity cannot last longer than three months, except that, when reasons impose so, it may be extended twice, for a maximum of three months, and the moment the activity is no longer required, it shall be suspended (Art. 179 para. 2 and 3 of the CPC). Police authorities process data obtained with the application of this measure and determine facts important for revealing and processing information about perpetrators of criminal offences. Personal data shall mean any information referring to a natural person and means of information, regardless of the form in which they are expressed (Art. 3 item (1) of the Law on Data Protection).

Upon completion of computer search, the police shall be obliged to submit to the judge for preliminary proceedings a report containing: information about the time of commencement and completion of computer search of data, data searched and processed, information about an officer who conducted the evidentiary action, description of used technical devices, information about persons included and results of the computer search of data (Art. 180 para. 2 of the CPC).

### ***Controlled delivery***

Controlled delivery is one of the latest evidentiary actions carried out for the purposes of detecting and proving criminal offences related to illegal trade in drugs and other psychoactive substances, weapons, nuclear waste and similar activities. Its objective is to penetrate into the structure of an organised criminal group within the territory of the Republic of Serbia and beyond its borders. Implementation of measures of controlled delivery is followed by a number of other evidentiary actions such as monitoring and recording, surveillance of communication, participation of undercover agents, and similar. What evidentiary actions will be applied depends on resources and a method of delivery.

UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, which defines and regulates controlled delivery issues in Article 1 item (7)<sup>17</sup>, was ratified more than 13 years ago.<sup>18</sup>

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<sup>17</sup> “Controlled delivery is an investigation technique by which illegal or suspicious deliveries of narcotics, psychotropic substances, substances listed in tables enclosed to the Convention, or substituting substances, allows the delivery to be continued, to cross over a territory and enter a territory of one or more countries, under the supervision of their competent authorities for the purposes of identifying persons involved in this criminal offense”.

This measure is usually implemented at the international level, according to the system of reciprocity, in cooperation with competent authorities of the states concerned, and in accordance with international treaties governing the content of the controlled delivery. Lately, we have witnessed a number of international police actions, which involved our members of the police, who cooperated even with DEA (Drug Enforcement Administration)<sup>19</sup>, and discovered and arrested international criminal groups involving persons from various countries (the Balkans, South America, etc.). Our country may be an initiator of an internationally controlled delivery when a suspicious package is found in or outside the cargo during customs inspection, whose final destination is out of the country, and when an informant or an undercover agent is directly involved in the transport of the suspicious package during an investigation.<sup>20</sup>

The CPC prescribes four types of controlled delivery (Art. 181). One refers to the delivery made within the territory of the Republic of Serbia, and the remaining three controlled deliveries are of an international character: deliveries arriving from the territory of Serbia whose final destination is another country; deliveries arriving from some other country and their final destination is the territory of Serbia; and deliveries arriving from the territory of another country that pass through the territory of Serbia and their final destination is a third country. Unlike other evidentiary actions, this action is directly ordered by the competent public prosecutor, without the involvement of the judge for preliminary proceedings. With his or her order, he or she determines the method of carrying out the controlled delivery (Art. 181 of the CPC). Upon completion of the controlled delivery, the police authority shall be obliged to submit a report to the public prosecutor, containing the following: information about the time of commencement and completion of the activity of controlled delivery, information about the person conducting the activity, a description of technical devices used, information about involved people and results of the application of controlled delivery (Art. 182 para. 3 of the CPC).

### ***An undercover agent***

Engagement of an undercover agent is one of the most efficient evidentiary actions in the fight against organised crime and terrorism. The main activity of the undercover agent is informative and in its nature confidential and directed towards detecting criminal offenses as well as towards collecting data on the basis of which already discovered criminal offenses may be clarified and proved, however, the role of the undercover agent is also preventive, because criminal offenses, which would otherwise be committed by members of a criminal organisation, may be prevented. The undercover agent is a specially trained police officer who voluntarily accepted the role of an undercover agent, and who is aware of all the risks that go with such a job. The undercover agent is given a different, criminal identity, i.e. a legend, which enables him or her to infiltrate in the criminal environment, where he or she will act in accordance with instructions received from the competent authorities.

Two conditions must be met to engage an undercover agent in Serbia. The first condition is that the activity must be related to (a) criminal offense(s) that fall under the jurisdiction of special public prosecutor's office, and the second one is the condition common for carrying

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<sup>18</sup> Adopted in Vienna on 19 December 1988, *Official Gazette of SFRY – International Treaties*, No. 14/90

<sup>19</sup> A special security service established with a purpose to combat drug trafficking

<sup>20</sup> Tatjana Lukić, *Evidentiary Actions in Criminal Proceedings*, Novi Sad 2011 p. 99

out of any evidentiary action, which is prescribed in Article 161 of the CPC. When the competent public prosecutor finds that certain material facts cannot be obtained in any other way, he or she shall suggest to the judge for preliminary proceedings to appoint the undercover agent. When the judge for preliminary proceedings considers the proposal of the competent public prosecutor and finds it founded, he or she shall issue an order for the appointment of the undercover agent. This order shall have a legally prescribed content, and it shall contain all the information necessary for successful execution of the assignment of the undercover agent<sup>21</sup> (Art. 184 of the CPC). The undercover agent is an officer from the security sector – police, VBA or BIA, who was specially trained and whose covert mission is known to few people of trust, which ensures that the identity of the undercover agent is protected as much as possible. The undercover agent is appointed under a pseudonym or a code by the minister competent for internal affairs, director of BIA, or director of VBA, i.e. a person authorised by them (Art. 185 para. 1 of the CPC).

The undercover agent shall, while performing his or her assignment, apply knowledge and skills gained in the training but also his or her personal experiences, observations and activities that can be useful in criminal proceedings, and he or she may also use specific technical devices for recording and photographing if authorised by the order of the judge for preliminary proceedings, which shall serve as evidence in criminal proceedings.

The undercover agent may acquire the status of a witness in criminal proceedings who may be exceptionally interrogated in criminal proceedings under a pseudonym or a code. The interrogation shall be conducted in such a manner that the parties and the defense counsel shall not be familiar with the identity of the undercover agent (Art. 187 of the CPC). His or her identity shall be considered confidential, and he or she shall be a witness unknown to the parties in the proceedings.

While performing his or her assignment, our regulations do not allow the undercover agent to encourage commitment of a criminal offense. Hence, it is clear that the undercover agent must not commit them either. The only unlawful act that is taken into consideration is when this is a necessity. Only in such (a) situation(s) of imminent danger the undercover agent shall have the right to take actions that fall into the legal description of a criminal offense and the action shall still not be considered to be a criminal offense. While carrying out his or her assignment, the undercover agent shall be obliged to communicate with his or her superior whenever possible, given the circumstances which he or she is in, and to furnish him or her with the material he or she collected. The superior shall be obliged to forward to the judge for preliminary proceedings the material collected during the investigation, upon completion of the activities of the undercover agent. The superior shall also be obliged to present a report on the progress of the investigation and its results. The judge for preliminary proceedings shall further forward the material to the competent public prosecutor (Art. 186 of the CPC). A special evidentiary action conducted by the undercover agent cannot last indefinitely. Engagement of the undercover agent shall last as much as it is required for collecting evidence, but no longer than a year (Art. 184 para. 3 of the CPC). The judge for preliminary proceedings may extend the duration of a special evidentiary action, At

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<sup>21</sup> Information about persons and a group on which the measure of engaging an undercover agent is applied, a description of possible criminal offences, the method, scope, place and duration of a specific evidentiary action; and depending on particular circumstances and needs, the judge for preliminary proceedings may determine that the undercover agent may use technical devices for photographing or voice, optical or electronic recording

the reasoned proposal of the public prosecutor, for a maximum of six months. Engagement of the undercover agent shall be suspended as soon as reasons for the engagement cease to exist.

A court decision cannot be based solely, or to a decisive extent, on a testimony of the undercover agent (Art. 187 para. 3).<sup>22</sup>

## POLICE ACTIONS IN PRELIMINARY PROCEEDINGS

### Detention of a suspect by the police

The new CPC permits detention of a suspect by the law enforcement body or the prosecutor, but only in exceptional cases (Art. 294). In accordance with the prosecutorial investigation model, the Code envisages that the public prosecutor shall decide on detention of the suspect whereas the police may keep the suspect only upon prosecutor's approval. The person to whom this applies shall exercise all the rights of a suspect, particularly the right to a defense counsel. The law enforcement body or the prosecutor must immediately, but no later than 2 hours, adopt and serve a decision on detention. The new CPC envisages that the decision on detention must be adopted and served the latest "within 2 hours from the moment the suspect had been informed about his or her detention" (Art. 294). Such a decision may cause a problem if the detainee was not informed about this at the moment of his or her arrest. Duration of detention is limited to a maximum of 48 hours from the moment he or she had been deprived of liberty, i.e. from the moment he or she responded to summons. The detainee can file an appeal against the decision on detention. The new CPC envisages a time limit of the right to appeal to 6 hours from the moment of delivery of the decision (Art. 294 para. 3). The appeal shall not stay the execution. According to the new CPC, the investigating judge, i.e. the judge for preliminary proceedings, must decide within 4 hours upon receiving the appeal about it.

The most important guarantee of the status of the suspect shall be an obligation to ensure examination in the presence of the defense counsel. The law envisages that examination of the suspect shall be postponed until the arrival of the defense counsel, up to 8 hours. If by that time the defense counsel has not been provided, the police shall release the person or bring him or her before the competent investigating judge. The new Code also contains a provision which prevents examination of the suspect without the presence of the defense counsel, however, it does not include the 8 hour limitation after which the person is released or brought before the competent judge (Art. 289 and 294).

### Collecting information

A person invited by the law enforcement body for the purposes of collecting information, who did not respond, may be forcedly brought only if the person was warned about this in summons. Collecting information from one person may not exceed 4 hours. The new CPC states that collecting information may exceed 4 hours upon consent of the person providing information (Art. 288 para. 3). If in the course of collecting information the law enforcement body determines that the summoned citizen may be considered as a suspect, the body shall

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<sup>22</sup> For more information see section "Status of the law enforcement officer as a witness"

be obliged to immediately inform the person about the actions he or she is charged with, about the grounds for suspicion, about the right to have a defense counsel and about other rights of a suspect, in accordance with provisions of the CPC. The new Code defines rights of a citizen who became a suspect in a slightly different manner, and states that the police shall be obliged to inform him or her in a language he or she can understand about the action he or she is being charged with, about the nature of and reasons for accusation, as well as that anything he or she says may be used as evidence in proceedings, to inform him or her about his or her right not to say anything, or not to answer a specific question, to freely defend himself or herself, to admit or not admit the guilt, and to inform him or her about the right to hire a defense counsel who shall attend his or her examination (Art. 289 para. 2).

The new CPC also states that, when a citizen is summoned for the purposes of collecting information and then becomes a suspect, detention is calculated from the moment of response to summons (Art. 294 para. 1). The practical issue whether the time spent for collecting information before the person became a suspect (maximum 4 hours) is calculated as part of the time of detention (maximum 48 hours) should be solved through the adequate training of police officers and public prosecutors.

Persons may be detained on the basis of the Law on Police and Law on Offenses. The Law on Police in Article 53 envisages a possibility to detain a person disrupting or jeopardising public order if public order cannot be established otherwise, i.e. if jeopardising cannot be eliminated otherwise. Detention is determined in a decision against which the detainee shall have the right to file an appeal to the competent court, and it can last not more than 24 hours. The Law on Offenses prescribes that the accused may be detained by a court order if his or her identity or a place of permanent or temporary residence cannot be determined, and there is a solid ground to suspect that he or she will flee; by going abroad, he or she may evade the responsibility for an offense for which the punishment of imprisonment is envisaged; if the person was caught committing a crime, he or she must be detained to prevent further committing of the offense (Art. 166). Detention is limited to 24 hours (Art. 167 para. 1).

### **Search of persons and apartments without a warrant**

The Constitution envisages that an apartment is inviolable, and that an apartment or some other premises may be entered against the will of their occupant and searched only on the basis of a written court decision and always in the presence of two witnesses. In exceptional cases it is allowed to enter person's apartment or other premises even without a court decision and to make a search, if this is necessary to directly deprive the perpetrator of a criminal offense of liberty or to eliminate direct and serious danger for people and property (Art. 40). From this constitutional provision stems Article 158 of the CPC which allows search of an apartment and a person without a court warrant.

In terms of this evidentiary action, nothing more important was amended in the new CPC, except for the organisation of articles.

Decisions referring to the search of an apartment from the previous version of the Code remained the same in the new CPC. The disputable provision of the previous Code which allows entry into an apartment and search without a warrant and presence of witnesses, if



someone calls for help, was kept in the new Code (Art. 81 and Art. 158), even though this reason can hardly be proven and can be misused. The search is envisaged to be ordered by the court, with a written reasoned warrant, and it can be carried out if it is likely that the search will yield in finding the accused, traces of a criminal offense or objects relevant for proceedings (Art. 77 of the CPC and Art. 152 of the new CPC), and it is also envisaged that in cases of search of military facilities, premises of state authorities, legal entities and law firms, a manager or a lawyer must be invited to be present during the search. The person whom the search order applies to may request for the presence of a lawyer or defense attorney.

An apartment search is an action for the most time supported by a search warrant issued by the court, and the most important role is assigned to law enforcement officers – the police. Even when the action is carried out by the public prosecutor, he or she shall almost always be escorted by the police, for security reasons. These security reasons are particularly visible when the search is conducted in the premises belonging to a person that is being prosecuted for serious criminal offenses and where there is sufficient evidence suggesting that the person will give some kind of resistance, sometimes with weapons. The reason for police involvement is then not questioned.

As the search is a repressive action causing inconvenience for a person, members of his or her family, violating his or her privacy and inviolability of the apartment, every search must be conducted discretely, with as little interference with the above stated rights as possible, i.e. with as much invasion of the above stated right as it is necessary for achieving a legitimate objective of the search. The principle of proportionality is very important, particularly in police actions, being the administrative body, i.e. body which shall, due to the nature of its work, most likely violate human rights, most often by exceeding the authorisations granted by the law, but only to the extent necessary for achieving a legitimate objective. The search is possible if there is a degree of assurance about existence of facts stronger than the founded suspicion (required for adopting a decision on conducting an investigation), and weaker than the certainty (required for pronouncing a judgement).<sup>23</sup>

The search without a court warrant is possible, and the law specifies in what situations: when there is a consent of the occupant of the apartment or other premises; when somebody calls for help; for the purposes of directly arresting the perpetrator of a criminal offense; for the purposes of executing a court decision on detaining a person or bringing a defendant; for the purposes of eliminating direct and serious danger for people or property (Art. 158 para. 1 of the CPC). Possibilities other than the legally prescribed ones are not permitted.

When the police finishes with the search of an apartment in the above stated manner, it shall be obliged to issue a confirmation to the apartment occupant which shall contain the reason for entry and allow recording of an objection of the present person, if the person believes that the search was unjustified and wants to initiate a procedure of re-investigation of the justifiability of the search before the competent authority (Art. 158 para. 2 of the CPC). The police shall be obliged to present a report to the judge for preliminary proceedings on the basis of which he or she shall be able to determine whether the search was justified, i.e. whether search conditions were met (Art. 160 of the CPC), and the present apartment

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<sup>23</sup> Momčilo Grubač and Tihomir Vasiljević, Comment to the Criminal Procedure Code, Belgrade 2011, page 192

occupant shall have the right to file a complaint against actions of the law enforcement authorities.

Also, the search of a person is also possible without a court warrant (Art. 159 of the CPC), under conditions which must be met in order to make the search legitimate. Those are situations when a person is deprived of liberty, or execution of an order of bringing a person into custody if the person is suspected of possessing a weapon or tool for attacking, or if there is a possibility that the person will dispose of, conceal or destroy items that should be seized as evidence in proceedings. The search of a person also involves internal and external examination of the body and body cavities in the manner not harmful to the health, if this is possible, in view of the circumstances, with the help of a medical or other professional. The question of justifiability is examined by the judge for preliminary proceedings.

### **The right to be informed about reasons for person's arrest and charges**

International conventions guarantee the right of every arrested person to be informed about reasons for his or her arrest “at the time of his or her arrest“ and the right to be informed about any charges raised against him or her, without delay, i.e. “as soon as possible“ (Covenant on Civil and Political Rights, Art. 9). The Constitution prescribes that “a person deprived of liberty by the state authority shall be immediately informed, in a language he or she understands, about reasons for his or her arrest, about charges and about his or her rights, and he or she shall have the right to immediately inform a person of his or her choice about his or her arrest“ (Art. 27).<sup>24</sup>

The new CPC envisages the accused shall have the right to be informed promptly, and always before the first hearing, in detail and in a language he or she can understand, about an offense he or she is charged with, a nature of and reasons for the accusation, as well as of the fact that anything he or she says may be used as evidence in proceedings (Art. 68 para. 1).

At the request of the suspect, he or she must be provide with an opportunity to read criminal charges, report on the investigation, findings and expert's report and request for investigation before the first examination (Art. 68). According to provisions of the new CPC, a person deprived of liberty shall not have as before an opportunity to initiate proceedings before the court, i.e. to file an appeal to the court which shall be obliged to urgently decide on the legality of the arresting procedure (the previous version of the CPC Art. 5 para. 3 item (4)). Nevertheless, bearing in mind that it is stated in the Constitution (Art. 27 para. 3) and that detention is decided by the court (Art. 212 para. 1), whereas the person detained by the public prosecutor shall have the right to appeal to the court (Art. 294 para. 3), it can be concluded that the right is still guaranteed.

### **Bringing the suspect before the judge as soon as possible and the right to a trial or release from detention within a reasonable period of time**

The new CPC also envisages that a person arrested without a court decision must be released without delay, no later than 48 hours, and brought before the competent judge (Art. 69). The public prosecutor shall, in line with his or her new role, assume the role of an investigating

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<sup>24</sup> *Human Rights in Serbia 2011*, Belgrade Centre for Human Rights, 2010, p. 216

judge and examine the person arrested the latest after 24 hours from the moment the person was informed about his or her right to call his or her defense counsel (Art. 293 para. 2). Although the 48-hour period is envisaged as an exception, in practice it has often been used, therefore, it is good that the new CPC places emphasis on the information that detention of the suspect is an exceptional measure (Art. 294 para. 1).

The police shall be obliged to bring the arrested person before the public prosecutor within 8 hours, who shall then be examined the latest after 24 hours from the moment the person was informed about his or her right to call a defense counsel. It is obvious that detention of the suspect, although envisaged as an exceptional measure, hardly lasts shorter than 48 hours. The role of the prosecutor's office thus becomes much more important because it has to be able to conduct an investigation professionally and without violation of rights of accused persons, particularly because, unlike the current Law, a new decision envisages that the judge for preliminary proceedings will only learn about detention of a person if he or she is deciding on an appeal against the decision on detention (Art. 294 para. 3). This means that, if the detainee does not complain against the decision on detention, the court will not be informed about detention of a specific person by the prosecutor's office or police. For purposes of exercising rights of the suspect, the police also should make efforts to bring the person before the public prosecutor as soon as possible.

The right of appeal to the court against deprivation of liberty and police detention. The Constitution of the Republic of Serbia guarantees the right to every person deprived of liberty to speak to the court which shall be obliged to urgently decide on the legality of the act of deprivation of liberty and on the order for releasing, if it is illegal (Art. 27 para. 3).

### **Examination of the suspect**

When the police collects information from a person suspected of being the perpetrator of a criminal offense, or actions envisaged by the Code are taken against the person in preliminary proceedings, the police can summon the person only in the capacity of the suspect. The summons shall contain information that the suspect shall have the right to a defense counsel. The most important guarantee of the status of the suspect is an obligation to ensure examination in the presence of the defense counsel. The law envisages that examination of the suspect shall be postponed until the arrival of the defense counsel, up to 8 hours. If by that time the defense counsel has not been provided, the police shall release the person or bring him or her before the competent investigating judge.

The new Code also contains a provision which prevents examination of the suspect without the presence of the defense counsel, however, it does not contain the 8-hour limitation after which the person is released or brought before the competent judge (Art. 289, Art. 294 of the CPC). If the public prosecutor does not attend examination of the suspect, the police shall immediately present the public prosecutor with a report on examination.

### **The status of the law enforcement officer as a witness**

The person who would violate the confidentiality of data with his or her statement, shall not testify until the competent body, i.e. public authority officer revokes the confidentiality of data or acquit the person of the responsibility; the person who would violate the

confidentiality of data with his or her statement (a religious confessor, lawyer, doctor, midwife, and others), unless exempted from this responsibility with a special regulation or statement of the person for whose benefit the confidentiality of data was determined; the person defending the matter conveyed to him or her by the accused.

The new CPC does not prohibit examination of a law enforcement officer as a witness of what he or she learned in preliminary investigation proceedings, and the court may, on the proposal of the accused or his or her defense counsel, also decide to examine as a witness a person exempted from the duty of testifying (Art. 93).

This is a good solution as such testimony may be important in cases when some citizens cannot testify, or their later testimony contradicts what they allegedly said to the police. While one should always carefully approach testimony about something learned second hand, the use of such testimony, which is supported by appropriate safety measures, is consistent with international standards.<sup>25</sup>

As already mentioned, the CPC envisages that a court decision cannot be founded only on a testimony of the undercover agent, rather agents' testimonies must be supported by other means of evidence. This is in accordance with the practice of the European Court for Human Rights which is particularly careful about permitting police officers to be treated as anonymous witnesses, as they fall into a separate category of witnesses closely associated with the state and the prosecutor's office, therefore, use of police officers as anonymous witnesses "must be resorted to only in exceptional circumstances".<sup>26</sup>

## COMPARATIVE SOLUTIONS

An insight into some comparative solutions clearly indicates to the fact that cooperation between the prosecutor's office and police has a long tradition and it has usually yielded in good results. Apart from small variations, all decisions included close cooperation and constant communication among all participants in proceedings. However, variations are also important and they range from special police units which cooperate with the prosecutor's office to various smaller or more effective ways of control of police work by the prosecutor's office.

### France

According to the French model of criminal proceedings, a criminal investigation of criminal offenses, execution of evidentiary actions and finding the perpetrator of criminal offenses before initiation of an investigation shall be carried out by the judicial police (police judiciaire) acting in accordance with instructions of the public prosecutor. The judicial police is described in detail in the Criminal Procedure Code (Code de procédure pénale) and

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<sup>25</sup> Opinion on the draft Criminal Procedure Code of the Republic of Serbia, Directorate for cooperation within the Directorate General for Human Rights and Legal Affairs, p. 7, Opinion: CRIM - SRB/185/2011, 2011, available at: [www.legislationonline.com](http://www.legislationonline.com)

<sup>26</sup> Opinion on the draft Criminal Procedure Code of the Republic of Serbia, Directorate for cooperation within the Directorate General for Human Rights and Legal Affairs, p. 9, Opinion: CRIM - SRB/185/2011, 2011, available at: [www.legislationonline.com](http://www.legislationonline.com)

consists of judicial police officers and persons with specific authorities within the judicial police, granted by the Code.

Actions of the judicial police are determined in accordance with the territorial jurisdiction. The Code prescribes criteria that must be met by police officers or other civil servants in order to become members of the judicial police, i.e. in order to be engaged for the purposes of criminal proceedings. Judicial police officers shall be authorised to take police investigative actions and may require assistance of the police for the performance of their assignments (Art. 17 of the CPC).

The assignment of judicial police officers shall be to assist chiefs in performing their duties, determining existence of criminal offenses and developing official documents about this, collecting official statements from persons, evidence and information relating to offenders and their accomplices.

Judicial police officers may be assisted in performing their duties by other civil servants employed in the national police that do not meet requirements for the judicial police service, as well as by members of the gendarmerie, and police officers.

When for the purposes of investigation of criminal offenses they are required to enter houses, business premises, buildings and other facilities, they can do this only upon approval of chiefs of the judicial police who shall be obliged to assist them and sign official documents about agreed actions. The role of judicial police investigators may be taken by civil servants of other state bodies, ministries of finance, defense, public administration, culture and of similar institutions, depending on the subject of investigation. The public prosecutor may, for the purposes of an investigation, form mixed teams consisting of chiefs of the judicial police and these civil servants, and also determine who will be managing the team. Although the Code specifies that the public prosecutor and investigating judge may conduct most of the investigation independently, this is not the case in everyday practice. The public prosecutor shall be directly involved in the investigation of serious or complex criminal offenses and order evidentiary actions, however, with a limited ability to control the way of their execution. This is the biggest paradox in terms of the functionality of the relation between the public prosecutor and police.<sup>27</sup> Even though the public prosecutor is superior to the police in the investigation of criminal offenses, at the same time, he or she depends on results of operation of the judicial police. The ministry of Justice is responsible for the investigation of criminal offenses, police organisation and administration is part of the Ministry of Interior, whereas the gendarmerie is part of the Ministry of Defense. Such a structure sometimes creates conflicts in terms of priorities between criminal investigation of criminal offenses and regular police duties. In complex investigations there have been cases when police officers more often obey to the orders of their chiefs than to that of the public prosecutor.<sup>28</sup>

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<sup>27</sup> Josip Pavliček, *Role of the Investigator in a Criminal Procedure*, 2009, p. 890, Faculty of Law in Zagreb, available at: [http://www.pravo.unizg.hr/\\_download/repository/17\\_Pavlicek\\_k2.indd.pdf](http://www.pravo.unizg.hr/_download/repository/17_Pavlicek_k2.indd.pdf)

<sup>28</sup> *Ibid.*

## Italy

Italian criminal proceedings are similar to French criminal proceedings in terms of investigation. Similarly, the subject of criminal proceedings may be the judicial police which may, at its own initiative, investigate criminal offenses, prevent them from causing further consequences, look for perpetrators, carry out actions necessary for providing sources of evidence and collect everything else that could be used in the application of the Criminal Law.

The judicial police is directly subordinated to the prosecutor's office according to the territorial jurisdiction, which has the ordering and disciplinary authority over it. Regarding judicial police authorisations to conduct investigative and evidentiary actions, it is quite independent during an investigation. Investigation, i.e. actions related to the criminal investigation aimed at searching for perpetrators of criminal offenses and elements of proof may be conducted at its sole discretion. In terms of evidentiary actions, it can independently determine the identity of the suspect and other persons, collect information from the persons that can provide useful information and from the suspect.

When there is a danger caused by delay and in case of urgency, it can search persons and premises, and urgently seize objects. Similarly, it is also authorised and obliged to arrest the suspect who will in the shortest period of time be made available to the public prosecutor.

## Germany

The Institute of Public Prosecutor's Investigators in Germany (Ermittlungspersonen der Staatsanwaltschaft) was defined in the German federal law in Article 152 of the Law on the Constitutional Court (Gerichtsverfassungsgesetz) which obliges them to execute orders of competent prosecutors and superior officers and sets frameworks for their appointment. The competent ministry shall appoint civil servants and general service employee for investigators with a special legal act. They must be employed in the public service, be 21 years of age and have at least two years of work experience in jobs they are being appointed for as investigators. Federal laws for specific fields provide more detailed guidelines describing what officers can be investigators. The largest number of investigators comes from the rank of the police and they perform a significant portion of work for the public prosecutor's office. This generally implies police officers from the middle and senior level. Managerial and senior police structures are not involved, thus their subordinates have more authorisations in terms of investigation of criminal offences. The German Law on Criminal Procedure (Strafprozeßordnung - StPO) envisages that the significant part of police forces engaged in a form of assistance to the public prosecutor's office, will directly report to the public prosecutor, depending on the importance of an individual investigation. In practice, all trained police officers have a role of an investigator and this has no real impact on the daily work of every single police officer.

As already mentioned, apart from police officers, the role of the investigator is also assigned to civil servants in some other state authorities and ministries (competent for finance, taxation, environmental protection, etc.). Jurisdiction of those civil servants is limited to the scope of their main job and authorisations in that institution within which they can

independently perform actions, whereas for criminal procedural actions, they need a prosecutor's order.

Although in normative terms, the prosecutor should play the leading role in preliminary investigation proceedings, the situation in practice is somewhat different. The police, i.e. public prosecutor's investigators coming from the police perform most of their actions independently, particularly when it comes to evidentiary actions that cannot be postponed and in cases of minor criminal offenses. Prosecutors are more involved in serious criminal offenses.

### **Macedonia**

Macedonia has similar decisions as those contained in the new CPC: introduction of prosecutorial investigation, conducting parallel investigations by the defense, cross-examination, development of a form of summary proceedings with a possibility of settlement, and similar actions.<sup>29</sup>

The Macedonian Law on the Public Prosecutor's Office defines the position of the public prosecutor's office managing investigation proceedings. The public prosecutor's office may initiate any action necessary for finding or prosecuting a criminal offense and perpetrators, for which the police, financial police and customs administration are authorised by the law. In case of a conflict of jurisdiction between the police and public prosecutor's office, the public prosecutor's office shall take actions assigned to the police or another state authority. The purpose of such a hierarchy is to distance the police from the political influence of officials in the Ministry of Interior and to make it subordinate to the public prosecutor's office for whom it conducts investigations. On one hand, the MoI chiefs of departments dealing with disclosure and reporting, as well as financial police and parts of customs administration of the Republic of Macedonia falling under the competence of the Ministry of Finance are now directly under the competence of the public prosecutor's office. On the other hand, the public prosecutor's office will now have criminal inspectors within its team. Unlike Italy, where each prosecutor has his or her own team of inspectors coming from the carabinieri, state and financial police, Macedonia has established public prosecutor's investigation centres which partly consists of members of the judicial police.

### **Croatia**

Croatia also has similar decisions as those contained in the CPC, primarily in terms of the prosecutorial investigation. The public prosecutor shall decide *ex officio* on the prosecution of suspects for all criminal offenses. He or she shall have the right and duty to investigate in preliminary proceedings (prosecutorial investigation). The prosecutor shall collect information himself or herself or through other bodies, commence and lead an investigation, manage operations of police and other investigative bodies, present proposals for the implementation of emergency court actions and submit applications for obtaining court orders. Regarding cooperation between the prosecutor and police in Croatia, it is important to mention special investigators (Art. 202 of the previous version of the Law on Criminal

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<sup>29</sup> Gordana Lazetić – Buzarovska, Gordan Kalajdziev, Reform of the Criminal Procedure in the Republic of Macedonia, 2009, p. 13, Iustinianus Primus Law Review, Skopje

Procedure). These are persons who are, according to a special regulation adopted on the basis of the law, authorised to conduct evidentiary and other actions.

Involvement of investigators in the investigation process shall be possible only on the basis of the public prosecutor's order (Art. 213 para. 1 of the CPC). Therefore, the investigator has a very limited possibility to undertake evidentiary actions at his or her own initiative. This means that the prosecutor must be timely informed about committed criminal offense in order to be able to independently undertake evidentiary actions or to issue an order to the investigator.

The investigator may always suggest to the prosecutor, if he or she finds it necessary, to take some other evidentiary actions. Lists of investigators shall be made by the state prosecutor and they shall contain persons who shall, in view of subjects of investigation and special applicable regulations, have appropriate experience and skills necessary for the investigation of activities for which evidentiary actions are being implemented. Investigator's tasks shall be performed by members of the police and other bodies, and majority of investigators shall come from the criminal police, but also from the traffic, border, and financial police.<sup>30</sup> In addition to the investigators coming from the police, the role of investigators may also be taken by civil servants of other state bodies, e.g. ministries.

## BIBLIOGRAPHY:

- Criminal Procedure Code, Foreword: G. Ilić, S. Beljanski, M. Majić, Official Gazette, 2011  
Gordana Lazetić – Buzarovska, Gordan Kalajdžiev, Reform of the Criminal Procedure in the Republic of Macedonia, 2009, Iustinianus Primus Law Review, Skopje  
Human Rights in Serbia 2011, Belgrade Centre for Human Rights, 2010  
Josip Pavliček, Role of the Investigator in the Criminal Procedure, 2009, Faculty of Law in Zagreb, available at:  
[http://www.pravo.unizg.hr/\\_download/repository/17\\_Pavlicek\\_k2.indd.pdf](http://www.pravo.unizg.hr/_download/repository/17_Pavlicek_k2.indd.pdf)  
Malone case (Malone v. the United Kingdom), ECHR, App. no. 8691/79, judgement of 2 August 1984, and Klass and others case (Klass and others v. Germany), ECHR, App. no. 5029/71, judgement of 6 September 1978  
Momčilo Grubač and Tihomir Vasiljević – Comment to the Criminal Procedure Code, Belgrade 2011, Official Gazette  
Opinion on the draft Criminal Procedure Code of the Republic of Serbia, Directorate for Cooperation within the Directorate General for Human Rights and Legal Affairs, p. 9, Opinion: CRIM - SRB/185/2011, 2011, available at: [www.legislationonline.com](http://www.legislationonline.com)  
Sidetracks of the New Criminal Procedure, newspapers "Politika" 25 May 2012, available at:  
<http://www.politika.rs/rubrike/Hronika/Stranputice-novog-krivicnog-postupka.lt.html>  
Tatjana Lukić, Evidentiary Actions in a Criminal Procedure, Novi Sad, Faculty of Law, 2011

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<sup>30</sup> Josip Pavliček, Role of the Investigator in the Criminal Procedure, 2009, p. 897, Faculty of Law in Zagreb, Available at: [http://www.pravo.unizg.hr/\\_download/repository/17\\_Pavlicek\\_k2.indd.pdf](http://www.pravo.unizg.hr/_download/repository/17_Pavlicek_k2.indd.pdf)



# PROFESSIONAL CULTURE, ETHICS, ERRORS AND POLICE ACCOUNTABILITY

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## ABSTRACT:

Police culture in the developed democratic society involves principles, ethics, values, accountability, openness and is directly related to confidence, institutions and assumptions on which the police basis its actions and behaviour. Police officers are the most visible representatives of the state authorities who are in daily contact with the citizens, and are therefore expected to consistently take care of their own behaviour and actions. Their conduct should be such as to reassure the citizens and create a sense of personal security. Therefore, the aim of the police reform should not be just the creation of a service capable of fighting the crime in a more efficient manner, but it should be at the same time incorporation of the highest ethical norms and human rights standards in the police work, so that the police would be more accountable to the citizens it serves. The police in Serbia must demonstrate professionalism and integrity by following the rules of professional and ethical behaviour. The emphasis on "ethical policing" with respect to service rules and principles of the Code of Professional Ethics in carrying out activities related to security is an essential element of police culture. The Government of the Republic of Serbia has adopted the Code of Police Ethics obliging members of MOI to respect human and civil rights and freedoms. In order to change its reflection and public image, the police in Serbia should demonstrate a high level of integrity in their work and be prepared to resist temptations and abuse of police powers and adhere to the values specified in the Code of Ethics. In this study of practical policy the focus is set on the analysis of the problem issues that occurred in the process of putting the Code of Police Ethics in practice. The causes of such problem issues lie in the errors that occurred in the implementation of the Code and certain shortcomings and ambiguity of the Code itself. In addition, some solutions are given to problems that occurred in the process of its implementation, as well as amendments of certain items in the Code.

The study shall also address control issues and police accountability from an ethical standpoint, with special reference to Internal Affairs Sector. Furthermore, problems tackling the relations of ethics and protection of personal data, police corruption as well as the importance of police education for creating accountable and ethical police service shall also be pursued.

## RECOMMENDATIONS:

01. In order to promote an ethical policing it is necessary to establish the values prescribed by the Code of Ethics through operational and non-operational processes in the police, to develop action plans and concrete steps at different levels in the police service. Promotion of the Code should be followed by an educational campaign on the national level, where the citizens would be informed on obligations and consequences in case of breaches of the Code.
02. Disciplinary Code for police officers should define in a more precise manner which internal rules must be respected and what kind of police conduct is considered unacceptable. Procedures specifying the disciplinary code should include individual and specific rules to be followed in the event of the breach and determine disciplinary actions for police officers who are found clearly guilty of its violation.
03. An effort must be made to integrate ethics into the police organisation and this should take place at three levels: at the level of training of newly recruited police officers, at the level of support to existing employees, senior and middle management and at the level of the organisational infrastructure and police management.
04. In order to create healthy and sound environment in which the police shall reflect ethnic and gender structure of society it is required to set up statistical targets and introduce monitoring of police structure to measure progress. The Code of Ethics should encourage the appropriate initiatives and special measures to give impetus to the formulation of policy that would clearly show how important the work of police is when it comes to inter-ethnic relations.
05. Ministry of Interior (MoI) of the Republic of Serbia should demonstrate in practice that the corruption as the most common form of unethical behaviour is not an acceptable form of police conduct. Effective anti-corruption strategy can be truly effective only if all the factors that contribute to its realization are actively involved in the process.
06. Courses in ethics should be directly related to the reality of daily activities of police officers and should include consideration of examples that are directly based on experience gained from interviews with active police officers, the cases recorded by the internal control, courts and their corresponding investigations as well as the cases entered in minutes during the process of conducting disciplinary proceedings.
07. In order to promote ethical and accountable police more support should be given to the development of a unique model of community policing for the whole of Serbia. In this

way the involvement of the police in dealing with citizens shall increase and this will be the best mechanism to change the way the police work in Serbia.

08. Police officers should constantly be reminded that in cases of unfounded allegations against them, the mechanisms of internal control exist in order to protect and help them to avoid errors that may occur in their work. Their management should be advised that the internal control strengthens the management structure and enhances police reputation.
09. Control measures should be integrated into the daily operations of the police and also in their actions in cases of emergency. Regular information and training on control measures organised for all police officers is needed in order to ensure effective internal control.
10. Internal Affairs Sector in Serbia should focus on individuals who work in it; it should support such individuals, encourage the strengthening of integrity and promote their positive attitude towards the control measures that should be included in each job position description.
11. The development of self-control mechanisms can be speeded up through the character and nature of police training, development of professional ethics and the system of grading, promotion and the accountability in the service. Self-control is an initial instrument, an instrument on the very onset of the control process, and if it is developed there will be no need to employ other instruments of control.
12. MOI should do more to support the work of professional associations of police officers and give them a role in development of professional standards, training models and some other aspects of improving of profession, particularly in adoption and ensuring compliance with professions' ethical standards.
13. MOI should make an effort to make police officers accept the general social values as values that should also be respected in the official position, which would bring citizens closer to the police and gradually improve its public image.

## FRAMEWORK OF THE PROBLEM

Diversity of tasks of modern police and their simultaneous focus on the interests of all citizens and the whole society on one hand, and the interests of the state, i.e. political organisations of society, on the other hand, opens the complex issue of establishing one generally applicable notion determining the function of the police in society and political system.<sup>1</sup> In this context, the maintenance of public order and tranquillity would traditionally be regarded as a typical police work. However, in addition to its traditional functions the contemporary police have to deal with crime prevention, community work, education and other functions. What is certain, the way of policing is changing drastically and the police must be prepared to respond to the increasing number of requests. The changes primarily involve the concept of policing, and the focus is shifting from the crime repression to the crime prevention, assistance to citizens in their everyday life and the concept of policing as a public service. There is an increasing demand for transparency and openness in policing, combating corruption, police sensitivity to gender issues and admission of female officers to the police service, customising police work to ethnic, religious and other minorities. These extensive changes in police service have led to major organisational changes in the police, and one very important aspect of such changes, without which the realization of all the new functions of the police would not have been possible, is the work on the development of police culture, professional ethics and police accountability. Culture of policing in a democratic society includes principles, ethics, values, accountability, openness and is linked to confidence, institutions and assumptions on which the police basis its actions and behaviour.<sup>2</sup>

As much as the efficiency of the police work is measured in relation to how a police officer is doing his job, the efficiency also refers to what the specific police officer actually does. Police officers are the most visible representatives of the state authorities who are in daily contact with the citizens, and therefore always have to pay attention to their behaviour and actions. Police officers have to act in a way that gives confidence to citizens and creates a sense of personal security. The police should be a public service that is servicing citizens twenty-four hours a day, with a role that is not based on repression but focused on a mere crime control. Therefore, police services must change their approach to policing, primarily in the area of support and management. This often necessitates the change in the whole concept of policing. Indifferent and repressive way of policing without explanation, with the excessive use of force and isolated from the community it should serve is no longer acceptable. The police need to be transparent, cooperate with citizens and suffer their criticism. It would have to move from the traditional approach that is based on the inviolability and isolation of the police from the society to the concept of local community policing. In this context, the awareness of the need to build a partnership with citizens is an important element of professional ethics of police officers.

The issue of shaping the police ethics became the central issue in the implementation of reform processes and concrete police activities. The way in which the police protect individual rights strengthens it against malicious and unfair criticism and the manner in which it treats offenders and victims reinforces its moral and legal authority on a daily basis.

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<sup>1</sup> Bogoljub Milosavljević, *Police Science*, Police Academy, Belgrade, 1997.

<sup>2</sup> OSCE Mission to the FRY, *Study on Policing in FRY*, Belgrade, October 2001.

Police ethics is considered as one of the pillars of the democratic and reform processes of the police in Serbia, especially in essential relation between the state, citizens and police. To build a relationship of trust between police and citizens, in addition to establishing an appropriate code of professional ethical conduct for police officers, efforts must be made in the direction of its implementation and compliance with police practice to avoid it becoming just a “dead letter”. Code of ethics should not be selectively drafted and it should include all aspects and areas of policing and among other things it should promote good relations between the police and the citizens, efficient cooperation with other state authorities, independent agencies, local communities, non-governmental and other citizens’ organisations, including ethnic, religious and other minority groups.

Also, during the education and training of police officers, the ethics should not be regarded as a mere supplement to a police technical training. It is essential that it becomes an integral part of police culture, that it is integrated in every aspect of police training and in every single function of the police work organisation. It is very important to ensure long-term sustainability of ethical function in the police organisation, which can be achieved by forming a team for the implementation of ethics, developing ethical reporting mechanisms, adopting management principles based on values and dialogue, developing the plan for the implementation of ethics, adopting the code of prescribed conduct and drafting a charter on basic values and training provided for ethical mentors.<sup>3</sup>

On the other hand it should be noted that the development of ethics is developing the positive police culture. The importance of police culture has drawn attention once it was realized that it occupies the prominent place in determining the police officers’ behaviour at work and outside of work. Specificity of police work and the emergent police culture are determined by frequent social isolation of police officers, risk related to this specific work, specific powers and responsibilities, the necessity of mutual solidarity in joint actions, frequent encounters with asocial and other problematic behaviour, the internal training system and professional knowledge and the nature of information that is available to the police.<sup>4</sup> From the ethical point of view the process of socialisation and introduction of young police officers in the police culture is very important. Already in the course of the training recruited police officers are being prepared to enter the police culture by learning and adopting its values and norms. Also, as soon as new police officers assume their duties, they often experience shock in the process of experiencing the reality of police work, which some authors call *reality shock* to emphasize its strength and impact on beginners.<sup>5</sup> During the first days they learn values and norms of the police culture which they have to adopt very quickly if they want to be accepted by their older peers. If negative elements of a police sub-culture that include cynicism, social isolation, conservatism, machismo, racial and ethnic prejudice and pragmatism<sup>6</sup> would be eliminated or at least minimized in the police culture, then the culture could become very useful in providing moral support and creation of team

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<sup>3</sup> Instructions on preserving police integrity, Geneva Centre for Democratic Control of Armed Forces (DCAF), Geneva, 2012.

<sup>4</sup> Bogoljub Milosavljević, Police Science, Policie Academy, Belgrade, 1997.

<sup>5</sup> Bogoljub Milosavljević, Nauka o policiji, Policijska akademija, Beograd, 1997.

<sup>6</sup> Reiner, R., The Politics of the Police, Brighton: Wheat sheaf Book, 1992

spirit which is necessary for efficient performance of a police function. What can be noticed as a change in police culture is a litmus test for the whole reform in the eyes of the public.<sup>7</sup> Police culture can be briefly defined as operational and ethical behaviour of police officers.<sup>8</sup> The positive aspect of a police culture is that it can provide moral support and create team spirit necessary for effective exercise of police roles and tasks. Police culture offers police officers a practical overview on how they will perform their duties and presents a variety of work processes that are not thought on training.<sup>9</sup> Police training cannot capture overall diversity of situations that police officers face when performing their everyday duties. To this end, a police culture can help a newly recruited police officer to find his place within the organisation and to successfully overcome a variety of daily challenges imposed by a nature police work. This is the way in which police officers perform their duties, and is the best indicator of changes in front of the eyes of the public. The police should help preserve the democratic values, and it itself should be imbued with the same values. The public shall accept the legitimate exercise of power by the police if it perceives that the police are performing their duties towards worthwhile, democratic goals and in a manner that is ethically acceptable. In return, after meeting all these requirements the police shall have every right to expect that the public will trust that they will carry out their responsibilities, that it will support them and cooperate in their activities. Furthermore, moral support in a police work has been identified as being an aspect that is both inevitable and indispensable.<sup>10</sup> Police work, by its very nature, is characterised by unique pressure and tension. Even in his spare time a police officer is often not able to relax and enjoy it, because of a specific tension related to his work and not existent in other professions.<sup>11</sup> Even in this aspect some elements of police culture may help the process of rationalisation of police work.

In order to justify citizens' trust, the police in Serbia must demonstrate professionalism and integrity by following the rules of professional and ethical behaviour. Given the limited resources and the need to set priorities, the police must use its discretionary power in law enforcement. Discretionary power of the police, on the other hand, "is permissible and desirable only when it is used in the interest of justice"<sup>12</sup>, and when it is accordance with the guidelines and the code of professional conduct. The ethical code of conduct should "reflect the highest ethical values"<sup>13</sup> expressed in prohibitions and obligations of police work. By laying the foundations of ethical standards, the code of police ethics should provide opportunities for easier identification, more comprehensive understanding, more careful analysis and easier solving of ethical problems. The code should also actualize issues relating to values applied in the police as an organisation and their proper implementation. In order to change its image and the impression it gives to the public, the police in Serbia must demonstrate high level of integrity in its work and must be prepared to confront the temptations and the abuse of police powers and to adhere to these values. It should be

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<sup>7</sup> Law Enforcement Department, *Police Reform in Serbia – towards creation of modern and accountable police service*, OCSE Mission to Serbia, 2004

<sup>8</sup> Ljubomir Stajić, Saša Mijalković, Svetlana Stanarević, *Security Culture*, Draganić, Belgrade, 2004.

<sup>9</sup> *Instructions on preserving Police Integrity*, Geneva Centre for Democratic Control of Armed Forces (DCAF), Geneva, 2012.

<sup>10</sup> *Instructions on preserving Police Integrity*, Geneva Centre for the Democratic Control of Armed Forces, Geneva, 2012.

<sup>11</sup> John Crank, *Understanding Police Culture*, second edition – Cincinnati, Ohio: Anderson publishing, 2004

<sup>12</sup> Code of Conduct for Civil Servants, Article 7

<sup>13</sup> UN, *Commissioner's Guidance for Democratic Policing in the Federation of Bosnia and Herzegovina*, principle 3.

mentioned that solid progress has been made towards the reform of the police changes - signs of change are quite visible on the streets of Serbia. Positive changes are particularly evident in the attitude of the police towards citizens, openness to the media, the equipment that is being used by the police, the increasing number of female police officers in joint patrols with colleagues, partial cooperation with other state institutions, primarily with independent control authorities. However, the question still remains whether the changes are only of cosmetic nature and if they will be maintained in the future, too.

## PROFESSIONAL ETHICS AND POLICE CULTURE

From the point of view of present circumstances, it seems that a pattern of Serbian police behaviour existing over the past decades is difficult to change and that the professional awareness built in the past adversely affects the continuation of the police reform processes in the police. Institutionalized relationship between the police and citizens is on a low level, i.e. the police are still to a certain extent isolated from the community they should serve, and creating the common security strategy based on ethical principles is very difficult. Lack of transparency, dominance of repressive over the preventive actions, lack of clear priorities, endemic corruption and centralized decision-making process within the MoI are additional obstacles to comprehensive and open involvement of citizens in formulating the MoI policy.

The Government of Serbia adopted the Code of Police Ethics, a document which obliges members of the MoI to respect human and civil rights and freedoms. It is stated in the Code that police officers are obliged to behave in a decent and responsible manner towards the citizens, and when communicating with the citizens, they are obliged to maintain their own integrity, dignity and reputation of the Ministry. In addition to taking clear and unequivocal view that any form of illegal behaviour will not be tolerated, neither minor incidents, nor serious violation of individual rights, Serbian MoI has to initiate concrete steps in that direction. To this end it is important to start working on the integration of ethics in the police organisation which is supposed to take place at three levels: at the level of training of newly recruited police officers, at the level of support to existing employees, senior and middle management and at the level of the organisational infrastructure and police management.<sup>14</sup> MoI should pay special attention that each of the stated levels has its own specificities that are interrelated and the implementation of steps on one level and their disregard on the other level can lead to errors and reduced efficiency. This approach could ensure that the ethics is not just a formal part of police training and police work but also a long-term and sustained ethical function that can become an integral part of the police organisational culture.

The emphasis on “ethical policing” with respect to service rules and principles of the Code of Professional Ethics in carrying out activities related to security is an essential element of police culture.<sup>15</sup> The Code of Police Ethics is only fictionally based on the Law on Police and European Convention for the Protection of Human Rights and Fundamental Freedoms.<sup>16</sup> The document obliges the police to meet the highest European standards when dealing with both the citizens and other institutions. However, hitherto practice makes it obvious that it is

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<sup>14</sup> Instructions on Preserving Police Integrity, Geneva Centre for Democratic Control of Armed Forces (DCAF), Geneva, 2012.

<sup>15</sup> Instructions on police ethics and methods of conducting police work, “Official Gazette”, no. 41/203.

<sup>16</sup> Code of Police Ethics, “Official Gazette of RS”, no. 92/06.

not enough just to distribute copies of Code of Ethics to police officers. The part that is missing and needs to be done is to implement in practice the values prescribed by the Code of Ethics through operational and strategic processes in the police organisation. The systematic approach, which is apparently missing, should be implemented at the level of the entire organisational structure of the police. This approach assumes that there is not only one way of implementation, but that the best long-term effect can be achieved through the implementation of combined activities on the development and implementation of the Code of Ethics. Action plans need to be developed along with concrete steps at different levels of the police organisation in order to implement the Code of Police Ethic more successfully. In order to promote ethical principles and security culture of the police, the distribution of the Code should be accompanied by a national level campaign, which would actively educate the public and the police on the rights, obligations and consequences of violating the Code. This campaign should be initiated and supported by the Government, senior officers of the police directorates, the MoI and the IAS. In addition to campaign it is important to take a series of concrete steps and develop long-term plans for the implementation and introduction of ethical code to police officers that would include pre-designed activities in the area of recruitment and selection of police officers, training and education, internal and external communication, evaluation, command, promotion, internal control, etc.

The current reform program has been hampered by a lack of funding, and stronger political will be required for real and fundamental changes to be implemented within the MoI. The goal of the police reform is not the development of a service solely capable of more effective dealing with crime, but also of such that could deal with negative effect of the internal corruption<sup>17</sup> within the service and, at the same time, this reform should incorporate the highest standards of human rights, thus making it more accountable to the citizens it serves. Building the trust between the police and the citizens is not possible without a modern and developed police culture and the implementation of the highest ethical standards in performing everyday police duties. It is necessary to continue to emphasize the accountability of the work throughout the entire police service, both at the individual level and at the level of the organisation as a whole. There is no doubt that accountability in policing is one of the cornerstones of the police reform. In a society governed by the rule of the law, the law applies equally to all citizens. Just like all other citizens, the police officers must be held accountable for their actions. Furthermore, they must also be fully responsible for orders to subordinated police offers issued by the hierarchical powers. The fact that the police officers are responsible for their actions should not rule out the possibility that the superiors may also be held accountable for issuing orders. The superiors should be held accountable in parallel with perpetrators or alone in case where the latter followed orders in good faith”.<sup>18</sup> Through an established chain of command, ultimate responsibility for police action can be traced in an effective way.

In order to implement and observe the stated measures, campaigns and plans of ethical conduct, Serbian MoI should designate a person within each police service, namely the Secretary for ethical issues. It would be desirable that this is a uniformed person, rather than a civilian, in order to win a support from the appropriate authorities while supervising the

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<sup>17</sup>Law Enforcement Department, Police Reform in Serbia – towards creation of modern and accountable police service, OSCE Mission to Serbia, 2004

<sup>18</sup> European Code of Police Ethics, CO-POL (2002)



creation of infrastructure and coordinating various activities.<sup>19</sup> The Secretary for ethical issues must attend training at the highest level (university) in order to understand theoretical, practical and organisational dimensions of police culture and ethics. He would also be a mediator in contact with external experts that the police would have to turn to in order to help it to implement its ethical infrastructure. The Secretary for ethical issues should also act as a channel (catalyst), responsible for coordinating work of others. In addition to the Code of Ethics his tasks would also include drafting of a charter of values that should state and define the main organisational values and sum them up in a mission statement.<sup>20</sup> The charter should be made of a list values that could be applied in specific cases or situations that police officers face.<sup>21</sup> This charter should not be a reference guide explicitly stating the core values of service. These values shall neither be applied in the same manner nor do all of them have the equal importance on the field. Therefore, it is important that the police officers are properly trained on how to manage the values stated in the charter. This type of training is all the more significant because the police have to respect both the charter and the Code of Ethics.

A police officer who complies with the law and professional ethics is “entitled to the active and physical support of the community he is serving”<sup>22</sup> and to be treated with respect by their superiors and colleagues. For the successful implementation of the Code of Ethics, the police service should have a detailed and comprehensive disciplinary code. At the moment, the Law on Police, the Law on Police Education and the Regulation on Disciplinary Responsibility of the Ministry of Interior<sup>23</sup> do not define precise disciplinary actions for violation of the Code of Ethics and internal regulations, and by creating a disciplinary code this problem could be overcome. Disciplinary code should precisely determine the internal rules that must be respected and any police conduct that is regarded as unacceptable. Disciplinary Code, among other things, should serve police officials to deal in a fair and consistent way with police officers who violated the Code of Ethics. Procedures specified in the disciplinary code should include individual and specific rules to be followed in the event of the breach and determine disciplinary actions for those police officers who are found clearly guilty of its violation. Just like ordinary citizens, police officers have the right to defence, timely and impartial trial, right to defend by remaining silent in criminal proceeding against them.<sup>24</sup> “Public authorities shall support police personnel who are subject to ill-founded accusations concerning their duties.”<sup>25</sup> Furthermore, certain measures from the disciplinary code should be integrated into the internal regulations of the MoI to ensure transparent and impartial procedures when lodging complaints and petitions. Disciplinary measures brought against police officers shall be subject to review by an independent body

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<sup>19</sup> Instructions on Preserving Police Integrity, Geneva Centre for the Democratic Control of Armed Forces, Geneva, 2012

<sup>20</sup> Note: Corresponding values are chosen depending on the context of a certain intervention, ones being more appropriate than others. The values stated in the charter should not be regarded as virtues that define the police work, since they reflect the characteristics of different countries and regions. Although there are certain primary values that remain the same in all police services, there are also secondary values that depend on the culture of work and service, as well as on jurisdiction (national, city, etc). . (Instructions on Preserving Police Integrity, Geneva Centre for the Democratic Control of Armed Forces, Geneva, 2012.)

<sup>21</sup> Instructions on Preserving Police Integrity, Geneva Centre for the Democratic Control of Armed Forces, Geneva, 2012

<sup>22</sup> Council of Europe, *Declaration on the Police*

<sup>23</sup> Regulation published in the “Official Gazette of RS” no. 8/2006 dated 27<sup>th</sup> January 2006

<sup>24</sup> *Declaration on the Police*

<sup>25</sup> Council of Europe, *European Code of Police Ethics*

or a court.<sup>26</sup> Such legislation should provide protection to affected citizens and also to innocent police officers.

Police officer must not under any circumstances inflict, instigate or tolerate any act of torture or inhuman or degrading treatment or punishment. The Code of Ethics should specify that it is not acceptable under any circumstances for the police officer to inflict, instigate or tolerate any form of torture from any reason, which has not been done. Special attention should be paid to the word “tolerate”, as it implies that the police should even have an obligation to do their utmost to hinder such treatment, which also follows from the overall objectives of the police.<sup>27</sup> The police exercising torture or inhuman and degrading treatment cannot earn respect and trust of the public and the citizens. Allegations of human rights violation must be reported and an independent investigation must be carried out.

## CITIZENS' AND POLICE PERSONAL DATA PROTECTION

New technological tools permit increased insight into the privacy of citizens and can potentially threaten not only the privacy and freedom of expression, but also the citizens' confidence in the institutions of authority.<sup>28</sup> The European Commission stated in its report that Serbia showed insufficient progress in the field of personal data protection, as a result of the lack of data protection laws in some very important areas, such as biometrics, video-surveillance, private sector security, also stating that new law are controversial, to put it mildly. Although Serbia adopted Law on Personal Data Protection in 2008, it is to some extent inconsistent with the standards of the European Union. The Code of Police Ethics states that “in compliance with the law, police officers protect personal data on citizens collected, elaborated and used by the Ministry for the purpose of carrying out jobs of their competence“. Data on citizens, most diverse in nature, such as national, ethnic and political affiliation, illness, sexual orientation and others, are collected and accumulated in countless databases in the MoI. Since data on citizens are mainly collected by the police, their databases are most comprehensive and therefore this provision of the Code of Ethics should be defined and specified in a more precise manner. In addition to a more detailed definition in the Code of Ethics it is also necessary to define and specify disciplinary actions in case of violation of the rules.

Of particular concern is the fact presented by the Commissioner for Information of Public Importance and Personal Data Protection, Mr. Rodoljub Šabić and Ombudsman, Mr. Saša Janković, who reported that telephone operators' data in Serbia show that only one of them registered over 270,000 online access instances by security services and the police.<sup>29</sup> The MoI has free access to telephone operators' databases on the calls of citizens, the time and location of the call, which opens the possibility for misuse. Law on Electronic Communications, adopted in June 2010, envisages that the police and security services are entitled to control communications on telephone and online without the court's order and to keep this information for a year in case they need it, so to say, for the protection of the state from terrorism and organised crime.<sup>30</sup> The problem is that only few believe that in the action

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<sup>26</sup> Council of Europe, *European Code of Police Ethics*

<sup>27</sup> European Code of Police Ethics, CO-POL (2002)

<sup>28</sup> Neyroud, "Policing and Ethics" (op. cit. note 46), p. 582

<sup>29</sup> [http://www.danas.rs/danasrs/drustvo/policija\\_ugrozava\\_privatnost\\_gradjana.55.html?news\\_id=243811](http://www.danas.rs/danasrs/drustvo/policija_ugrozava_privatnost_gradjana.55.html?news_id=243811)

<sup>30</sup> <http://www.vreme.com/cms/view.php?id=974658&print=yes>

not necessitating a court's order, the police and others shall pursue only terrorists and criminals and not exceed the authority given to them. Although the Constitution of the Republic of Serbia guarantees the confidentiality of communication, this rule only should not apply in cases of criminal proceedings, but only if approved by the court. Rodoljub Šabić also stated that surveillance of telephone operators showed that the MoI and security services submitted more than 4,400 requests to access operators' data, and more than half of such cases were without legal basis.<sup>31</sup> Although non-implementation of the Law on Data Confidentiality results in the lack of transparency, the misuse of confidentiality can be prevented by the Code of Police Ethics in many ways. Also, the additional problem in this area is the lack of control over the classification of documents within the MoI, which is why even the prosaic documents are still classified as confidential. Namely, the Rulebook on Official and State Secrets and the Method of Issuing and Relieving from Keeping Official and State Secrets from 1976, the act that has up to now regulated issues within the MoI that were related to formulation of documents that are the state and official secret, determining the level of secrecy (confidentiality) and the measures of keeping secret data, was a secret document.<sup>32</sup> This is incompatible with modern, democratic and transparent police work. The selective declassification of documents was not undertaken even though it is envisaged by the Law on Data Confidentiality. Strict control by the officers in charge of data protection is also needed to ensure that "collection, keeping and use of personal data by the police is conducted in accordance with international data protection principles, and is particularly limited to the extent needed for the implementation of legal, legitimate and specific activities."<sup>33</sup>

## POLICE AND MINORITY GROUPS

Due to the increasing interactivity of the police with the citizens and intensified cooperation and communication between the police and the public, the police should seek admission of men and women from different social groups, including members of ethnic, national, sexual and religious minorities as well as members of both sexes. If the police officers show discrimination on any grounds and also show a disproportionate preference for certain minority groups, it can significantly cause and deepen the divisions both within the police organisation and the society itself. In order to create ethically sound environment and state where the police shall reflect the structure of the society and in order to avoid conflicts between police officers and the society they are serving, more precise and measurable goals must be set. Such goals would lead to a more even distribution of ethnic and gender representation in the police. Furthermore, progress measurement procedure would be upgraded once regular monitoring and analysis of police should be introduced.

The Code of Ethics should give impetus to appropriate initiatives and special measures to encourage the candidates from minority backgrounds and help them to the necessary standards for employment and work in the police service, as well as steps to eliminate all

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<sup>31</sup> Of particular concern is the fact that the Government and the National Security Council have not established any cooperation with the Ombudsman and the Commissioner on these issues, nor have they responded to the current activities of these bodies.

<sup>32</sup> Collection of policy papers on police reform in Serbia, Number 3, September 2010. *Authors:* Jan Litavski, Saša Đorđević, Žarko Marković, *Publisher:* Belgrade Centre for Security Policy

<sup>33</sup> Law Enforcement Department, Police Reform in Serbia – towards creation of modern and accountable police service, OSCE Mission to Serbia, 2004.

direct and indirect discriminatory barriers and prejudices that affect minorities and their position both in the society and in the police. In order to solve this problem, the MoI should work on formulating a policy that clearly indicates the importance of policing for inter-ethnic relations. The Code of Ethics should include the professional standards of policing in multi-ethnic municipalities in Serbia, and police training programs should have a component especially designed to achieve these standards. There should be corrective measures for breaching these standards, and exemplary good practice should be rewarded with professional and public acknowledgement. It is recommended that police managers are responsible for ensuring that their staff achieves these standards when working with minorities and that their work give example of good practice.

The commitment of the MoI and the Police Directorate should be such that the police as a whole, in the Ministry and in all organisational units, reflect the diversity of the overall population including the ethnic structure. In this respect, help and support provided by national minority councils is of great benefit. Along with already established affirmative actions for the admission of candidates to the basic police training, MoI should advise national minority councils to consider the possibilities of creating their own incentives for members of national minorities within the Code of Ethics in order to encourage their interest in police training and subsequent police work. This is the only viable way for long-term goal achievement in terms of adequate representation of minorities in the police organisation.

## POLICE CORRUPTION

Police corruption involves unfair, improper, immoral and criminal activity of a police officer, i.e. a conduct that deviates from the basic social norms.<sup>34</sup> Corruption within the police is a bad example both for the police and the society. It distorts the work of police officers, promotes the code of “silence”, creates a resistance to the principles of responsible ethical work and undermines the legitimacy of the police and the executive authorities in charge of control and supervision over the police.<sup>35</sup> If the state seeks to ensure the observance of the law it must ensure that those who enforce the law are positive examples. A police officer has the duty to oppose to every act of corruption and can not be engaged in activities incompatible with the official duty and those that impair the reputation of the police. If the goal is increasing public confidence in the police, then the police officers cannot allow their private interests to jeopardize their position in the civil service. Corruption hinders equitable service delivery<sup>36</sup> and seriously harms the public image of the police. If a state is democratic, corruption in the police will undermine its ethical foundation, which will lead to weakening of state legitimacy.

A serious consequence of corruption in the police is weakening of ethical standards in society. If the citizens believe that the police benefit from the corruption, it will lower their moral standards and make them more willing to turn to crime themselves.<sup>37</sup> Corruption in the

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<sup>34</sup> Roebuck, B., Baker, T. 1974. *An empirical typology of police corruption: A study in organizational deviance*. Springfield: C.C. Thomas.

<sup>35</sup> Kutnjak-Ivković, Sanja. 2005. *Fallen Blue Knights: Controlling Police Corruption*. Oxford: Oxford University Press.

<sup>36</sup> Bogoljub Milosavljević, *Police Science*, Police Academy, Belgrade, 1997.

<sup>37</sup> *Instructions on Preserving Police Integrity*, Geneva Centre for the Democratic Control of Armed Forces, Geneva, 2012.

police is constantly increasing and the methods of practicing corruption are becoming more sophisticated and more difficult to detect.<sup>38</sup> One of the reasons is that the level of acceptance of corrupt methods used by police officers has increased significantly in the recent years.<sup>39</sup> In addition, police corruption is hardly noticeable and its detection requires reporting from the citizens or fellow police officers, and neither wants to admit involvement in corrupt practices. All police control mechanisms are reactive and investigations generally find only the most visible forms.<sup>40</sup> This is why fight against corruption in Serbia requires application of anti-corruption policy and the Code of Conduct for the proper and dignified police action, as well as implementation of effective measures to implement these policies at all levels of the police. The effective solution must aim not only at solving the basic problem of low incomes, and especially favourable opportunities for bribery at certain positions in the positions in the police, but also the effectiveness of the system of disciplinary and sanctions measures.<sup>41</sup>

Effective strategy to fight corruption can be effective only once all the factors contributing the instantaneous solution of problem are identified and therefore it has to include tools for strategic analysis such as SWOT<sup>42</sup> analysis, gap analysis, analysis of the influential factors and impact mapping. Great benefit of these tools lies in the fact that with their help it is possible to identify organisational units within the MoI which are more susceptible to serious and systematic corruption of others. Departments that deal with solving of highly profitable and enduring types of crime usually offer long-term opportunities for serious cases of corruption.<sup>43</sup> If the police management wants to make a priority list in their efforts to deal with the corruption in the police it must identify and focus on those areas of policing in which the perpetrators are most susceptible to bribery and rewards.

It is also important to note that the police service can not fight the corruption by adopting only ethical or disciplinary codes, since the practice and experience witness that their combined use is the one that gives the best results. Serbian MoI must demonstrate that the corruption in the police will neither be tolerated nor accepted as an adequate police conduct. Punitive measures must be of a public nature, the perpetrators of corruption must be publicly named and bear all consequences, so that other police officers could witness in practice what constitutes an offence committed by their peers and what behaviour is considered unacceptable. In addition, the fight against corruption within the police requires public reporting about the adequacy of anti-corruption system<sup>44</sup>, the extent to which it applies how effective it is, as well as how active is participation of civil society in this process.

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<sup>38</sup> Kutnjak-Ivković, Sanja. 2005. *Fallen Blue Knights: Controlling Police Corruption*. Oxford: Oxford University Press.

<sup>39</sup> Saša Đorđević, What do we know about police corruption? Belgrade Centre for Security Policy, May, 2012.

<sup>40</sup> Saša Đorđević, What do we know about police corruption? Belgrade Centre for Security Policy, May, 2012.

<sup>41</sup> CE, Resolution (97) 24 on the twenty guiding principles for the fight against corruption, Article 10

<sup>42</sup> English abbreviation for SWOT Analysis- Strength, Weaknesses, Opportunities and Threats.

<sup>43</sup> Instructions on preserving police integrity, Geneva Centre for the Democratic Control of Armed Forces, Geneva, 2012.

<sup>44</sup> Twenty guiding principles for the fight against corruption, Article 16

## THE ROLE OF POLICE EDUCATION IN BUILDING OF AN ETHICAL BEHAVIOUR OF POLICE OFFICERS

What can be seen as a change in police culture is an indicator of standards of the entire reform process. With this in mind, police education plays a vital role in determining police culture and ethical behaviour of police officers. The introduction of the newly recruited police officers during basic training in the principles of ethical and responsible police work and in the teaching contents in accordance with the human rights standards and accepted guidelines for the use of force can strengthen their attitudes and behaviour and make the unbreakable bond between the two. However, the police officers in Serbia must be continuously educated on the changes that occurred since it is not enough just to attend the basic police training at the beginning of their career. Also, Serbian MoI should regularly organize seminars for police officers together with all stakeholders in order to raise their awareness and responsible behaviour. This is particularly important when one takes into account the assumption that the adopted behaviour of police officers are not unchanging – behaviour that was perceived as normal and acceptable for the previous generation is no longer deemed appropriate and now potentially falls within the scope of unethical behaviour. Assistance to police education should be focused on ensuring sustainable education development, through the provision of modern training methodologies and curricula.<sup>45</sup>

Police training should be based on the fundamental values of democracy, rule of law and protection of human rights and it should develop in line with the objectives of the police. Basic police training should be oriented towards principal circumstances and needs of the society. Initial and continuing training during the service and the education should be available in all areas of police activity in regular intervals and for all professional titles in the police. This means, in an operational context, that the police should be trained in applying the law, police ethics, code of conduct and human rights standards.<sup>46</sup> During the training it is, however, not enough to talk about principles of ethics and abstract entities. The police officers need to be tested against real and concrete police issues<sup>47</sup>, for example, of role plays.<sup>48</sup> Ethical training should emphasize the importance of strengthening the professional assessment of police officers, such a commonsense decision-making; the police officer must be able to recognize and exactly identify the situation and ethical dimensions and identify the values of the police service, civil society and other stakeholders.<sup>49</sup> The training should reflect the values of the police service and provide police officers the tools they need to understand the ethical dimension of a given situation.

It is crucial to note that the police ethics should be taught by the police officers who are specially trained in this area. A key success of these courses lies in their connection with

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<sup>45</sup> Law Enforcement Department, *Police Reform in Serbia – towards creation of modern and accountable police service*, OSCE Mission to Serbia, 2004

<sup>46</sup> Council of Europe, *Declaration on the Police* (op. cit., note 5)

<sup>47</sup> Guidebook on Democratic Policing, compiled by the Senior Police Advisor to the OSCE Secretary General

<sup>48</sup> Although such formal training exists or is introduced into the system of police education, the interviews with young police officers who completed their training recently have shown that such training is being conducted on a low level.

<sup>49</sup> Instructions on Preserving Police Integrity, Geneva Centre for the Democratic Control of Armed Forces, Geneva, 2012

reality of daily activities of police officers.<sup>50</sup> This includes consideration of examples in the courses that are directly based on experience gained from interviews with active police officers, the cases recorded by the internal control, courts and their corresponding investigations as well as the cases entered in minutes during the process of conducting disciplinary proceedings. In addition to the above, lecturers should be teaching the adoption of personal standards of conduct on their classes of ethics, as they capture a sense of pride in being members of a police organisation.<sup>51</sup> This is particularly important for police recruits who need to know from the outset the core values that should define and govern their work. Without some such objective reference for standards and values, the trainer's task is made doubly difficult. Both the origin and authority of standards have to be argued for, with the risk that they are seen as merely local and the creation of no one but the trainer.<sup>52</sup>

## THE SELECTION PROCESS AND RECRUITMENT INTO THE POLICE SERVICE

Although the candidate selection and recruitment process has improved, still it is often that the appointment to a position is not implemented on the basis of suitability and competence but on the basis of personal and family links. The standards and criteria for the appointment of a police officer to a certain position and the promotion should be clearly and precisely defined. Police management must be confident that during the recruitment of new police officers and promotion of individuals in the police, these individuals are not susceptible to unethical behaviour and that no disciplinary actions were initiated against them.

## MODEL OF POLICING

Choosing a model of policing is among the most important strategic decisions of the police, since it determines its organisation, the method of coordination and command, division of competence and the overall organisation management.<sup>53</sup> Social progress and development puts a pressure on the police to change the concept of its work or to move from traditional model of work to a model of community policing. The problem of the traditional model of policing is that it is based on the strict application of the law which is seen as largely repressive and reactive. Police structure is centralised, hierarchical type and relation between the senior police management and lower management are military-bureaucracy type. While the model of community policing is based on the concept of the police as a public service that is available to citizens twenty-four hours a day, the police are only one of the institutions responsible for the quality of life of the citizens. Police organisational structure should preferably be such as to promote building the trust between the police and the public. The citizens should perceive the police more as a service available to them and not as a force that is imposed upon them. The police should be organised as an integral part of the society. The police can greatly increase their effectiveness if relationships between them and other public bodies at different levels are well established, particularly between the police and the public often represented by groups or non-governmental organisations. The ethical

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<sup>50</sup> Instructions on Preserving Police Integrity, Geneva Centre for the Democratic Control of Armed Forces, Geneva, 2012

<sup>51</sup> See footnote 48

<sup>52</sup> European Code of Police Ethics, CO-POL (2002)

<sup>53</sup> Bogoljub Milosavljević, Police Science, Police Academy, Belgrade, 1997.

implications of the new model of community policing require entirely new approach to the citizens, since the police and the citizens must work together to maintain peace and tranquillity, the citizens are no longer fully subordinated to the force of law and would require from a police officer to be more accountable to the public and build partnership with them. Police officers need new skills, for example, communication skills and establishing relations based on trust. In line with above, in the forthcoming period it is necessary to work on building the trust between the police and local communities in Serbia.

Municipalities in Serbia, apart from some common problems, have their own, specific security problems, which require flexible and decentralised approach to policing. This is important in multi-ethnic municipalities, because the ethnic groups that in the past had extremely negative experience with the police, at present expect from the police to be a service of all citizens of Serbia, regardless of language, religion or national origin. Also, the issues of unethical behaviour in the police are usually discussed in case when the perpetrator is an individual, and usually the entire police organisation is assumed to be immoral and unethical by the public. Community policing model means that an efficient police is not successful only when it comes to fight against crime, but also presents an integral part of the community and is decentralised in decision-making, the individualism of a police officer is elevated to a higher level and is sensitive to changes and needs of the local community. Also, efforts should be made to make police officers more accountable through senior police officers facing the elected representatives of the community who can say, on behalf of their community, what they would like the police to do, and ask about their performance, efficiency and effectiveness. In order to promote ethical and accountable police work greater support should be given to developing a unique model of community policing at the level of the whole Serbia. In this way, the engagement of police in dealing with citizens will be increased, and this will be the most effective mechanism of changes in the way police works in Serbia.

## CONTROL AND POLICE ACCOUNTABILITY IN SERBIA

Development of police culture can be achieved when the police recognise its accountability for upholding the fundamental rights and freedoms of the individual and start working on the preservation of their own integrity through internal accountability measures. While citizens voluntarily give their consent for the police monopoly on the use of force for the purpose of maintaining social control and exercise of their civil, political and economic freedoms, democratic police services are required to subject their work to public scrutiny and check through the process of accountability.<sup>54</sup> Police accountability means that police activity- ranging from the behaviour of single police officers to the strategies of police operations, appointment procedures or budget management – is open to observation by a variety of oversight institutions.<sup>55</sup> Effective control system increases the chances for the police service to operate in accordance with its purpose. Control systems constitute sort of internal and external assurance that the management system is functioning properly.<sup>56</sup> Internal control includes activities that take place within the police. The external control includes measures implemented by institutions or individuals outside the police service.

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<sup>54</sup> United Nations *Code of Conduct for Law Enforcement Officials*, Preambular paragraph 8(a)

<sup>55</sup> Guidebook on Democratic Policing, compiled by the Senior Police Advisor to the OSCE Secretary General

<sup>56</sup> Instructions on Preserving Police Integrity, Geneva, Centre for Democratic Control of Armed Forces (DCAF), Geneva, 2012.



Police control in Serbia, whether internal or external, formal or informal, is still at the rear when compared to the level of development existent in services in democratic societies. As regards the internal control, in Serbian MoI it falls under the competence of IAS. IAS of the police existed before as Inspectorate General's Service of the former Public Security Service of the MoI. Although it was founded on 12<sup>th</sup> March 2001, the actual process of constituting IAS began with the appointment of the first Inspector General in June 2003.<sup>57</sup> Despite the high expectations from this kind of control, up to now it has not shown any visible results. Possibly due to lack of political will or slow reform processes within the police, no prerequisites have been created at the moment to make this type of control successful. In this regard, it is necessary to raise awareness of police officers on norms and principles that must be respected and the control mechanisms that are available to them. Internal control must focus on the implementation of ethical standards and ensure that the police respect the values and measures adopted in the police organisation. Internal control measures must ensure that all employees in the police and all who are in contact with the police have equal treatment. Internal control should respond specifically in case of cynicism among police officers and due to this fact the accepted values and norms are respected only formally. Furthermore, police officers should constantly be reminded that in cases of unfounded allegations against them, the mechanisms of internal control exist in order to protect and help them to avoid errors that may occur in their work. It is also necessary to develop a policy of transparency and inform the public about the work of internal control and the response of this service as regards offences committed and measures taken to prevent the recurrence of similar acts.

Police officers in Serbia and especially the police management must be advised that the internal control strengthens the management structure and enhances police reputation. To this end it is necessary to establish early warning systems to identify and prevent violation of the values and norms prescribed in the police service.<sup>58</sup> On the other hand, one should always point to the fact that the internal control makes the police accountable and therefore it is necessary to develop the police management command responsibility on continuous basis since in this way they would also be punished if they breach any law or ethical rule.

In order to comply with professional ethics and Code of Police Ethics, internal control must ensure that all police officers respect the norms and values that are accepted in the police in the same way. Internal control should ensure that the police officers and citizens are treated equally, without discrimination on any grounds. Control measures should be integrated into the daily operations of the police and also in their actions in cases of emergency. It is important to note that regular information and training on control measures organised for all police officers is needed in order to ensure effective internal control. A sound internal control system should focus on individuals who work in it, it should support such individuals, encourage the strengthening of integrity and promote their positive attitude towards the control measures. Internal control of the police in Serbia should be organised so that all employees in the police organisation are responsible for it, with the control measures being incorporated into the daily routine of the organisation and also in managing emergency tasks. Regular information and training on control measures organised for all employees in the MoI is important for sustainability of internal control.

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<sup>57</sup> Source: SUKP, <http://prezentacije.mup.gov.rs/sukp/sukp.htm>.

<sup>58</sup> Instructions on Preserving Police Integrity, Geneva Centre for Democratic Control of Armed Forces (DCAF), Geneva, 2012.

In addition, it is obvious that in our conditions, full subordinations of the IAS to the Minister of Interior, who is at the same time responsible for police work, is not an idea that can match the expectations. The reasons for this are numerous, and one of them is certainly that the institution of ministerial responsibility is not developed yet in Serbia.<sup>59</sup> Therefore, the IAS is more some sort of Ministers's Commissioner, with a role to balance between the demands of the public and the interest of the service embodied by ministerial command rather than by law. In order to enhance its role, the Sector has to acquire clear legal authority and open way of communication with the government and the public in case its action with the police<sup>60</sup> is being limited. Also, its work has to be transparent in order to start gaining public's trust.

The major setback to a successful functioning of the police internal control is a lack of a whistleblower protection in the police. Based on current situation it could be undoubtedly stated that there are strong and multiple reasons for robust whistleblower protection and witnesses who cooperate in investigations carried by control authorities. Without a clearly defined legal protection there is justifiable concern of police officers to turn to control authorities (the Ombudsman and others) as regards their future status in the police. Therefore, the law and the Code of Ethics should unequivocally and clearly define that the police officers will not face administrative sanctions or other forms of sanctioning if they report a violation of rules of police service committed by other police officers or those who have such intention.<sup>61</sup> Police officers who filed a complaint should be protected from any form of retaliation.

In order to constantly improve the process of reform in the police of the Republic of Serbia, the key element must be the observance of the Code of Ethics, police culture, internal and legal regulations by police officers. To this end, particular attention should be paid to the development of informal means of control within the police. Such internal control mechanisms of informal character significantly influence the behaviour of police officers and prevention of errors in their work.

Self-control is a mechanism based on the adoption of ethical, legal and professional norms of conduct in the service and is activated as integral part of conscious reaction in some situations.<sup>62</sup> In the police in Serbia for a long time a bureaucratic type of professionalism was being developed. It was based on formal discipline and insufficient motivation for taking personal responsibility in relation to the consequences of treatment. Taking into account that the Code of Police Ethics contains a set of principles and rules that serve police officers as moral principles and criteria for assessment of their own procedures, on admission to the police service, the police sub-culture may contribute to the development of self-control if it fosters professionalism that is based on awareness of personal and professional ethics. Mechanisms of self-control of the police in Serbia should be developed because in this way a police officer deliberately restricts its actions with regard to norms and rules of conduct

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<sup>59</sup>Bogoljub Milosavljević, *Civilian Oversight of Police*, Center for Peace and Democracy Development, Belgrade, 2004.

<sup>60</sup>Collection of Policy Papers on Police Reform in Serbia, Number 5, Authors: Jan Litavski, Saša Đorđević and Žarko Marković, published with a support of the OSCE Mission in Serbia, Embassy of the Kingdom of the Netherlands in Serbia and the Geneva Centre for the Democratic Control of Armed Forces (DCAF), Belgrade, July, 2011

<sup>61</sup>United Nations *Code of Conduct for Law Enforcement Officials*

<sup>62</sup>Bogoljub Milosavljević, *Civilian Oversight of Police*, Center for Peace and Democracy Development, Belgrade, 2004

accepted during the training and service. Developing mechanisms of self-control could be encouraged by the character and content of the police training, development of professional ethics and most of all, system of grading, promotion and the accountability in the service. Self-control of police officers in Serbia should be developed primarily because it presents an initial instrument within the system of control, an instrument on the very onset of the control process. If it is developed, its actions make it easier and there will be no need to employ other instruments of control.

Bearing in mind that the police sub-culture in Serbia often nurtured and emphasized solidarity between the police and the obligation to remain silent about the errors made by the colleagues, or a pattern of behaviour in the style of “conspiracy of silence”, special attention should be paid to the development of interpersonal control mechanisms. Interpersonal control implies the development of informal control mechanisms based on mutual control within the work teams and groups, made up of two or more police officers in the joint action.<sup>63</sup> Focus should be on raising awareness of the shared responsibility of the group members, limiting the actions of an individual and showing negative consequences of the entire group supporting the unethical actions of individuals in the group. In order to prevent this kind of conduct programmes of more stringent group control along with measures of responsibility of all group members should be applied for the actions of any member of the group. Police officers should continue to raise awareness that the corrupt behaviour, abuse of power, non-observance of principles of the Code of Ethics is a personal decision and responsibility of each individual police officer. When working on strengthening of interpersonal control mechanisms it should be noted that a very small number of police officers who, no matter where they come from, enter the service with the intention of succumbing to corruption or immoral or unethical conduct. Particular focus should be given to education and police training since these aspects are indispensable for the preservation and strengthening of such a position. Training should promote integrity and ethics, and provide tools for transparency and accountability. It is particularly important that the training is not a one-off but a continued process for a police officer during his service.

Trade union and professional associations of police officers as means of informal control should, among other things, appear as an asset that can significantly contribute to the reputation of the profession and the acceptance of higher standards of professional associations of police officers. Unionism in the police may contribute to the further democratisation of the police. Moreover, professional associations of police officers are an important asset that can significantly contribute to the good reputation of the police in the society and acceptance of higher standards and ethical responsibility. The MoI should do more to support the work of professional associations of police officers and give them a role in development of professional standards, training models and some other aspects of improving the profession, particularly in adoption and ensuring compliance with profession’s ethical standards.<sup>64</sup>

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<sup>63</sup> Bogoljub Milosavljević, *Civilian Oversight of Police*, Center for Peace and Democratic Development, Belgrade, 2004.

<sup>64</sup> Bogoljub Milosavljević, *Civilian Oversight of Police*, Center for Peace and Democratic development, Belgrade, 2004.

Special and very useful control tool is the developing of a more direct contact of police officers with the citizens, i.e. their integration with the social environment.<sup>65</sup> Until the beginning of the twenty-first century, the police was kept isolated from the community, and the direct contact of the police and citizens was limited in order to distance the police from public influence and from understanding its interests. The MoI should work to ensure that police officers accept social norms as values that should be respected in their official capacity. This can be achieved by developing direct contacts of the police officers with the citizens through various joint actions of both educational and informative character. By strengthening social contacts of police officers with the public, the MoI would contribute to the integration of the police in the social environment, thus making it more accountable for their actions, and giving to public the possibility to control the police in a more profound manner. The MoI should work to develop public confidence in the police, promote partnership of the police with the citizens, local communities and the general public in order to combat the unethical and immoral conduct of its members.

The efforts of the police *to reduce fear of crime* among citizens is the last and most important factor contributing to the improvement of public perception of the police and encouraging social responsibility of the police. This method covers programmes and activities which contribute to the creation of feeling of communion with the police among citizens in their community, and which ameliorate communication relationships between the police, display the concern of the police and the community for the citizens' safety, and develop the citizens' trust in the police. These programmes and activities should include development of prevention through submitting data about measures for protection and the status of criminality, actions of "door to door" visits, increase in the number of the walking patrols in the police, permanent telephone lines, counselling for citizens and others.<sup>66</sup>

Finally, it is also important to mention the external control of the police, which is crucial for police accountability and adherence to the rules and principles set forth in the Code of Police Ethics. This type of control is external to the chain of command in the police and it involves directing and managing police operations. It consists of evaluating and monitoring the behaviour of the police by the executive authorities, parliament, judicial authorities, special independent institutions, ad hoc investigative authorities, civil society organisations and the media. Monitoring involves retroactive assessment of police activities, and continuous monitoring of their work. This kind of control is very useful because it does not include institutions within the MoI, but those that are organisationally and operationally independent in relation to the police. Independent regulatory institutions can help Serbian MoI in strengthening democratic governance over the police, encouraging public confidence in the police, ensuring compliance with international standards of policing and improving police services. Serbian MoI should increase the cooperation with the stated institutions, not just because they encourage the establishment of effective internal control and supervise their work but also because they provide the public with an independent mechanism for complaints related to immoral and unethical behaviour of the police. Moreover, these

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<sup>65</sup>Bogoljub Milosavljević, *Human Rights and the Police – Human Rights Standards for the Police*, Centre for Peace and Democratic Development, Belgrade, 2004

<sup>66</sup> Collection of Policy Papers on Police Reform in Serbia, No. 3, Authors: Jan Litavski, Saša Đorđević and Žarko Marković, published with a support of the OSCE Mission in Serbia, Embassy of the Kingdom of the Netherlands in Serbia and the Geneva Centre for the Democratic Control of Armed Forces (DCAF), Belgrade, September, 2010

institutions have the ability to deal with the cases of immoral and unethical behaviour in the police that could not be resolved by the police service alone, due to the severity of the case or conflict of interests.

## FINAL CONSIDERATIONS

In addition to usual activities related to prevention, crime suppression, maintenance of public order and tranquillity and protection of fundamental rights of the individual, Serbian MoI should also provide various social services. The MoI should strive to make the police a fully modern and professional organization in the service of citizens. The citizens of Serbia shall accept and even embrace the legitimate exercise of power by the police if they perceive that the police are able to carry out their tasks towards worthwhile, democratic goals in a manner that is ethically acceptable. In this way, the Serbian police shall have every right to expect that the public will trust them to carry out their responsibilities, and support and cooperate with them in their activities when doing so. Persisting on direct work of the police with the citizens would lead to a meaningful police policy offering the possibility of achieving direct control and supervision exercised by the citizens, especially in the aspect of legality and ethics of police work.

Without strict adherence to and implementation of Code of Police Ethics, further reforms of the police would be seriously compromised. Serbian MoI must insist that the police observe the personal rights of citizens while carrying out their duties including human rights and freedoms and avoid arbitrary and unlawful action. Furthermore, IAS must unambiguously adhere to the “rule” that those who make, publish and apply the law have to abide to the same law. Serbian MoI should create the conditions to bind itself and subject to the very law it has committed to enforce.

## BIBLIOGRAPHY:

- Bogoljub Milosavljević, *Civilian Oversight of Police*, Centre for Peace and Democracy Development, Belgrade, 2004.
- Bogoljub Milosavljević, *Human Rights and the Police – Human Rights Standards for the Police*, Centre for Peace and Democracy Development, Belgrade, 2004.
- Bogoljub Milosavljević, *Police Science*, Police Academy, Belgrade, 1997
- Collection of Policy Papers on Police Reform in Serbia, No. 3, September 2010.
- Collection of Policy Papers on Police Reform in Serbia, No. 5, July 2011
- Council of Europe European, *Code of Police Ethics, CO-POL (2002)*
- Council of Europe, *Recommendation No. R (2000) 10 of the Committee of Ministers to Member States on Codes of Conduct for Public Officials*, 2000.
- Council of Europe, *Resolution (97) 24 of the Committee of Ministers on The Twenty Guiding for Democratic Policing in the Federation of Bosnia-Herzegovina*, Sarajevo, 1996.
- Declaration on the Police, RESOLUTION 690.*
- Department of Law Enforcement, *Police Reform in Serbia –Towards the Creation of a Modern and Accountable Police Service*, OCSE Mission to Serbia, 2004.
- Guidebook on Democratic Policing, compiled by the Senior Police Advisor to the OSCE Secretary General

- Instructions on police ethics and methods of conducting police work, "Official Gazette", no. 41/2003.
- Instructions on preserving Police Integrity, Geneva Centre for Democratic Control of Armed Forces (DCAF), Geneva, 2012.
- John Crank, *Understanding Police Culture*, second edition – Cincinnati, Ohio: Anderson publishing, 2004.
- Kutnjak-Ivković, Sanja. 2005. *Fallen Blue Knights: Controlling Police Corruption*. Oxford: Oxford University Press.
- Law Enforcement Department, *Police Reform in Serbia – towards creation of modern and accountable police service*, OCSE Mission to Serbia, 2004
- Ljubomir Stajić, Saša Mijalković, Svetlana Stanarević, *Security Culture*, Draganić, Belgrade, 2004.
- Miroslav Hadžić et al. (Ed.), *Yearbook of the Security Sector Reform in Serbia*, Centre for Civil-Military Relations, Dan Graf, Belgrade, 2009.
- OSCE Mission to the FRY, *Study on Policing in FRY*, Belgrade, October 2001.
- OSCE, High Commissioner on National Minorities, "Recommendations on Policing in Multi-Ethnic Societies", February 2006
- Peter Neyroud, "Policing and Ethics", in: Tim Newburn, *Handbook of Policing* (Portland, 2005)
- Radomir Zekavica, "Cooperation between the police and citizens within the concept of community policing", *Security*, vol. 47, No. 1, p. 83-94, 2005.
- Regulation published in the "Official Gazette of RS", 27<sup>th</sup> January 2006.
- Reiner, R., *The Politics of the Police*, Brighton: Wheat sheaf Book, 1992
- Roebuck, B., Baker, T. 1974. *An empirical typology of police corruption: A study in organizational deviance*. Springfield: C.C. Thomas.
- Saša Đorđević, *What do we know about police corruption?* Belgrade Centre for Security Policy (BCSP), May, 2012.
- The Community Tool Box: English abbreviation for SWOT Analysis- Strength, Weaknesses, Opportunities and Threats, Contributed by Val Renault, Edited by Jerry Schultz.
- Twenty guiding principles for the fight against corruption, Adopted by Committee of Ministers at 101<sup>st</sup> session of the Committee of Ministers.
- UN, *Commissioner's Guidance for Democratic Policing in the Federation of Bosnia and Herzegovina*.
- United Nations Code of Conduct for Law Enforcement Officials, Adopted by General Assembly resolution 34/169
- United Nations International Police Task Force (IPTF), *Commissioner's Guidance Principles for the Fight against Corruption*, 1997.