Criminal Justice and Security in Central and Eastern Europe

From Common Sense to Evidence-based Policy-making

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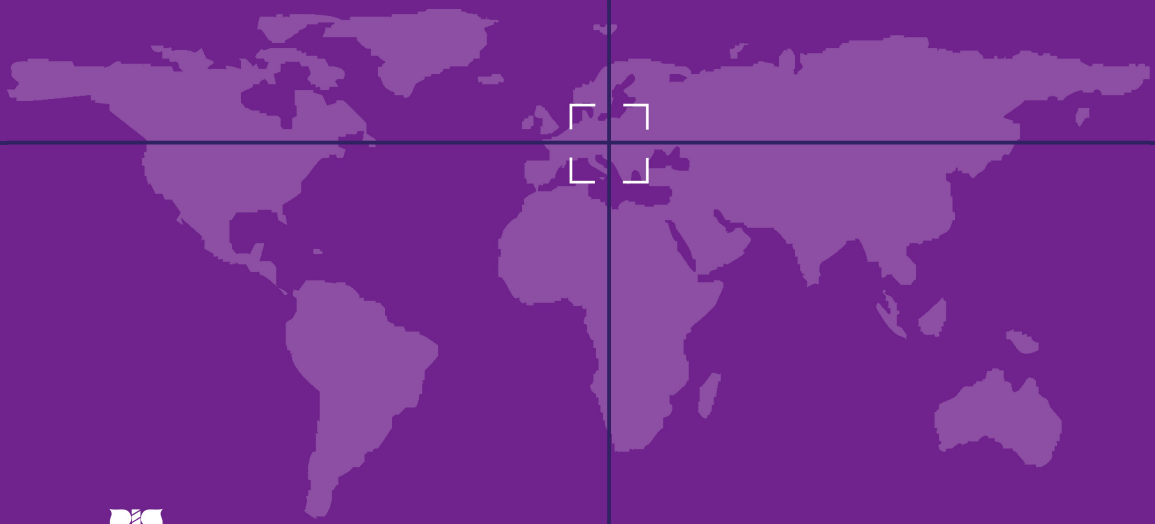

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POLICE DEPRIVATION OF LIBERTY IN THE CRIMINAL PROCEDURAL LEGISLATION OF THE REPUBLIC OF SERBIA AND THE RIGHT TO LIBERTY AND SECURITY OF A PERSON

Saša Mijalković[1], *Dragana Cvorović*[2], *Veljko Turanjanin*[3]

ABSTRACT

The reformed criminal procedural legislation of the RS successfully follows the modern trends in the criminal procedural doctrine, especially in the area of application of the measures of deprivation of liberty by the police and the limitation of the right to liberty and security of a person. The new legal solutions in the RS (CPC/2011) are different both in their conceptual definition, and by the entity that decides on the implementation of the measures, which make the issue in question even more current, so the authors accordingly paid special attention to the following issues: firstly, the police deprivation of liberty as an international standard in the reformed criminal procedure legislation of the RS; Secondly, court as a subject of decision on the legality of police deprivation of liberty in the RS; Thirdly, empirical research into the implementation measures of police arrest in the RS and suggestions of *de lege ferenda*.

Keywords: right to liberty and security of person, police arrests, court, Serbia

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INTRODUCTION

The complexity of the processes of reforming the criminal procedural legislation of the Republic of Serbia is manifested both through the monitoring of contemporary trends in the doctrine of criminal procedure legislation (Bejatović, 2012; Jovanović & Petrović, 2012; Vazić, 2012), and through modification of the normative framework, starting with the adoption of the Criminal Procedure Code of the Republic of Serbia in 2001, as well as numerous changes and amendments to the above Code, in order for the process of the ten-year reform to be ended by adopting the Criminal Procedure Code in 2011, which, with the critical tone of argument and with the profound theoretical explanations (Bejatović, 2014a; Djurdjić, 2015) and expert interpretation (Bejatović, 2014b; Skulić, 2014a) has contributed to the implementation efficiency of the process (Bejatović, 2010), and thus the implementation of international standard (Bejatović, 2015) in the European framework (Djurdjić, 2010). Namely, the international standard of the right to liberty and security of a person, in addition to the aspect of universality, also implies the absence of arbitrariness and illegality, which are difficult to imagine in a modern, democratic society, where the rule of law exists. However, the presupposed right to liberty and security of person is not only a reflection of a contemporary society, but looking from the aspect of historical genesis, the first proclamations of fundamental rights, had brought a right to liberty and security of person, which is indicative of its importance and necessity of predicting an adequate legislative framework that will ensure its full implementation.

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Numerous modifications to the legislative text of Serbia according to the modern trends have been inevitably accompanied by a modification of the police activities in the pre-trial procedure (Ilić, 2013), the relationship with the public prosecutor (Cvorović, 2015) as well as the measures of the deprivation of liberty, which are for the first time in the criminal procedure legislation of the Republic of Serbia explicitly listed and the distinctive preference depending on the subject that applies them. Also, in comparative criminal procedure legislation, the relationship between the police and the prosecutor in the previous procedure, in which the measures of police deprivation of liberty are applied, is considered to be extremely important and the police are conducting the entire investigation in most cases, including the measures of deprivation of liberty. Depending on the type of investigation, this can be done on their own initiative, as is in the US, where the police investigation exists (Abadinsky, 1998; Gillieron, 2013) or in England or where the prosecution is being investigated by a prosecutor such as the case in Germany (Eisenberg, 2002 Roxin, 2002), and in the case of criminal offenses for which imprisonment up to three years is possible, where in most cases the conduct of the entire investigation is entrusted to the police.

Hierarchical primacy does not allow us to analyze the above rights starting with the Criminal Procedure Code (2011), which elaborates the right to liberty and security of person and without encroaching upon the substance of law, especially from the aspect of deprivation and restriction of liberty by the police, but we will consider the Constitution of the Republic of Serbia (2006) to be the primary and general framework. Namely, the Constitution (Simović, Avramović, & Zekavica, 2013) proclaims the right to liberty and security of person in the way that everyone has the right to liberty and security. Also, other countries provide for constitutional proclamations of the right to liberty and security of the person as well (Gless, 2013; Gillman, 1993; Lioyd, 2005). The deprivation of liberty is allowed only on the ground and in the procedure stipulated by the law. These guidelines of the lawful deprivation of liberty are included in international documents, including the European Convention (Amatrudo & William, 2015; Roberts & Hunter, 2012 Schabas, 2015; Wolfrum & Deutsch, 2007) as one of the most important for us, which foresees the lawful deprivation of liberty only in legally appropriate procedure and with the fulfillment of a restrictive set of conditions.

In addition to the general provisions for the legal restriction of personal liberty in the form of deprivation of liberty, the Constitution (Bataveljić, 2011: 27) provides that a person who is deprived of liberty by a public authority immediately, in a language he understands, be informed of the reasons for his arrest as well as the charges that he had been charged with and about their rights and he has the right to promptly inform about their deprivation of liberty the person of their choice, as well as the right to initiate habeas corpus proceedings (Cvorović, 2016).

The aforementioned proclamations were related to the deprivation of liberty by a court decision. However, the Constitution (Kolaković-Bojović, 2018: 281-282) also contains additional rights in the event of the deprivation of liberty without a court decision, which is even more important from the aspect of issues in question and the police actions in accordance with the national law and international standards. Namely, the person deprived of liberty without a court decision shall be notified immediately that he has the right to remain silent and not to be interviewed without the presence of defense counsel of his choice or a counsel who will provide free legal assistance if he cannot pay for it. Also, the person deprived of liberty without a court must without delay, and no later than in 48 hours, be handed over to the competent court or otherwise be released (Article 29 of the

Constitution (2006)). The detailed elaboration of the constitutional provisions are regulated by the Criminal Procedure Code, in which has brought novelties in the criminal procedural legislation of Serbia, especially in measures of deprivation and restriction of liberty by the police (Ilić, 2010). Specifically, the Criminal Procedure Code finally conceptually determines i.e. lists all the dimensions of the apprehension of the suspect or the accused, which has not been the case, it also provides the distinction between the police arrest and other forms of the deprivation of liberty. The casuistic approach when it comes to the provisions relating to the meaning of certain terms (Djurdjić, 2014; Skulić, 2014b), although marked as adversarial when it comes to the measures of the deprivation of liberty is necessary, from the aspect of police apprehension, given that before the adoption of the new Criminal Procedure Code (2011), all measures were signified as a deprivation of liberty, presupposing them to include the measures of the police activities, whereby the distinction was not made. The reformed measures have foreseen that the deprivation of liberty occupies the following: arrest, detention, prohibition of leaving the apartment, detention and stay in an institution which, in accordance with this Code, was included in detention (Article 2, paragraph 1, item 23 of the CPC). Also, the measures of deprivation of liberty are conceptually determined in comparative criminal procedure legislation as well, and in accordance with that, The German Code of Criminal Procedure (2014) provides for the following measures: temporary deprivation of liberty, detention and retention (Kühne, 2010; Roxin & Schünemann, 2012), while in America the conceptual determination of freedom, in other words, the deprivation of liberty under the 4th amendment of the US Constitution, does not include just the deprivation of liberty (McDonald, Rossman, & Cramer, 1982), that is, arrest, as proclaimed by the explicit of the criminal procedural legislation of the RS, but arrest is only one form of seizure.

When it comes to police treatment, measures of arrest and police detention are important. The measures of arrest and detention are applied to the suspect. As pointed out, the CPC (2011) presupposes police arrest which was finally distinctively defined in relation to the other measures of the deprivation of liberty, which was met with critical attitude of a certain part of the professional public due to a foreign element. However, we consider such a legal solution to be legitimate, since it clearly indicates the entity that deprives of liberty, which is the police as well as the situation to which it relates, while the element of internationality of the arrest could be positively characterized as following modern trends and consistency at an international level, that convergence is not only the elements of criminal procedure system, but also contributes to the concepts of efficiency, but also understanding and precision of the legal text, which is extremely important in achieving the rule of law, and to adjust the behaviour of citizens with the law and the protection of their rights from infringement. Accordingly, the term arrest, in CPC of the Republic of Serbia is completely adapted to the international standard of the right to liberty and security of person, so with the aim of globalist tendencies, as evidenced by the new CPC of the Republic of Serbia, which takes a number of elements of the US criminal procedural legislation (Bacigal, 2009; Carmen, 2010; Scheb & Scheb, 2011) we have accepted police arrest as an adequate legal solution (Cvorović, 2016).

The introduction of elements of the Anglo-Saxon legal system into the criminal procedural legislation of the Republic of Serbia is a consequence of the necessity of reforming the criminal procedure of the Republic of Serbia in accordance with the process of accession of the Republic of Serbia to the European Union. Having received the Screening Report for the negotiation chapter 23, as the final step of screening concerning the judiciary and basic

rights, Serbia started amending the criminal procedural legislation with the aim of improving the efficiency of the procedure, especially in the part related to the delivery of submissions, recording of trials and procedural discipline, bearing in mind the EU standards, the practice of the ECtHR and the Constitutional Court. The Republic of Serbia received the Report regarding screening, in other words, the review of the compliance of the legislation of the Republic of Serbia with the acquis and EU standards, on July 28, 2014. It highlights the areas that must be prioritized in the reform process, especially in the judiciary segment (Kolaković-Bojović, 2016: 233), that is, the amendment of the Constitution of the Republic of Serbia and in respect of procedural guarantees, including the rights of persons deprived of their liberty. In response to the recommendations from the Report and the screening, the Republic of Serbia drafted and adopted the Action Plan for Chapter 23, which was adopted on April 27, 2016, and which foresees concrete activities to be implemented.

Changing the process law, including the CPC, is foreseen in the National Justice Reform Strategy or the period 2013-2018 (hereinafter: the NJRS) adopted by the Republic of Serbia on 1 July 2013, while the Action Plan for the implementation of the NJRS was adopted on 31 August 2013. The NJRS has outlined five basic reform principles to promote independence, improve efficiency and change, and improve procedural laws. The recommendations from the Screening Report pointed out the necessity of improving the efficiency of the criminal procedure, as well as the regular reporting by the Commission for the implementation of the NJRS on the results of the implementation of the amended law by the commission for monitoring the implementation of the CPC, where the difficulties arose with the introduction of the prosecution investigation, but also there is the significant growth in percentage of procedures completed by the application of the principle of opportunity and the plea bargain. Also, in the area of procedural guarantees, it was pointed out that the Law on Free Legal Aid was necessary, the draft law has already been done, which will provide greater guarantees for exercising the rights of the lawyers of the suspects or accused persons, which is especially significant for persons deprived of their liberty, according to which the measure of police arrest was applied, which is in line with EU standards. Also, amendments to the CPC with the aim of securing interim legal assistance granted without undue delay after detention and before any police examination, as well as the creation of a "letter of rights" provided to the arrested or suspect by the police or the prosecution.

The Criminal Procedure Code RS (2011) provides that police may arrest a person if there is a reason for custody, but they are obliged to hand over the person in question without delay to the competent public prosecutor (Article 291 of the CPC). The legislator, in accordance with previously stated, requires the fulfilment of the following conditions, in order for the arrest to be lawful by the police: the existence of reasonable suspicion that a person has committed a criminal offense which is prosecuted ex officio if some of the reasons for detention and if found on the scene of the crime (Article 292 of the CPC). Specifically, reasonable doubt is set as a material condition which is a collection of facts which directly indicates that an individual offender (Article 2, paragraph 1, item 18. of the CPC), wherein we may notice that the higher degree of suspicion is required for the police arrest than to initiate criminal proceedings (reasonable doubt), but as an argument that can be pointed out to support this fact we may state the importance of the right to liberty and security of person in a democratic society and the realization of the principle of the rule of law. Besides the material, there is also a formal condition, which is the existence of some of the reasons for the custody, and they are:

- for the person in question to be hiding or his identity cannot be established or as a defendant obviously avoids appearing at the main trial or if there are other circumstances indicating a danger of escape;
- there are circumstances that may indicate that he will destroy, modify or forge evidence or traces of the criminal act, or if the special circumstances indicate that he will interfere with the process by influencing the witnesses, accessories or concealment;
- special circumstances indicate that in the short period of time he will repeat the criminal offense or complete the attempted crime or commit a criminal act which threats;
- if for the criminal offense he is charged with the proposed punishment of imprisonment is of more than ten years, or imprisonment of over five years for the offense with elements of violence or the verdict of the first instance court sentenced to five years' imprisonment, a method of execution or effects of the crime weight have led to concerns of the general public which may jeopardize smooth and fair conduct of procedure (Article 211 of the CPC).

The Federal Republic of Germany has an interesting legal solution (Beulke, 2008; Satzger, 2004), which, in addition to detention as a measure of deprivation of liberty which is proclaimed by the CPC, whose determination is in the sole jurisdiction of the court (paragraph 114 of the CPC), provides for the detention which remains at the disposal of the police by the Law on the Tasks of the Bavarian Police, with subsequent court decisions on the permissibility or extension of deprivation of liberty. In accordance with paragraph 17 of the Law on the Tasks of the Bavarian Police, the police may detain a person in the following cases: firstly, if it is necessary for the protection of the body and life, especially in the case of persons who obviously are not in the capacity to freely decide or are in another helpless state; secondly, if it is necessary to prevent the immediate imminent execution or completion of a commenced criminal offense or an offense of relevance to public order and peace; thirdly-if it is necessary to implement a measure of prohibition of residence in a particular place in the sense of paragraph 16 of CPC. In America (Barkow, 2006; Breitel, 1960), the arrest is just one of the forms of deprivation of liberty that falls under the protection of the IV Amendment, in which there are other types of interference in human freedom that do not constitute arrest but fall under the protection of the said amendment. These are: stopping and searching, border searches; roadblocks represent captures and fall under the fourth amendment, but the constitutional requirements for these types of police actions differ from arrests as milder forms of decline. So, we can say that the term deprivation of liberty is wider than the term of arrest, which implies that any arrest is a deprivation of liberty, but not every deprivation of liberty is an arrest.

Namely, the arrest is defined as taking a person into custody against his or her will for the purpose of prosecution or interrogation (Dunaway v. New York, 1979). Also, in America, the lawfulness of arrest is determined primarily by federal constitutional standards, and in particular by material condition, established suspicion and state laws. The significance of legal arrest entails the lawfulness of the evidence, and the accent of the knowledge of the law on the arrest of the police (miranda rules) is extremely important, because if the arrest is lawful then the search of the suspect and the areas under his or her control are also legal. On the contrary, if the arrest is illegal, then the search of the suspect and the areas under his or her control are also illegal, and the evidence obtained in such a way is unlawful.

The conditions provided by the police deprivation of liberty in the Republic of Serbia are in compliance with the European standards of limitations of the freedom and safety of person (Art. 5 of the EC), as noted earlier, in the previous discussions.

COURT AS AN ENTITY DECIDING ON THE LEGALITY OF THE DEPRIVATION OF LIBERTY BY THE POLICE IN THE REPUBLIC OF SERBIA

In addition to the above international standards that exist in the process of the deprivation of liberty by the police, the very important segment of the deprivation of liberty is habeas corpus act[4] (Friedman, 1988; Hugles, 1990) which guarantees to every person deprived of liberty to initiate proceedings before the Court to urgently decide on the legality of the arrest. Otherwise, the Habeas corpus act, through the basic principles that it envisages, became part of the modern legal system, including the RS that were implemented in CPC from 2011, but the right to personal liberty and principles from habeas corpus act were foreseen by the adoption of the first Serbian Code of Criminal Procedure from 1865.

Accordingly, the person arrested by the police has the right to request that the lawfulness of his deprivation of liberty be decided by the court. This right stems from the provisions of the law that a person arrested without a court decision or a person arrested on the basis of a court that is not heard, must, without delay and at the latest within 48 hours[5], were handed over to the competent judge for preliminary proceedings or if it does not happen, were set free (Article 69, paragraph 2 of the CPC, 2011). The judge for preliminary proceedings if in the instant case regarding the legality of the arrest by the police, will decide whether there was a reasonable suspicion that a criminal offense subject to public prosecution on the basis of reports of the arrest and the implementation of which should contains a description of the work, the facts and circumstances giving rise to reasonable suspicion, and those facts and circumstances indicating the existence of some of the reasons for detention, which is a necessary formal requirement for the police arrest and based on that, decide that the person is released or to determine custody (Bejatović, 2014c). Seen in this context, it should be noted that in this case a higher degree of suspicion is required than the one the law provides when it comes to instituting criminal proceedings or grounds for suspicion.

Habeas corpus proceedings initiated by the person deprived of liberty, predicts the court to be the subject on its legality, which derives from the front set out the constitutional[6] and legal explicits, which is compliant with international standards (Article 5, paragraph 4 of the European Convention for the Protection of Human Rights and Fundamental Freedoms). Namely, the Commission envisages that any person who is arrested has the right to take proceedings by which the Court to examine the legality of his deprivation and order release if the deprivation of liberty is not lawful.

4 This document provides for a series of guarantees for the protection of personal liberty in the Anglo-Saxon legal system, England being considered as its representative, while in modern trends this place still belongs to America. The Habeas Corpus Act set up the foundations of the procedural aspect of protecting the said right (which still has procedural character in England, while in the United States it has constitutional character), which still represents the basic principles of criminal procedure, which, with the adoption of the new Criminal Procedure Code RS (2011) further updates the opportune legal system and normatively predicts its elements (adversarial main hearing, party presentation of evidence, formal truth, etc.). The basic principles prescribed by the Habeas Corpus Act, which are also the part of the modern legal system, are the principle of ne bis in idem, the institute of obsolescence, and as a key segment of the protection of personal liberty, there is the necessity of existing and communicating the basis of deprivation of liberty to the arrested.

5 Compliance with constitutional guarantees which provide that a person deprived of liberty without a court must without delay, and no later than 48 hours, be handed over to the competent court otherwise be released (Constitution of the Republic of Serbia, 2006).

6 Anyone who is arrested has the right to appeal to a court, which is obliged to urgently review the lawfulness of his deprivation of liberty and order release if the deprivation of liberty was unlawful (Constitution of the Republic of Serbia, 2006).

The court as an entity deciding on the legality of the deprivation of liberty is undisputed, however, the question is whether in this case, the public prosecutor could be regarded as the first operator in control of the legality of his deprivation of liberty by the police, given the reformed provisions of the CPC advocating the implementation of the arrested person to the public prosecutor. Namely, the verification of the legality of the deprivation of liberty must be carried out by the court or other authority that is able to carry out the minimum procedural guarantees and which has the power to face released (Jaksić, 2006). If we consider these facts, in the case of the provisions of the CPC, which provide that the public prosecutor immediately after the hearing should decide whether to release the arrested person or to suggest detention to the judge for preliminary proceedings (Article 293, paragraph 4 of the CPC, 2011), we can conclude that the public prosecutor may be considered as the entity deciding on the legality of the arrest in case of police arrest. Namely, there are three facts that speak in favour of that conclusion, and these are: handing over of the arrested to the public prosecutor, as the provisions of the former CPC (2OO1 provided investigating judge; the decision of the public prosecutor about the release of the arrested; the public prosecutor as a subject of the implementation of procedural guarantees (Cvorović, 2016). Bearing in mind the new concept of public prosecution investigation and the importance of the public prosecutor in achieving the ideals of fairness, we consider making a legitimate legal basis of the public prosecutor about the fate of the arrested persons with the following aspects public prosecutors procedures: legality, professionalism and efficiency.

EMPIRICAL RESEARCH INTO THE IMPLEMENTATION MEASURES OF POLICE ARREST IN THE REPUBLIC OF SERBIA AND SUGGESTIONS OF DE LEGE FERENDA

Police is an active subject of practical implementation of the measures of police arrests. The police arrest rate was analysed at the level of police departments overall, as well as at police headquarters in Belgrade and regional police departments (Kragujevac, Novi Sad, Niš and other) in the segment deviations in the reference values, for the year 2013 when the measure of police arrest started with application according to the new CPC (2011) and for the year 2017.

The basic characteristics of the analysis in the police departments of the police administration in Belgrade for the year 2013 are (Table 1, 2):

- when it comes to police departments in total, the most pronounced quantum value was observed in the offense of unauthorized production and trafficking of narcotic drugs - 101. Then, there are the following criminal offenses: aggravated theft - 73; domestic violence - 47; unauthorized possession of narcotic drugs; theft - 38; murder - 15; serious bodily injury – 16; and
- police Administration in Belgrade, with a tendency of similar quantum discrepancies when it comes to the type of offenses for which it applied the most, manifested the following values: aggravated theft - 34; illicit production and trafficking of narcotic drugs - 31; banditry - 19; theft – 17.

Table 1: *The number of person who were imposed measure – Police arrest for criminal offences recorded in 2013*

The number of offenders with measure		Articles of the criminal offences of the criminal code of the Republic of Serbia																														
		113	114	121	122	123	132	135	138	178	182	185	185A	194	203	204	205	206	208	208A	210	212	213	214	221	223	225	230	231	234	234A	246
Police Departments, total	2013	15	4	16	3	4	6	1	11	6	1	1	1	47	38	73	4	42	6	8		2	6	10	1	1	1	1	14	17	1	101
BEOGRAD	2013	3	1		2			1	2	1			1	9	17	34	2	19	4				3	2			1					31
KRAGUJEVAC	2013			1										3		4																7
JAGODINA	2013	1							1	1				1						8												3
NIŠ	2013	2					6							3	1	1		2	2			2		6						3	1	4
PIROT	2013								1																	1						3
PROKUPLJE	2013	1												1	1	6		5						1								1
LESKOVAC	2013	1		4					1		1	1		10	6	5		1					1	1						1		4
VRANJE	2013	1			1									3				2												10		6
ZAJEČAR	2013			3											3															1		4
BOR	2013			2												1																1
SMEDEREVO	2013	2							3								2	2														6
POŽAREVAC	2013														1																	
VALJEVO	2013			3										1															14	2		1
ŠABAC	2013	1	2												2	2		1					2									2
KRALJEVO	2013	1	1			4			1	2				5	5	7		2								1						10
KRUŠEVAC	2013	2														1																
ĆAĆAK	2013															2																2
NOVI PAZAR	2013								1	1				4	1	3		2														
UŽICE	2013													1		1		3														3
PRIJEPOLJE	2013															1																2
NOVI SAD	2013									1					1	2		2														1
SOMBOR	2013													3																		3
SUBOTICA	2013			3																												
ZRENJANIN	2013													3		2																
KIKINDA	2013								1																							1
PANČEVO	2013															1																
SREMSKA MITROVICA	2013																	1														5
SUK	2013																															1

Source: Sector for analytics, telecommunications and information technology, 2014

Table 2: *The number of persons who were imposed measure - Police arrest for criminal offences recorded in 2013*

The number of offenders with measure		Articles of the criminal offences of the criminal code of the Republic of Serbia																					
		246A	269	275	278	289	296	297	317	322	323	332	333	334	344	344A	348	350	355	359	364	367	368	388
Police Departments, total	2013	46	1	1	3	1	1	6	1	4	9	1	2	1	10	4	22	7	8	5	2	7	7	2
BEOGRAD	2013	9							1		1				2		10		1			3		1
KRAGUJEVAC	2013	1	1										1		1		1			1				
JAGODINA	2013																							
NIŠ	2013	1									2	1			4	4	1	2		1	1	2		
PIROT	2013	2			1			1									1							
PROKUPLJE	2013			1				1		1							2							
LESKOVAC	2013	1				1				2	1						1			2				
VRANJE	2013	12												1	2		1							
ZAJEČAR	2013																							
BOR	2013																							
SMEDEREVO	2013	7													1									
POŽAREVAC	2013							1												1				
VALJEVO	2013	5			1												1							
ŠABAC	2013						1	1			1							1						
KRALJEVO	2013	7									1						1				1			
KRUŠEVAC	2013																							
ČAČAK	2013									1														
NOVI PAZAR	2013												1											
UŽICE	2013																							
PRIJEPOLJE	2013	1									1							1						
NOVI SAD	2013																							
SOMBOR	2013																	1						1
SUBOTICA	2013																							
ZRENJANIN	2013							1			2													
KIKINDA	2013																							
PANČEVO	2013				1												1					2	7	
SREMSKA MITROVICA	2013							1									2	2	7					
SUK	2013																							

Source: Sector for analytics, telecommunications and information technology, 2014

Table 3: *Total number of arrested persons on the territory of the Republic of Serbia in 2017*

Police Departments, total	Police arrest
SRBIJA	2582
BEOGRAD	824
KRAGUJEVAC	122
JAGODINA	22
NIŠ	70
PIROT	90
PROKUPLJE	48
LESKOVAC	57
VRANJE	64
ZAJEČAR	25
BOR	53
SMEDEREVO	66
POŽAREVAC	5
VALJEVO	113
ŠABAC	113
KRALJEVO	73
KRUŠEVAC	21
ČAČAK	42
NOVI PAZAR	98
UŽICE	32
PRIJEPOLJE	57
NOVI SAD	19
SOMBOR	71
SUBOTICA	10
ZRENJANIN	161
KIKINDA	88
PANČEVO	45
SREMSKA MITROVICA	183
AP KIM	
SBPOK	14
SUK	

Source: Sector for analytics, telecommunications and information technology, 2018

Due to the above (Table 3), the police is the key subject of the preliminary investigation and the realization of efficiency as an international standard, and the use of measures of deprivation of liberty or a police arrest contributes significantly to the increase in efficiency and not just more of the pre-trial and criminal procedure. Accordingly, critical review and deepened theories require new normative solutions regarding the implementation of measures of deprivation of liberty and implementation of the international standards. The critical review at the legal solutions in the Republic of Serbia brings the following conclusions and proposals *de lege ferenda*:

- it is extremely important to note, with regard to its conceptual definition, that the effectiveness of police action, and therefore the application of measures of deprivation and restrictions of freedom of parties to the proceedings in any case should not be to the detriment of international treaties and national legislation guaranteed rights and freedoms;
- the control of the legality of police conduct in implementing the measures of deprivation and restriction of freedom has been secured by, among other things, the control mechanisms of its work. For these reasons, it is of particular importance to establish an effective system of both external and internal controls, which include the successful implementation of the various means of control, such as hierarchical control, disciplinary responsibility, controls of the various supervisory bodies, which is not yet satisfactory, especially from the aspect of its practical functioning. However, we have to praise the fact that the work on the adoption of the new Code of Police was given special attention to create more effective normative framework, especially in the promotion of human rights and the creation of adequate mechanisms of internal and external control of the police;
- the police, in the realization of its activity, also takes the measures of procedural constraints, in other words, measures of deprivation of liberty (police arrest), and in their implementation strictly to be observed in statutory requirements of application of such general principles of police action in such situations. The positive legislation of Serbia, in this regard, is at the level of solutions that have generally become the standard, and as such, present in most of the laws of the modern democratic state;
- when it comes to the implementation of measures of police arrest, the decision of the Criminal Procedure Code by which a person who is deprived of liberty by the police may be even after eight hours' taken to the public prosecutor in charge (Article 291, paragraph 3 of the CPC, 2011) is inadequate. This happens primarily because of the fact that the notion of unavoidable impediment is so broad and so vague that a lot of things may be considered, and it thus offers the possibility of misuse of such an exception. For these reasons, it seems to be far more appropriate solution to leave a slightly longer period within which the police is obliged to hand over the person deprived of liberty to the public prosecutor (e.g. a maximum of ten hours) or to be more precise in determining the reasons of possible deviations from the deadline of eight hours as a rule (e.g. only due to the need of urgent medical assistance of person deprived of liberty). With this type of regulation of this issue, it is possible to avoid any misuse which is, admittedly, possible; and
- in accordance with the above mentioned, the CPC from 2011 in has brought considerable novelties in terms of the procedural position of the subjects in the pre-trial and investigative procedure. These are, generally speaking, praiseworthy. Specific analysis of not a few of the parts of these phases in the process, and not only to them,

show that they are not at the desired level. They are not in the function of the normative base for the desired level of efficiency of processing entities in the fight against crime in general. Therefore, it is justified by the majority opinion of professional Serbian public that the CPC from 2011 may not be the end of our reform of the Criminal procedural law (Bejatović, 2014a). On the contrary, it is necessary to continue work on reforms and scale differently quite a number of today's solutions that are not in the function of the proclaimed objective of the reform (creating a normative basis for a more efficient procedure, but not at the expense of international treaties and national legislation guaranteed freedoms and rights of subjects of criminal procedure). Accordingly, and in view of the arguments, work on the forthcoming reforms must include the segment of measure of deprivation of liberty by the police, including police arrest.

The conducted research on the topic of police arrest confirmed the initial hypothesis that it is one of the most important and most current issues in the field of criminal law (theory and practice) in general. Furthermore, all hypotheses of the baseline of the research have been confirmed. It has been fully proven that the expansion of human rights has led to the adoption of a large number of relevant international documents, which regulate the field of basic human rights and freedoms and their existence in the national legislation of the Republic of Serbia.

It has been clearly proven that the correlation between the police and human rights is extremely important, especially from the point of view of deprivation of liberty, where the police are the key entity in the application of measures that deprives a person of liberty. Namely, we can notice that when it comes to statistical indicators of the use of police arrest measures, they are constantly increasing and considered to be extremely important measures for the realization of the preventive aspect of criminal policy, especially when it comes to criminal offenses of unauthorized production and trafficking of narcotic drugs, aggravated theft and domestic violence.

On the basis of the conducted research, the use of all necessary methods resulted in a large number of conclusions and suggestions of *de lege ferenda* related to police arrest. The conclusions should contribute to even more adequate normative regulation of the police as an active subject of deciding on deprivation of liberty and restrictions on the freedom and rights of citizens, respectively, more adequate use of such a standardized position of the police in the practical realization of its powers of this character.

CONCLUSION

The international standard of the right to liberty and security of person is of universal character and has several key characteristics, such as: the prohibition of arbitrary deprivation of liberty; constitutional legal character of the standard because of its significance; strict adherence to the legally prescribed conditions for taking measures of police arrest; time determination in undertaking, reduced to the terms - without delay, as soon as it comes to police arrest, while the trial of the habeas corpus act in the court and the duty to review the decision of deprivation of liberty at certain time intervals and to decide on prolonging or abolishing the measure of deprivation of liberty. The authors highlighted the police as a significant subject not only in the pre-investigative process, but also in the field of combating crime in general, which is more effective by standardizing several forms of deprivation of liberty by the police, including police arrest. Viewed from the perspective of positive legislation of the Republic of Serbia, it can be concluded that the national

framework of police powers which limits movement in a certain area is to a great extent in line with the anticipated international standards of deprivation of liberty, which, through legal explicit of temporal determination, the goals for which they are being undertaken and the professionalism of the police, reflect a representative image of the conducting of the police in the taking measures of police arrest, which is extremely important both at the international level and in regard to the lawful, effective and professional conducting of police at the national level.

The paper outlines the standards of police arrest, which are the guarantees of a person deprived of liberty, as well as the legality of police treatment during deprivation of liberty. As such, they represent minimum guarantees at the European level. Through the analysis of their implementation in the positive legislation of Serbia, the authors pointed out a high degree of implementation and consequently consistency in Europe regarding the right to liberty and security of the person. The authors find that the above-mentioned facts point out a positive outcome of the reform of the criminal procedural legislation of the RS with regard to the measure of police arrest, but also the necessity of further reform in the direction of strengthening the procedural guarantees of persons deprived of liberty in accordance with EU standards and the practice of the ECHR.

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