

Professor Zheljko Nikach, PhD
Academy of Criminalistic and Police Studies
Belgrade, Serbia

POLICE: FUNCTIONS, POWERS AND LEGAL RULE

Abstract: In the introductory part of this paper, we provide an overview of the ongoing transformation of governance and the reform of police in modern society, especially in the countries in transition, such as those of the Western Balkans. The central part of the work involves an analysis of the police, its functions, activities and tasks, organization, legal authority and respect for the rule of law. The legality of adequate controls, internal and external is essential for the promotion of the rule of law and the other universal values. The paper evaluates the positive legal solutions and practices of police action in the Republic of Serbia. In the concluding remarks, we point to the positive results of the police reform and we provide *de lege ferenda* suggestions for further improvements.

Keywords: police - jobs, organizations, legal authority, and control of, the rule of law, reform, Serbia and the EU.

I n t r o d u c t i o n

In the history of the human civilization, one of the key moments was the emergence of the state as a model of an institutional organization of society, dedicated to the protection of rights, freedoms and universal values. The state and its organization have changed throughout the stages of the development of human society, all the way toward today's modern society. The police organization has adapted to the changes and demands of the time and it was modernized and adjusted to the needs of the community in most states.

After the fall of the Berlin Wall, there was a crucial change in the international community, due to the disappearance of the bipolar division of the world and the new architecture of international relations. The expected political change, democratic reform and economic transition were initiated in the socialist bloc. The issue of reforming the state institutions and, particularly, the transformation of "armed forces"- the army, the security services and the police was raised. At the beginning of the third millennium, these processes are almost completed in most countries, some of which have already made good results and became members of the European Union. A wave of change swept the territory of former Yugoslavia, but unfortunately, this process did not develop quietly. After the end of the conflict, a peace process was launched. Also, transition and reformation of the new successor states began. After Slovenia joined the EU membership, applications were presented by the other former

SFRY members, while the imminent accession of Croatia to the EU is expected. One of the essential conditions for European integration is the transformation of the security services and the police, which is a subject to risks and security in the region.

At the moment, in accordance to the universal concept of "community policing," the reform of the security services and police is partially accomplished. In the functional sense, "community policing" is synonymous with the model of modern organization and proactive work in a democratic society. It is the new philosophy of policing which places emphasis on the rule of law, civil liberties and human rights.

1. Police - genesis and development, concept and elements

1.1. Periodization of the police development

The genesis and development of the police may be seen at various stages of the development of human civilization - from the simple form of integration, through original community up to the current developed forms. The advent of class society and the *state* occurs at the centre of the authorities' efforts to preserve the positions of the ruling class, including the police and other entities responsible for compliance and sanctions for violations.

Forerunners of the police existed in ancient China, organized by the security services tasked with the control of civilians, inspection of residencies and other premises. In ancient Egypt (1340. BCE), there was a related organization, responsible for the protection of religious rights, security of property, persons and objects. In the Inca civilization, a similar formation existed (the *mayoka*) - civil servants were responsible for monitoring the members of the society and controlling the work in the community. In the Aztec civilization, the police functions were performed by "commissioners," officials in charge of the preservation of the public order and peace in the community.¹

In ancient Greece and Rome, police organizations were developed and police work was done by members of the police force (cohortes) who were originally slaves. The police were responsible for the execution of court decisions, keeping records, guarding prisoners, etc. Therefore, the police service was "very obnoxious, didn't generate a huge profit, no one wanted it for themselves and if they took it, they wouldn't abide by its rules." ² The foundation of modern organizations can be traced to the end of the Middle Ages in the developed countries of the time - France and England, where there were formations to protect the national territory, the provision of roads, maintenance of law and order.³

In the new century, the American doctrine in the research on police and police development can be divided into three *eras*: political (1840-1900), reform (1900-1970) and the era of community policing (1970-2000). After the terrorist attacks in the United States (2001), a

¹ Nikach Zh., *Community Policing*, KPA, III edition, Belgrade 2010, pp. 13-16.

² More in: Aristotle, *Politics*, Book IV, VI and VII, BIGZ, Belgrade, 1975.

³ Milosavljevic B., *The science of police*, PA, Belgrade 1997, pp.10-11.

new era in the development of the police emerged - "era of the battle against terrorism." In the first era, the presence of political factors in the work of the police, particularly in the selection of management structure is noticeable. The reform phase is marked by weakening of the influence of political factors and emphasizing prevention, the development of rapid intervention tactics, syndicalism and redefining the relationship between the police and the citizens. The current era of community policing is based on the following principles: safe communities, partnership with the community, decentralization, prevention of crime, proactive approach etc. Regarding the proposed fourth stage called "the era of the battle against terrorism," we think that it would be appropriate to wait and see how its elements will be tested in practice.⁴

1.2. Concept and elements of the police

Semantically, the word "**police**" originates from the Greek word *politeia* (lat. *politia*), which means government, authority and power to maintain public order, property and personal safety. The word *police* still existed in French around 1250.CE and it signified a state administrative action.⁵

In the current literature and practice, there is no universal definition of the police, but there are several conceptual definitions that depend on the author and the prevailing elements. Thus, the functionalists' initial criterion is the *functioning* of the police, while the coercivists take *force* as the primary element of definition.⁶ We think that the general definition of the term is not rational, because it does not recognize the multidimensionality of the police, given that different legal systems exist and, consequently, different models and organizational forms of policing.

In our opinion, a definition of a joint venture is acceptable. It may ensure an equal respect for the above mentioned and other elements, according to which the *police is an executive body established by law which is responsible for the maintenance of public order, peace, order and combating crime, with the possibility of legitimate use of force (coercion)*. The legal analysis of the definition demonstrates that the following characteristics are underlined: legal status of state government functions in the implementation of law, respect for authority, rules of conduct and legitimate use of force.⁷

Police systems indicate social status, role in society and community relations with the police, while *police models* include the organization and the organizational forms. Based on the division of the prevailing legal system in the world to the concepts of customary (*common law*), continental (*civil law*), socialist and Islamic law, the

⁴ Nikach Zh., *The Concept of Community Policing and Initial Experiences in Serbia*, ACPS, Belgrade 2012, pp. 45-49.

⁵ Maslesa R., *Police - Organization and Functioning of a Democratic Society*, FCS, Sarajevo, 1999, pp. 15-18.

⁶ Babovich B., *International Police Relations and Interpol*, FPS, Belgrade 1996, pp. 15-20.

⁷ See footnote 1.

classification of the police systems to centralized and decentralized, or open and closed can be made.⁸

2. The functions of police

In the modern doctrine and practice, it is known that as an executive authority, the police have a determined place, role and duty in society. The main function of the police is to protect public order, peace and order, fight against crime and perform other duties. The police perform traditional police operational matters, as well as certain legal, administrative and other duties entrusted to them. In that sense, the function of the police is uniform.⁹

In the exercise of delegated tasks and duties the police carry out important functions of government, such as social, administrative, normative, criminalist and others.

2.1. The social function

The social function of the police is based on the need of the community and society to maintain the harmony in the community, the orderly environment and stable public order. The police as an executive body is an instrument for protecting the society and fulfilling the demands of community and people, as expressed by the notion of *social control* as “ways of controlling behaviour and activities within the department.”¹⁰

In carrying out this function, the police use the existing mechanisms and cooperate with other bodies, such as schools, centres for social work, justice (courts, attorney general), inspection, local government and others. In carrying out this function, the main goal of the police is to diminish the roots of crime and deviant behaviour and to integrate the operation of all services in the community in order to improve the living and working conditions of the citizens.

2.2. Administrative function

The administrative and legal functions of the police are viewed in the spirit of the traditional divisions of the state government on judiciary, legislature and executive. In this context, the police belong in the category of executive authority and it is an integral part of the public administration system which performs tasks entrusted to the public interest and the interests of the entire society.

⁸ Nikach Zh., *Transnational Cooperation between States in the Fight against Crime: Europol ad Interpol*, Bureau of textbooks and teaching aids RS, Belgrade 2003, p. 64-65.

⁹ See footnote 3, pp. 85-94.

¹⁰ *Ibid.*, p. 128.

In Serbia, the police perform administrative tasks according to the Article 3 of the Law on Ministries where it is stated that, among other things „*The Ministry of Interior is responsible for state administration* relating to:

- „The protection of life, safety and security of property, prevention and detection of crime and the detection and capture of offenders and bringing them to the authorities, maintenance of law and order, provision of assistance in case of emergency, the security of gatherings and other meetings of citizens, protection of certain persons and facilities, including foreign diplomatic and consular missions of the Republic of Serbia; safety, regulation and control of traffic on the roads, border security and the control of the borders and the movement and residence within the border zone, the residence of aliens, trade and transport of weapons, ammunition, explosives and certain other hazardous substances, testing of small arms, ordnance and ammunition, fire protection, citizenship, personal identification number, domicile and residence, identity cards, passports, international aid and other forms of international cooperation in the field of internal affairs, including and readmission, illegal migration, asylum, training of personnel, administrative resolution of the appeal, on the basis of regulations on refugees and other statutory duties.“¹¹

In certain cases determined by law, the police carry out decisions by providing assistance to the other authorities in the execution of decisions. These are the administrative acts and court decisions empowering the police to carry out part of the disposition, as well as in the criminal legal matters, assisting in the enforcement of sanctions.¹² In order to fulfil these obligations, the police have powers on disposal, according to the standards determined by the police and by-laws of the RS Ministry of Interior.

In order to fulfil these obligations, the police have powers on disposal, according to the standards determined by the Police Act¹³ and by-laws MOI RS.¹⁴ With regard to this function of the police, activities in the field of public order and the prevention of violence are of particular importance. For these, the police use the tools provided by the administrative procedure and administrative legal norms (e.g., public meetings, registration of an association, restrictions and bans, mandatory fines and penalties). The police objectives are providing stable public order, an optimal level of security in the community and an equal protection of the rights and freedoms of all citizens.

2.3. Normative function

The normative legal function of the police is specific as, on one hand, its execution creates right, while on the other, the law is applied through its execution of other functions (administrative, criminal, criminal). **Police law** is a specific area of the legal system,

¹¹ *Official Gazette of the Republic of Serbia* No. 72/12, Belgrade, 2012.

¹² More in: Vasilevich D., *Administrative Law*, ACPS, Belgrade, 2012.

¹³ *Official Gazette of the Republic of Serbia* No. 101/05, 63/09, 92/11.

¹⁴ More in: Nikach Zh., *Collection of Regulations - Police Act and the Bylaws*, MOI RS, Belgrade, 2008.

including both the standards relevant to the work of the police in the strictest sense and norms in the field of Interior. In doctrine and practice, a significantly broader term „the right of the Interior” is used, as it covers several areas of police work.

In carrying out this function, the police also have an important role to give expert opinions and proposals to other organs, particularly to the legislative bodies in the formulation of laws and solutions. In addition to adopting a new Police Act and regulations for its implementation, the representatives of the MOI of RS participated in the creation of standards for important areas such as: road safety, border security, asylum and foreigners, passport (visa liberalization), citizenship status, legal issues, etc. In this way, the police greatly contribute to the legislative function of the state, as the adopted solutions are tested in practice.¹⁵

The legal framework of the police is a subject of interest of the wider professional community, judicial and other controls (Ombudsman, Commissioner for Information of Public Importance, Commissioner for Equality) and monitored by the RS Constitutional Court regarding constitutionality and legality.

2.4. Competences of the police with regard to misdemeanors

The competences of the police with regard to misdemeanors are some of the most important activities. These are realized by an action against misdemeanor offenses, both independently and in cooperation with the misdemeanor courts and other authorities. In the legal doctrine and practice, there is a broader term - criminal acts which include offenses and crimes.

Misdemeanors are less serious types of offenses, involving a lower degree of social danger and violations of regulations pertaining to law and order, as well as other areas of specific regulations for which appropriate sanctions are imposed. One of the characteristics of the offenses in relation to other criminal acts is their frequency.

Misdemeanor proceedings are initiated ex officio, on a written request of the police for minor offenses, relating to: public safety, assembly of citizens, traffic safety, asylum and immigration, with regard to identity cards and travel documents, identification number, residence, arms and ammunition, etc. We remind that the new Law on Misdemeanors RS clearly regulates the proceedings and other important issues.¹⁶

The responsibility for the offense is determined in misdemeanor procedure which is specific and mixed in character, with elements of criminal and other proceedings. The misdemeanor courts of the countries of continental orientation are called magistrates, while Serbia and the neighbouring countries have specialized misdemeanor courts.

¹⁵ Miletich S', *Police Law*, Belgrade, 2003, pp. 85–90.

¹⁶ More in: Djordjevic Dj., *Offences Law*, ACPS, Belgrade, 2010.

2.5. Criminal function

Criminal police function is probably the most recognizable and the most important function, since the police have an inherent jurisdiction in the area of crime prevention and the protection of public order. According to Article 10 of the Law on Police and Article 3 of the Law on Ministries, the police perform tasks concerning, as stated in paragraph 1, item 3) "prevention, detection and solving of crimes, misdemeanors and other crimes (hereinafter referred to as crimes and offenses), other aspects of the fight against crime and destroying its organized and other forms", and item 4) "detect and apprehend perpetrators of crimes and offenses, and others that are being searched and bring them to the authorities."¹⁷

Criminal police function is expressed as preventive and repressive. According to the Code of Criminal Procedure (CCP), police authorities act in preliminary proceedings as service of the judiciary and the public prosecutor's office. They have an extremely important role and a great responsibility.

Legal sources for the realization of the criminal functions of the police are the standards of police law - Police Act and secondary legislation (regulations, instructions, directives). The current norms of criminal law, both substantive and procedural, derive from the following regulatory provisions: Criminal Code (CC),¹⁸ Law on liability of legal persons for criminal offenses,¹⁹ Law on organization and jurisdiction of government authorities in suppression of organised crime, corruption and other particularly serious crime,²⁰ Law on confiscation of goods attained through criminal means, Code of Criminal Procedure (CCP), etc.²¹

The police play an important role in the realization of judiciary function in criminal matters, because most of the personal and physical evidence is obtained through the engagement of the police in pre-trial proceedings. One of the most important novelties of the Code of Criminal Procedure (CCP) is introducing the concept of police-prosecutorial investigations which speeds up the process and makes it more efficient, while respecting the rule of law (presumption of innocence, the right to counsel, the right to legal assistance, medical care and treatment, information, family, etc.).

In carrying out its functions, the police act on the orders of the court, the order of the public prosecutor's office (PPO) or independently (without a warrant), on the basis of discretion. In this capacity, the police have access to statutory powers (Articles 30-109) which are used for the purpose of performing the delegated tasks.

¹⁷ See footnote 14.

¹⁸ Criminal Law and Law on Amendments and Supplements, *Official Gazette of the Republic of Serbia* No. 85/05, 88/05, 107/05, 72/09, 111/09.

More in: Djordjevic Dj/, *Criminal Law –The Specific Part*, ACPS, Belgrade, 2011.

¹⁹ *Official Gazette of the Republic of Serbia* No. 97/08.

²⁰ *Official Gazette of the Republic of Serbia* No. 42/02, 72/09.

²¹ Nikach Zh., 'New in the Field of Criminal Law Relevant to the Conduct of the Police', MOI RS "Security" No. 03/10, Belgrade, 2010, pp. 108–122.

3. Police and security agencies in the Republic of Serbia

3.1. Subject of the security system

During the autumn of 2000, there was a significant social change in Serbia and, accordingly, the reform of the security services and the police was launched. The Law on the Security Information Agency (**SIA**) was passed. According to it, the former State Security Ministry was separated from the MOI and the secret service was founded to protect the constitutional order,²² while the traditional police and security affairs remained under the jurisdiction of **MOI** RS. As noted above, in 2005 the Law on Police was passed. According to it, the former RJB is transformed into Police Directorate, in accordance with the modern concept of organization and modelled on policing in developed countries.

Today, the police security structures in Serbia include the Military of Serbia which has access to special means of maintaining security in the area of military criminal acts. These are the Military Security Agency and Military Intelligence Agency,²³ as well as the recently founded General Inspectorate.²⁴ In broader sense, there is a security system and communal police established at the national level, cities and municipalities, responsible to ensure the respect for the public order and peace.²⁵ The *Private Security Sector* is also a part of the security system and it includes private security companies and private detective agencies. It is a system with a large number of employees, while the firms form an association within the Serbian Chamber of Commerce. The draft Law on private security and the draft Law on detective activity are currently in preparation.

The National Security Council²⁶ is a relatively new body, established to coordinate the activities of the security services in the Republic of Serbia. The Council considers issues related to defence, internal affairs, military and civilian security services, mutual cooperation and relations with other state bodies, foreign agencies, institutions and organizations. The Council considers the intelligence and security assessments and determines the priorities through conclusions, methods of protection and realization of national interests, monitors executive conclusions and gives opinions on the work plans, budgets, appointments, dismissals, etc. The same body supervises the implementation of regulations and standards regarding the protection of personal data and regulations on human rights protection which can be affected by exchange of information and other operational activities. It proposes measures to improve

²² *Official Gazette of the Republic of Serbia* No. 42/02,111/09.

²³ Law on MIA and MSA, *Official Gazette of the Republic of Serbia* No. 88/09.

²⁴ Law on Defence, *Official Gazette of the Republic of Serbia* No. 116/07, 88/09, 104/09.

²⁵ Law on Communal Police, *Official Gazette of the Republic of Serbia* No.51/09.

²⁶ Decision of the National Security Council RS, *Official Gazette of the Republic of Serbia* No. 50/07; Regulation on the Establishment of the Office of the National Security Council, *Official Gazette of the Republic of Serbia* No. 12/09.

cooperation with local authorities and cities and also performs other activities important for the safety.

The composition of the Council includes the President of the Republic, the Prime Minister and Ministers of defence, police and justice, Police Director, SIA, MSA and MIA, Chief of General Headquarters, as well as the head of the President's office who acts as Secretary of the Council. Coordination Bureau is a special organ which coordinates the work of the security services and carries out the conclusions of the Council. If necessary, he employs experts and people on call who have no right to decide.

3.2. MOI Republic of Serbia: legal resources, activities and organization

In terms of traditional policing, the Ministry of Internal Affairs is indisputably the most important part of police and security structures in the Republic. The most important within the Ministry is the Police Department. It is the nucleus of the Ministry and its main operational part. It concerns in particular carrying out of police work, line and territorial organization, use of authority and control of other tasks. The professional and impartial role of the police in law enforcement, human rights and civil liberties, the rule of law and recognition of other principles is extremely important.

a) International legal sources relevant to police work are numerous; among them the most important is no. 690 Resolution of the Parliamentary Assembly and the Council of Europe Declaration on the Police (1979), according to which "the police are the public service created by the law, which must have the responsibility for maintaining and enforcement of law."²⁷ Police have a legal status and public service performing duties in accordance with law, in the interest of all citizens and to benefit of the community.

The most important internal legal source for the conduct of the police was already mentioned - the *Police Act* (2005). The law was enacted in the context of the admission of Serbia to the Council of Europe. It aims to respond to the conditions and obligations, such as the harmonization of legislation, reorganization of the secret services, police reform, redefinition of police powers, the implementation of the European Code of Police Ethics and the establishment of government control over the police and Parliament. At the end of 2011 the regulation was amended in section status, trade union and labour law issues.

By-laws adopted to implement the law also have a great significance, because they detail a variety of questions concerning the police activities, tasks and powers of application.²⁸

b) Police operations are regulated in this law as a single, well defined content and their specific objectives, principles and standards are defined. Their organization is envisaged and the police powers

²⁷ Nikach Zh, 'New Police Act RS and Place, Role, Duties and Powers of the Members', *Security* No. 01/06, pp. 10-23, Belgrade, 2006.

²⁸ See footnote 14.

determined for these duties, apart from those already established by other laws.

Concept, content and type of police work are outlined in the Article 10 of the first part of the Law on Police, while the second part defines the ways in which the police work is conducted (the Minister regulates them by mandatory instruction). *The main objectives and principles* of performing police duties aim to provide an equal protection of rights, freedom and security of the citizens, law enforcement and the rule of law (Article 11, paragraph 1).²⁹

Police officers perform their duties in accordance to the national and international standards, without discrimination and in the service of community. Special attention is provided that the use of force remains the last option, necessary and legal, with the explicit prohibition of inhuman treatment. Articles 14-16 regulate the police authority during the state of *emergency or state of war*, measures of temporary restrictions, prohibiting movement or residence in certain areas due to broken law and order, assisting in the execution and others.

In addition to the traditional police work, additional duties are assigned to the MOI, such as the *Emergencies Sector*, fire fighting and the protection of life, health, property and other issues.³⁰

c) Organization of the Ministry of Interior (Police) was regulated by the Law of police and further detailed through by-laws. The Regulation on the principles of internal organization of the MOI is of particular importance. According to Article 2 of this legal instrument, the Directorate of police provides education on the police and other interior work, while sectors are formed for performing highly specialized jobs that make police work possible.³¹ The Rules on the internal organization and job classification in the Interior Ministry detail this Regulation further, in order to secure its implementation, as well as the specific legal regime ("Confidential").

The head of the **MOI RS** is the Minister of Interior and its major organizational units are the Cabinet of the Minister, Police Department and sectors. The Cabinet of the Minister includes the Secretary of State, Department of Security, Secretariat and five specialized bureaus.

Sectors are formed to support the activities relevant to police work and they perform highly skilled jobs for the functioning of the Ministry. The police departments are composed of: General Logistics Sector, Technical Logistics Sector, Internal Affairs Sector and Emergency Response Sector.

The Police Directorate is the most important part of the police. Its organization, legal status and other issues are regulated by Articles 20-29 of the Police Act. The functioning of the police is determined through standard forms, creating the *territorial* and *line* shape, the shape of the object and on-call service. The police headquarters include line managements, such as uniformed police (in order), criminal police, border, transportation, security, administrative

²⁹ See footnote 13.

³⁰ More in: Law on special milestones, *Official Gazette of the Republic of Serbia* No. 111/09.

³¹ *Official Gazette of the Republic of Serbia* No.08/06, 14/09.

tasks and operations centre for the protection unit. The following are the special forces: (Gendarmerie, ATU, CTU, Helio), special operations group - Negotiation Team (NT) and territorial units (PD Belgrade, RPD, PS). Mutual relations among the organizational units are based on the principles of hierarchy and the multiple units can take over the tasks of lower educated and *ad hoc* working groups.

4. Police powers

The police powers were the "software" of the police department and its organization from its earliest days to the present, especially in an era of technological revolution and development of modern communications. These are important tools for performing the delegated tasks and duties. They are essential for the lawful conduct of the police and its members. These tools become increasingly important when we realise that the modern technological means are easily available to the other side, as well (criminals and lawbreakers).

The Police Act determined the specific powers of the police in performing the delegated tasks. The laws also envisage some other powers for the police and its members. Such laws are: Criminal Procedure Code (CPC), Law on Minor Offences, Act on combating organized crime, corruption and other most serious crimes, Law on organization and jurisdiction of government authorities in war crimes, Law on assembly of citizens, Law on public order and others.

According to the solutions of the current Police Act, there are in total 21 police powers, as well as numerous more complete, accurate and complementary solutions to these regulations.

Principles and standards underlying the use of police powers are particularly developed in the case of sensitive issues, human rights and civil liberties. We may add here the following important principles and standards (Articles 30-38): a) legal guarantees for the person against whom the authorization applies, b) official behaviour, openness and representation, c) humanity, health, respect of personality, the fundamental rights and freedoms, non-discrimination, d) proportionality and gradation in the use of authority, and e) the special protection of minors.³²

According to the type, nature and other elements of the Police Act (Articles 39-109), the following **police powers** were determined:

- Warning and order,
- Checking the identity of persons and identification of objects,
- Calling,
- Apprehension,
- Temporary detention and restriction of freedom of movement,
- Seeking information,
- Seizure warrant,
- Review - premises, facilities, documentation, and counterterrorism,
- Stopping and inspecting people, objects and means of transport,

³² See footnote 13.

- Providing an overview of the scene,
- The use of another's means of transport and communications,
- Receipt of applications on the committed offense,
- Public announcement of awards,
- Recording in public places,
- Polygraph testing,
- Police observation (observation),
- The search for persons and objects,
- Protection of crime victims and other individuals,
- The collection, processing and use of personal data,
- Measures of targeted search and
- Employment of force: physical strength, batons, restraints, special vehicles, dogs, horses, means for detention, water weapons, chemicals, firearms, special weapons and explosives.³³

The legal analysis of the provisions demonstrates that the legislature made an effort to find solutions based on the fundamental *international instruments* (European Convention for the Protection of Human Rights and Fundamental Freedoms, European Code of Police Ethics), universal standards and the experience of the developed countries. From the point of view of the content in question, these are classical solutions of modern police and legal practice which have been used in police work for a long time. In the legal system of the former Yugoslavia (Serbia), these solutions had a specific legal regime ("confidential"), according to the specific regulations of the Corps discretion (mandatory instructions on operational work, Guidelines on the organization and competence of the operational work). That influenced introducing the legislation on police powers and tools for work, such as the Anti-Terrorist review, public announcement of awards, recording in public places, polygraph testing, protection of victims of crime, collection of data, processing and use of personal data and measures targeted search.

The adoption of the Police Act and the new laws eliminated the potential duality of norms. That is of particular importance for the lawful police conduct, respect for and protection of human rights and civil liberties. The legislature has the authority to "legalize" the current police practices. The adoption of these solutions forms part of the efforts to reform the police, in the spirit of harmonization with the European law and Serbia's application for EU membership.

5. Control of police work in the spirit of rule of law

In the history of human society, there were many practical cases where police work was plagued by excessive abuse of force. In the recent past, it has been the case in Nazi Germany and in the USSR during Stalin's regime. More recently, it happened in countries which have been fighting for democratic change and where modern society was built (Chile-Pinochet, Franco-Spain, Greece-military junta, Romania-Ceausescu etc.). The secret services were particularly involved in illegal actions against political opponents of the regime

³³ See footnote 14.

and even physical elimination of the "unfit" and "objectionable" (Ibar highway in the case of Serbia, the assassination of the late Prime Minister of RS, Dr. Djindjic etc.).

In addition to the *politicization* and *criminalization* of parts of the security services in the past, the characteristics of police occupation, as well as other objective and subjective factors are significant to police work. These circumstances may be of importance and influence in the lawful discharge of delegated tasks and lead to possible violations of the rights of citizens and others. Individual behaviour beyond the legal rights and violation of rights can negatively affect the public opinion and even lead to public concern, dissatisfaction and other undesirable consequences. The key to preventing such developments is the cooperation and community policing in response to the security challenges, as well as developing mutual trust and partnership in building safe communities ("safe community").³⁴

Control of the police is imperative in modern times and in building a democratic society; the protection and promotion of the universal values of the rule of law are of great importance. *Monitoring* the work of security services is important both for the protection of the reputation of the state and its creditworthiness in the international community, as well as because of the holders of state functions and the organs of state they manage. Of special importance is monitoring the application of *force* and some "heavier" police powers, such as detention, arrest, search of persons and premises, seizure, wiretapping and other powers restricting certain human rights and civil liberties.

External control of the police is envisaged in Article 9 of the Police Act. It provides that the Minister of the Interior shall submit to the Parliament annual and periodic performance reports and *ad hoc* reports on individual cases. In addition to the RS Assembly, there are other authorized entities which undertake external control. These are some *government agencies and institutions*: government, judicial, administrative and other authorities and bodies (Article 170). Paragraph 3 of the same provisions specifies further the powers of these bodies, the methodology and the availability of access to confidential information, the way of contacts with officials, the right to answer parliamentary questions, interpellations and others.³⁵

The independent state mechanisms and institutions, such as the Commissioner for Information of Public Importance and Protection of confidentiality of data protection, Commissioner of gender equality, Civil Rights Protection (Ombudsman) and others have a special role in controlling state authorities. In addition to the institutional, there is a strong non-institutional (informal) external control of police and state authorities. It is accomplished primarily through the media, citizens and their associations, non-governmental organizations (NGOs) and other forms.

³⁴ See footnote 4.

³⁵ Simich B., Nikach Zh., 'Control of the Police in Serbia', International Conference: *The legal system and social crisis*, Law Faculty Pristina, K. Mitrovica 2011, Proceedings, Volume II, pp. 463-476.

Internal control of the police has improved, compared to the previous period. The specialized line control was introduced in addition to the regular hierarchy. Command and control of the police is daily and it refers to the common practice in the performance of police units and members, such as machinery already built, work discipline, disciplinary and material responsibility, attitude towards citizens, working in the security sector, etc. Specialized control is implemented through the line services and special units, such as the Department of Examination in the PD Belgrade, followed by identical line departments of uniformed police and other forms of law enforcement.

The Sector of Internal control (SIC) is a specialized line of work of police units. It is responsible to exercise control over the work of the police, especially when it comes to indications of committed criminal acts and police perpetrators. According to Articles 170-181 of the Police Act, the circumstances of its control of the police are determined. At the head of the Department is a senior officer who ranks as Deputy Minister (Article 171). The subject of internal control and methodology is regulated by the cited Acts, especially the cooperation of all organizational units and services. According to Articles 176-178, the Sector has a special duty of reporting and informing the Minister of Internal Affairs, who submits a report of the work to the Government, the National Assembly, the Security Committee of the Assembly, working bodies and other organs.³⁶

Particularly important aspects of control of the police are the **complaints** under Article 180. In practice, the provisions are interpreted quite extensively, so the complainants are filed both by natural and legal persons. The solution envisaged in Article 181 derives from the principle of rule of law. It addresses the issue of confidentiality and protection of data, especially after public control and cessation of active service. According to numerous experts, the complaints procedure, regulated by special by-law is complicated, demanding and expensive. Thus, it did not significantly contribute to the protection of citizens' rights. We agree on this point and we believe that the procedure should be made more effective and efficient.

Control of the police work is an important issue in every community, especially in countries in transition, such as Serbia and the other former Yugoslav republics which are now independent states. In this context, of particular importance is the prevention and permanent work with the police, in order to adopt the values of civil society and the rule of law as basic postulates of the "legal state".

Instead of a conclusion

The **Police** are a state organ which has the right to legitimate use of force. As such, they are an important organ in the modern democratic society. Potentials and capacities that the police have today can be a guarantor of internal stability in regulated states, as this organization is primarily *professionalized* and *depoliticized*. It goes without saying that a certain level of *operational independence* of the

³⁶ Ibid.

police has been achieved, because only such an organization can perform normal tasks entrusted to the protection of public order, crime fighting and others.

Decriminalization of the Police is an important precondition for the reform of the police and security services. This is especially true in the case of Member States of the EU belonging to the former socialist bloc and the republics of the former Yugoslavia among which is the Republic of Serbia. The organization and methodology of the police were based on the universal model of **"Community Policing"**, as the security is indivisible and the police acts in cooperation with the community to solve problems in the society.

The implementation of the Law on Police transformed the Serbian police and its actions into a *"service to the citizens"* - service and welfare of the community. The protection of general interests and universal values, while respecting the rule of law, respect for human rights and civil liberties is at the heart of police. We consider that some of the key decisions must be exposed to serious consideration, so that in future the novelties could provide viable proposals *de lege ferenda* for the improvement of individual solutions.

Special emphasis should be placed on the application of Serbia and other countries of the former Yugoslavia to join the European Union. In this regard, the anticipated standards necessary for the harmonization with the EU law should be observed. It is necessary to fulfil the other stipulated conditions, among which one of the most important is the legal work of the police for the wellbeing of the community and the welfare of all its members. Some of these and other tasks are highlighted in the recently adopted document entitled *"Strategy of the Ministry of Interior of the Republic of Serbia for the period 2011-2015."*
