

ТМ	Г. XXXVII	Бр. 4	Стр. 1719-1730	Ниш	октобар - децембар	2013.
----	-----------	-------	----------------	-----	--------------------	-------

UDK 343.131.7

Претходно саопштење

Примљено: 04. 08.2013.

Одобрено за штампу: 02. 12. 2013.

Nedjo Danilović

Dragan Manojlović

Milomir Minić

Sreto Nogo

Megatrend University

Belgrade

## **SUSPENSION OF THE PRESUMPTION OF INNOCENCE AND VIOLATION OF CIVIL LIBERTIES IN SERBIA**

### **Abstract**

This paper presents the results of a qualitative and quantitative research pertaining to the work of Serbian institutions (the police and the prosecution) authorized to conduct criminal investigation and raise charges against perpetrators of criminal offences. These institutions have the authority to submit requests for initiating criminal investigation and to indict criminal offenders. This research focuses on different social circumstances and government measures which have been observed over a twenty-year period. The collected data have been analyzed in terms of comparable periods and the correlation between the criminal complaints filed by the police against citizens as perpetrator of criminal offences and the indictments issued by the competent public prosecution offices. The data have also been examined in terms of the total number of indictments and confirmed indictments resulting from the criminal investigation. The authors discuss the impact of a disproportional number of indictments containing criminal charges based on inadequate or insufficient evidence, which shows that the offenders were charged and convicted without sufficient evidence. Such practices inevitably imply a suspension of the legal standard on the presumption of innocence and a violation of civil liberties in Serbia.

**Key Words:** criminal charges, criminal investigation, presumption of innocence, civil liberties

## СУСПЕНЗИЈА ПРЕТПОСТАВКЕ НЕВИНОСТИ И ОБУСТАВА ГРАЂАНСКИХ СЛОБОДА У СРБИЈИ

### Апстракт

Рад представља квалитативно и квантитативно истраживање које се односи на рад установа у Србији које су овлашћене да воде кривичну истрагу и подижу оптужбе против грађана као починилаца кривичних дела. Слично ислеђивању, оне су надлежне да подносе захтеве за спровођење кривичне истраге и подижу оптужнице против починилаца. Ово истраживање се усредсређује на двадесет различитих друштвених околности и мера владе у смислу упоредивих периода и односа тачака оптужби против грађанина оптуженог за кривично дело, и броја оптужница и потврђених оптужница на основу истраге. Чланак по први пут у Србији испитује утицај несразмерног односа броја тачака оптужења заснованих на доказима исказаним у актима и без доказа, оптужених и осуђених грађана, услед чега долази до суспендовања претпоставке невиности и обуставе грађанских слобода.

**Кључне речи:** тачка кривичних оптужби, криминалистичка истрага, претпоставка невиности, грађанске слободе

### INTRODUCTION

The research conducted by the authors of this paper is the first of this kind in the theory dealing with police practice in Serbia. The research points out to the implications that police actions and measures taken without legal grounds or without sufficient evidence may have on the Serbian citizens' human and civil right, particularly in case when such police measures and activities serve as the grounds for the competent public prosecutor to raise charges against the suspected offenders. In the cases at issue, the citizens were charged with the commission of specific criminal offences but the competent public prosecutors never initiated proceedings under their jurisdiction due to the lack of factual or legal grounds (Manojlović, 2010, p. 243). Yet, the criminal complaints contained no evidence indicating that the citizen was involved in or committed the criminal offence which he/she had been suspected of committing.

This theoretical and empirical research focuses on a huge number of police investigations and criminal complaints filed by the police against citizens in the Republic of Serbia in the last decade of the 20<sup>th</sup> century (during the rule of Slobodan Milošević) and in the first decade of the 21<sup>st</sup> century (during the rule of "the democratic governments"). The authors first present the structure of research methodology, elaborate on

the existing police theory and practice and explore the national legal provision on the police authorities. After providing a definition of criminal complaints, we present the results of the conducted empirical research, elaborate on the research findings, present the concluding observations and, finally, give some recommendations based on the findings.

In police theory and practice in Serbia, the study of criminal investigation refers to examining the methodology of crime detection, collection and preservation of evidence, which proves that the crime has been committed by a particular person or persons. The Criminal Procedure Code stipulates that the police have the authority to file criminal complaints to public prosecution offices, notifying the competent prosecutor that a criminal offence has been committed (either by a known or by an unknown perpetrator), whereby the criminal complaint is perceived as a motion to indict the alleged criminal offender. However, in this research, we examined another aspect of criminal complaints filed by the police against known (reported) perpetrators. In the Serbian police practice, "shedding light on crime" is a common phase which sums up the role of the police as the state authority in charge of crime detection. In our opinion, the standpoint that best reflects what the police are supposed to do when investigating a committed crime or criminal activity in progress is provided by Pavišić, Modly, and Vejić (2012, p. 18). These authors argue that the police should "detect and secure evidence". We believe that the place of the police in criminal investigation is most explicitly defined in the statement that "police investigation entails meticulous work on collecting information about a particular event or a person" (Manojlović, 2010, 357).

In the Republic of Serbia, there is no legal definition on criminal complaints. In police practice, this concept is commonly referred to as a written or oral notification submitted to the competent public prosecution office (or prosecutor) against a natural or a legal person who is suspected of having committed a criminal offence. Criminal complaints must be based on fully established facts and on the probable cause, i.e. reasonable ground to believe that a criminal offence has been committed (Krivokapić, Žarković, Simonović, 2005, p. 99). Generally, criminal complaints based on established facts and supported by reliable evidence are regarded as an asset in criminal proceedings.

#### *RESEARCH METHODOLOGY*

**Aim and content of research:** The aim of this research is to collect data on the police investigation of criminal offences and the criminal complaints filed by the police with the competent public prosecution offices. These data are an important tool for observing possible violations of civil rights and detecting the shortcomings in the discovery and preser-

vation of evidence. The data collected in this study provide information on the total number of criminal complaints filed by the police against reported (known) perpetrators and the total number of citizens whose cases were referred to the competent Public Prosecutor's Office. Yet, for the lack of evidence, the competent public prosecutor did not have legal grounds to indict them and initiate criminal proceedings. Thus, a huge number of citizens of the Republic of Serbia were subjected to various police measures and techniques, which did not provide sufficient evidence for the prosecutors to indict them and initiate criminal proceedings under their jurisdiction. By undertaking such actions, the police significantly violated the citizens' human rights, both on the individual level and collectively (as the entire family suffered the consequences of such practices). Not only did the violations constitute an interference with the individual human rights pertaining to the citizen status but also an interference with the economic and social rights (by virtue of citizens' defamation). Having a criminal record which is based on unjustified criminal charges (raised without sufficient evidence) permanently stigmatizes a citizen as a registered criminal offender, who "is entered into the police records". Thus, the citizen is denied the fundamental human and civil rights which he/she is entitled to exercise before the completion of the police proceedings.

**Observed sample:** The research sample includes criminal complaints filed by the police with the competent public prosecution office, on the basis of which the perpetrators were prosecuted for the commission of specific criminal offences.

**Scope of research:** This study includes criminal complaints filed by the police with the competent public prosecution office, in compliance with the established criminal procedure, including the prosecutorial proceedings involving relevant lower-court and higher-court public prosecutors. The content of this study is confined to the specific characteristics of the first stage of public prosecution, where the police act *ex officio* as reporting units by filing criminal complaints with the competent prosecutor's office.

**Data collection method, time frame, and sources:** The observation was conducted in the last decade of the 20<sup>th</sup> century (1990-2000) and in the first decade of the 21<sup>st</sup> century (2000-2010). The surveys were conducted on the annual basis, but the obtained data are presented per decade. The data collection method used in observing the first stage of public prosecutions is statistical analysis of the obtained data on the criminal complaints filed by the police with the competent prosecution offices. The methodology also includes comparison, analysis, and correlation of the obtained data. All the criminal complaints were filled out at the time when the criminal proceedings were initiated. The main sources of infor-

mation in this research are the data obtained from the final decisions of the Public Prosecutor's Office.

**Definitions of key terms:** A *criminal act* is an unlawful and wrongful act that constitutes a criminal offence. The term "a *reported person/a known offender*" refers to an adult offender against whom the police filed a criminal complaint but the preliminary proceedings were rejected upon the prosecutor's decision and charges were dropped or suspended. The term "*type of decision*" implies the decision of the competent public prosecution office by which the criminal prosecution was terminated.

**The representative sample:** The data on reported adult citizens, contained in the examined criminal complaints filed by the police, have been collected on the basis of statistical analysis of the database of the Statistical Office of the Republic of Serbia.

**Research description, organization, and data collection instrument:** The data collection instrument used in this research was a Questionnaire for adults who were subject to prosecutorial proceeding on the grounds of a criminal complaint filed by the police but whose criminal prosecution was terminated for lack of evidence. The Questionnaire includes data about the offender, the type of proceedings, the public authority that filed the criminal complaint, the mode of delivery of the criminal complaint to the competent public prosecution office, the decision of the competent prosecutor, justification of the decision and the receipt date.

**Classification of research:** This research falls into the category of a basic quantitative and qualitative scientific research and the research has the status of an original scientific work.

#### *LEGAL RULES ON CRIMINAL POLICE INVESTIGATION IN SERBIA*

The Criminal Procedure Code (2011) of the Republic of Serbia, in Chapter I ("General Provisions"), Article 1 ("Subject Matter of the Code"), Paragraph 1, contains the following legal provision: "This Code establishes rules intended to prevent the conviction of any innocent person and to enable a perpetrator of a criminal offence to be sanctioned in accordance with conditions envisaged in the Criminal Code, based on lawful and fair proceedings." Further on, Paragraph 2 of the same article stipulates that the Code establishes rules on "the exercise of the rights of persons wrongfully deprived of liberty". Thus, the Code recognizes the principle of the presumption of innocence as well as the legal protection of rights of persons wrongfully deprived of liberty, but it does not seem to recognize that that criminal complaints filed by the police against individuals have to be supported by relevant and sufficient evidence.

Article 286 of the Criminal Procedure Code, pertaining to the “Police Authorities”, states as follows: “If there are grounds for suspicion that a criminal offence which may be prosecuted *ex officio* has been committed, the police is required to implement necessary measures to locate the perpetrator of the criminal offence, for the perpetrator or accomplice not to go into hiding or abscond, to detect and secure traces of the criminal offence and objects which may serve as evidence, and to collect all information which could be of benefit for the successful conduct of criminal proceedings. For the purpose of fulfilling the duty referred to in paragraph 1 of this Article, the police may: seek necessary information from citizens; perform necessary inspection of vehicles,

passengers and luggage; restrict movement in a particular area for a necessary period of time, not exceeding eight hours; take necessary measures to establish the identity of persons and objects; to post notices on wanted persons; inspect certain facilities and premises of public authorities, enterprises, shops and other legal entities, inspect their documentation and seize it (if necessary) in the presence of a responsible person; and take other necessary measures and actions. A transcript or an official note will be made on facts and circumstances established during the performance of specific actions, as well as on the objects found or seized, which may be of interest for the criminal proceedings.”

After collecting the information, the police are obliged to notify the competent public prosecutor about the taken police actions and measures. Pursuant to the Criminal Code of Republic of Serbia (*Official Gazette, N<sup>o</sup>. 72/2011, 101/2011, with editions*), the police have to base their criminal complaints against alleged offenders on the evidence they have discovered in the process of collecting information.

On the basis of these provisions, it can be concluded that, in defining the police investigation authorities, the legislator does not specify that the police duty is, above all, to detect and secure the evidence. Instead, the provided legal rules specify that the police must first identify the perpetrator in order to prevent him/her from hiding or escaping, and only then are the police given the authority to examine the clues that may be used as evidence. Given the scope of police powers that the legislature has vested in the police, over a million of Serbian citizens have been involved in some kind of police investigation proceedings in the last decade of the 20<sup>th</sup> century (1990-2000) and in the first decade of the 21<sup>st</sup> century (2000-2010). In many of these cases, the police had no legal ground to file criminal charges against the suspected offenders, primarily for the lack of evidence that the citizens had committed the alleged criminal offences.

*CHARACTERISTICS OF POLICE INVESTIGATION AND  
PROSECUTION PROCEEDINGS  
IN THE REPUBLIC OF SERBIA  
IN THE PERIOD FROM 1990 TO 2000*

The results of the empirical research reveal that, in the period from 1990 to 2000, there was a total number of 655,242 Serbian citizens against whom the police filed criminal complaints with the competent public prosecution office but who were never indicted due to the lack of evidence (*see Table 1*). This study shows that the authors did not primarily focus on the scientific and professional aspect of this issue but also examined the obtained statistical data pointing to a large number of Serbian citizens who were subject to some measures and activities undertaken by the police as the competent state authorities, in compliance with the legal provisions contained in the Serbian Criminal Procedure Code (2011).

*Table 1. Survey results obtained from the study sample in the period from 1991 to 2000: the total number of criminal investigations, criminal complaints filed by the police and prosecutors' indictments in the Republic of Serbia*

<b>The period from 1991 to 2000</b> (during the rule of Slobodan Milošević): Correlation between the total number of criminal complaints filed by the police and the total number of indictments issued by public prosecution offices in the Republic of Serbia in the period from 1991 to 2000					
Year of Survey	Number of criminal complaints (filed by the police)	Number of indicted citizens (indictments)	Number of unindicted citizens (no indictments)	Percentage of unindicted citizens (no indictments)	Percentage of indicted citizens (indictments)
<b>1991</b>	112,678	52,000	60,678	53.85%	46.15%
<b>1992</b>	123,709	42,491	81,218	65.65%	34.35%
<b>1993</b>	140,062	49,402	90,660	64.72%	35.28%
<b>1994</b>	148,210	47,213	100,997	68.14%	31.86%
<b>1995</b>	122,030	52,036	69,994	57.35%	42.65%
<b>1996</b>	118,917	53,096	65,821	55.35%	44.65%
<b>1997</b>	115,637	54,268	61,369	53.07%	46.93%
<b>1998</b>	108,474	61,176	47,298	43.60%	56.40%
<b>1999</b>	84,365	48,218	36,147	42.84%	57.16%
<b>2000</b>	84,543	43,483	41,060	48.56%	51.44%
Total survey sample	<b>1,158,625</b>	<b>503,383</b>	<b>655,242</b>	<b>56.55%</b>	<b>43.54%</b>

Source: the Statistical Office of the Republic of Serbia, Statistical Bulletin No. 546, ISSN 0345-3641, www.stat.gov.rs

Through the exercise of police powers, citizens were exposed to criminal investigation proceedings which included a number of police investigation measures and activities, such as: interviews, hearings, temporary apprehension and detention. After that, the police filed criminal complaints with the competent public prosecution office against suspected offenders, who were never indicted by the prosecutor as there was a lack of evidence that they had committed the specific criminal offence.

The immediate result of this approach was a violation of the basic human rights. From the above findings, we conclude that in 56.55 % of the cases (*see Table 1*) there was no evidence that the citizens committed crimes; yet, they were registered as perpetrators in the police records.

As for the total number of citizens who were subject to police investigation, the analysis of the research results indicates that the value of the correlation is negative; namely, in the period from 1991 to 2000, the total percentage of indictments was 43.54 % as compared to the total percentage of cases where there were no indictments (56.55%). Thus, out of the total number of 1,158,625 surveyed citizens, only 503,383 were actually indicted. It further implies that only in these cases did the police provide sufficient evidence to initiate prosecutorial investigation and raise charges against the offenders (*see Table 1*).

*CHARACTERISTICS OF POLICE INVESTIGATION AND  
PROSECUTION PROCEEDINGS  
IN THE REPUBLIC OF SERBIA  
IN THE PERIOD FROM 2000 TO 2010*

At the beginning of the 21<sup>st</sup> century, after overthrowing the Milošević regime and introducing the "democratic government" in Serbia, the empirical research results in the period from 2000 to 2010 show that the police conducted criminal investigation and filed criminal complaints against a total number of 962,645 Serbian citizens, but in a total of 497,967 cases the citizens were not indicted due to the lack of necessary evidence (*see Table 2*). The survey findings revealed that the police criminal investigation practices did not change much after introducing a more democratic system of government. There is no doubt that such practices generate a great deal of concern, particularly in terms of human rights and liberties.

The research results indicate that the number of indictments issued by the Serbian public prosecution offices in the period from 2000 to 2010 (when the democratic government was in power) is negatively correlated with the total number of criminal complaints filed by the police against citizens. In the first decade of the 21<sup>th</sup> century, the total percentage of indicted citizens was 48.27% (*see Table 2*). Drawing upon the collected data, the research results show that the police filed a total of 962,645

criminal complaints against Serbian citizens suspected of committing a crime, but in a total number of 497,967 cases (51.73%) the police had no evidence or legal grounds to initiate their their prosecution (*see Table 2*).

*Table 2. Survey results obtained from the study sample in the period from 1991 to 2000: the total number of criminal investigations, criminal complaints filed by the police and prosecutors' indictments in the Republic of Serbia*

<b>The period from 2001 to 2010:</b>					
Correlation between the total number of criminal complaints filed by the police against adult citizens and the total number of indictments issued by the public prosecution offices in the Republic of Serbia from 2001 to 2010					
Year of Survey	Number of criminal complaints (filed by the police)	Number of indicted citizens (indictments)	Number of unindicted citizens (no indictments)	Percentage of unindicted citizens (no indictments)	Percentage of indicted citizens (indictments)
<b>2001</b>	93,431	44,859	48,572	51.99%	48.01%
<b>2002</b>	104,061	47,915	56,146	53.96%	46.04%
<b>2003</b>	95,733	43,591	52,142	54.47%	45.53%
<b>2004</b>	88,453	44,881	43,572	49.27%	50.73%
<b>2005</b>	100,536	47,870	52,666	52.27%	47.61%
<b>2006</b>	118,917	55,360	50,341	47.63%	52.37%
<b>2007</b>	105,701	48,903	49,799	50.56%	49.54%
<b>2008</b>	98,702	53,035	48,688	47.87%	52.13%
<b>2009</b>	101,723	50,404	49,622	49.61%	50.39%
<b>2010</b>	100,026	27,860	46,419	62.50%	37.50%
Total survey sample	<b>962,645</b>	<b>464,678</b>	<b>497,967</b>	<b>51.73%</b>	<b>48.27%</b>

Source: the Statistical Office of the Republic of Serbia, Statistical Bulletin No. 546, ISSN 0345-3641, [www.stat.gov.rs](http://www.stat.gov.rs)

On the whole, the statistical data collected over a twenty-year period have yielded significant findings. The overall results of the survey conducted in Serbia in the last decade of the 20<sup>th</sup> century (during the rule of Slobodan Milošević) and in the first decade of the 21<sup>st</sup> century (after overthrowing the Milošević regime) show that there was a total number of 2,121,270 citizens who were subject to police investigation and criminal complaints filed by police under suspicion of having committed a crime.

In these two periods under observation, the overall findings indicate that there was a total number of 1,153,209 unindicted Serbian citizens; even though they were initially subject to police investigation as suspected offenders and subsequently referred to the competent public prosecutors by means of criminal complaints filed by the police, no indictments were issued by the public prosecutors because the police had not provided evidence to support further criminal prosecution. This information is highly disturbing and it calls for urgent action. In the third millennium, the democratic values and the fundamental human rights need to be adequately protected and promoted.

### *CONCLUSION*

To sum up, there are no significant differences between the characteristics of criminal investigation by the police during the rule of Slobodan Milošević and after his regime was overthrown and replaced by the rule of the democratic government.

The police practices pertaining to criminal police investigation and filing criminal complaints against Serbian citizens suspected of having committed a crime are based on the legal provisions envisaged in the Criminal Procedure Code of the Republic of Serbia (2011), which explicitly stipulate such police authorities. However, given their harmful effects, we wonder whether these legal rules should be part of the Serbian Criminal Procedure Code at all.

In a nutshell, the key problem is the police conduct and practices in the course of criminal investigation in Serbia. The main issue may be formulated as follows: given the total number of 2,121,270 criminal complaints submitted against Serbian citizens suspected of committing a crime, how can the police justify the fact that a total number of 1,153,209 suspected offenders were not indicted due to the lack of evidence? On the other hand, many of these citizens are still suffering the consequences of being entered into the police records and referred to the competent prosecution office without legal grounds.

The right of the police to file criminal complaints against citizens even without securing evidence is a historical, political and legal heritage dating back to the period after the Second World War (from 1945 onwards) and the Communists' rise to power. As we may conclude from Tables 1 and 2, the police criminal investigation practices against Serbian citizens has proved to be illegitimate and unjustifiable, both from the legal and ethical perspective, because it does not provide for exercising the rule of law.

*A RECOMMENDATION ON THE BASIS OF  
RESEARCH FINDINGS*

There is a need to introduce changes in the Serbian Criminal Procedure Code and urgently amend some legal provisions on the police authorities and actions in criminal investigation proceedings. Thus, the police shall not have the authority to qualify a criminal act and file criminal complaints against offenders, but only to collect evidence and notify the competent public prosecution office about their work; on the grounds of the provided evidence, the prosecutor shall decide on issuing the indictment. This would prevent the current negative trends in the democratic development of the Serbian society and put an end to the "police surgery" method, which was used in countries of the Eastern Bloc after World War II and which is still used in Serbia. In the 21<sup>st</sup> century Serbia, the police shall continue their education and training in the field of criminal investigation, which is not the current practice.

*REFERENCES*

- Krivokapić, V., Žarković, M., i Simonović, B. (2005). *Kriminalistika taktika*. Beograd: Digital dizajn.
- Manojlović, D. (2010). *Kriminalistička operative*. Beograd: Beosing.
- Pavišić, B., Modly, D., i Vejić, P. (2012). *Kriminalistika-Knjiga 2*. Rijeka: Dušević & Keršovnik.
- "Official Gazette of RS", No. 72/2011, 101 / 2011, with amendments  
 Republic Institute for Statistics, Bulletin No. 546, 558.  
 Statistical Office of the Republic of Serbia, [www.stat.gov.rs](http://www.stat.gov.rs) (access: 12.12. 2012)  
 Ministry of Justice, [www.mpravde.gov.rs](http://www.mpravde.gov.rs) (access: 04. 01. 2013).

Неђо Даниловић, Драган Манојловић, Миломир Минић, Срето Ного, Мегатренд  
 Универзитет, Београд

**СУСПЕНЗИЈА ПРЕТПОСТАВКЕ НЕВИНОСТИ И  
ОБУСТАВА ГРАЂАНСКИХ СЛОБОДА У СРБИЈИ**

**Резиме**

Истраживање приказано у овом раду је указало на негативну праксу криминалистичке истраге криминала у Србији и кривичних пријава, које се од стране криминалистичких служби подносе против грађанина. Аутори су указали да би се српским грађанима, према подацима Министарства правде, у другој половини прве деценије двадесет првог века, на основу неоснованог притвора (сто деветнаест хиљада дана), могло да исплати више од пола милијарде динара, уколико би сви неосновано притворени грађани покренули поступак наплате одштете. Према поднетим тужбама и другим актима за накнаду штете, долази се

до броја од више од двадесет хиљада дана годишње, које грађани Србије провели у притвору због неоснованог лишавања слободе од стране полиције. Ако бисмо томе додали број грађана који су, на основу резултата истраживања у овом раду, били у неком од поступака које покрене полиција, а након чега је полиција поднела надлежном тужиоцу кривичну пријаву којом је грађанину ставила на терет извршење кривичног дела, број дана које су грађани неосновано провели у неком од поступака пред државним органима, а да против њих никада није покренута истрага, нити подигнута оптужница, неприхватљив је из било ког аспекта: правног, етичког, људских права и слобода, економског или било ког другог.

У раду се на основу налаза из истраживања указује да је нужно да се у раду криминалистичких служби у Србији уведе „откривање, прикупљање и обезбеђење доказа“, а не пријављивање грађанина без доказа и да се метод рада криминалистичких агенција усмерен на „непријатеље“ који је уведен у криминалистичку методiku поступања средином деветнаестог века, усмери на метод рада „на доказу“, што је захтев просвећених народа и цивилизацијског напретка у остваривању права грађанина од неоснованог прогона. Следећи аспект на који налаз у раду указује је недостатак професионалног знања из области истраживања криминалних деликата – шта је доказ. Из резултата истраживања које је спроведено над узорком од два милиона и двеста хиљада кривичних пријава поднетих од стране криминалистичких служби против грађана као извршилаца кривичних дела у две деценије у Србији, методом компарације и корелације, уочава се да се без правног основа посеже за подношењем кривичних пријава без доказа чиме се суспендује претпоставка невиности и нарушавају грађанска права и слободе.

Текст лекторисала: Гордана Игњатовић