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In front of you is fifth Collection of Policy Papers on Police Reform in Serbia which is the result of joint work of two CSOs: the Belgrade Centre for Security Policy, and the Belgrade Centre for Human Rights. It is a part of the project "Fostering Civil Society Involvement in Police Reform" supported by the OSCE Mission to Serbia, the Embassy of the Kingdom of the Netherlands and the Geneva Centre for Democratic Control of Armed Forces (DCAF).

The views expressed herein are those merely of the three researchers from the CSOs in Serbia and do not necessarily reflect the official position of the OSCE Mission to Serbia, the Embassy of the Netherlands and the Geneva Centre for Democratic Control of Armed Forces (DCAF).



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List of Abbreviations:

ACPS	Academy of Criminalistic and Police Studies
BCSP	Belgrade Centre for Security Policy
CoE	Council of Europe
CSOs	Civil Society Organizations
DCAF	Geneva Centre for Democratic Control of Armed Forces
EU	European Union
EUROJUST	European Union's Judicial Cooperation Unit
EUROPOL	European Police Office
FBI	Federal Bureau of Investigation
FRONTEX	European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union
IAS	Internal Affairs Sector
MFA	Ministry of Foreign Affairs
MoI	Ministry of Interior
OSCE	Organization for Security and Cooperation in Europe
RC	Republic of Croatia
RS	Republic of Serbia
SECI	Southeast European Cooperative Initiative Regional Centre for Combating Trans-Border Crime
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees

Professional Ethics, Culture and Responsibilities of the Police in Serbia

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Researcher at the project

Abstract:

The aim of the police reform should not be just the creation of a service capable of fighting the crime in a more efficient manner, but it should be at the same time incorporation of the highest ethical norms and human rights standards in the police work, so that the police would be more responsible to the citizens it serves. In order to justify citizens' trust, the police in Serbia have to show professionalism and integrity by following the rules of professional and ethical behaviour. The ethical code of conduct should reflect the highest ethical values expressed in prohibitions and obligations of police work. In order to change its image and the impression it gives to the public, the police in Serbia must demonstrate high level of integrity in its work, must be prepared to confront the temptations and the abuse of police authorities and to adhere to these values.

Recommendations:

1. In order to promote ethical principles and security culture of the police, it is necessary to conduct a campaign at the national level, so that the public and the police are actively educated on the rights, obligations and consequences of violation of the Code of Police.
2. The Law on Police should define in a more precise manner the disciplinary measures for violations of the Code of Ethics and the internal regulations. These measures should be integrated into the internal regulations of the MoI to ensure transparent and impartial procedures when lodging complaints and petitions.
3. Through development of police culture, measures should be introduced in the police organization which would ensure that police officers of minority origin are accepted and treated equally with the purpose of providing a neutral working environment, and that they enjoy equal advancement opportunities. New professional standards of policing in the multi-ethnic municipalities should be introduced in the Code of Police Ethics. Police managers should ensure that their staff implements these standards in dealing with minorities and that their work gives examples of good practice.
4. Fight against corruption has to be better specified in the Code of Ethics. Also, anti-corruption policies and rules of behaviour for right, dignified and proper functioning of the police should be clearly incorporated in the Code of Ethics and police culture.
5. Additional areas of ethical and responsible police work should be introduced into the police education, as well as additional teaching contents defined in accordance with the human rights standards and the accepted guidelines for the use of force.

6. In order to build trust between police and local communities, it is necessary to work more on the development of unique models of community policing at the level of Serbia. Community policing will increase the engagement of the police in the work with the citizens, and will be the most effective mechanism of changing the way of policing in Serbia.
7. The complete subordination of the IAS to the Minister of Interior leads to problems of its work, because the institution of ministerial responsibility is not developed in Serbia. In order to improve the work of the IAS, it has to obtain clear legal authority and clear communication with the government and the public in case its action within the police is being limited.
8. In order to promote internal control mechanisms of informal character of the police, it is necessary to work on the strengthening of the self-control mechanisms as an initial instrument in the police officers control system. This can be done through improvement of the character and the content of the police training, development of professional ethics and, most of all, through the system of grading and promotion of the services.
9. The MoI should support the work of trade unions and professional associations and assign them a role in the development of professional standards, training models and especially in the adoption of profession's ethical standards and ensuring compliance with them.

Framework of the Problem

Police officers are the most visible representatives of the state authorities who are in daily contact with the citizens, and therefore always have to pay attention to their behaviour and actions. Police officers have to act in a way that gives confidence and creates a sense of personal security. Awareness of the need to build a "partnership" with citizens is an important element of police officers' security culture.

The issue of shaping the police ethics became the central issue in the implementation of concrete police activities. Police ethics is considered as one of the pillars of the democratic and reform processes of the police in Serbia, especially in essential relation between the state, citizens and police. To build a lost relationship of trust between police and citizens, an appropriate code of professional ethical conduct with moral components has to be established. It should promote good relations between the police and the citizens, efficient cooperation with other institutions, agencies, local communities, non-governmental and other citizens' organizations, including ethnic minority groups.

In order to justify citizens' trust, police in Serbia must demonstrate professionalism and integrity by complying with the rules of professional and ethical conduct. Given the limited resources and the need to set priorities, the police must use its discretionary power in law enforcement. Discretionary power of the police, on the other hand "is permissible and desirable only when it is used in the interest of justice"¹, and when it is in accordance with the guidelines and the code of professional conduct. The ethical code of conduct should "reflect the highest ethical values"² expressed in prohibitions and obligations of police work. In order to change its image and the impression it gives to the public, the

¹ CoE, Code of Conduct for Civil Servants, Article 7.

² UN, Commissioner's Guidebook on Democratic Policing in the Federation of Bosnia and Herzegovina, Principle 3.

police in Serbia have to demonstrate high level of integrity in its work, to be prepared to confront the temptations and the abuse of police authorities and to adhere to these values.

What can be noticed as a change in police culture is a litmus test for the whole reform process in the eyes of the public.³ Police culture can be briefly defined as operational and ethical behaviour of police officers.⁴ Police culture is the way in which police officers perform their duties, and it is the best indicator of changes in front of the eyes of the public. It should be mentioned that solid progress has been made in this area – signs of change are visible on the streets of Serbia. However, the question remains whether the changes are only of cosmetic nature and if they will be maintained in the future, too.

Professional Ethics, Culture and Accountability of the Police in Serbia

Certain progress in the police reform has been made in the previous years, and yet the Government, the MoI and the police of Serbia are faced with difficult decisions. The current reform program has been hampered by a lack of funding, and stronger political will is required for real and fundamental changes to be implemented within the MoI. The goal of the police reform is not the development of a service solely capable of more effective dealing with crime, but also of such that could deal with the negative effect of the internal corruption.⁵ At the same time, this reform should incorporate the highest standards of human rights in the police, thus making it more accountable to the citizens it serves.

The basic element of police culture is respecting the rules of service and the principles of the code of professional ethics when performing security jobs.⁶ In this respect, the Government of Serbia adopted a document which obliges members of the MoI to respect human and civil rights and liberties. The Code of Police Ethics⁷ is at least fictionally based on the Law on Police and European Convention for the Protection of Human Rights and Fundamental Freedoms. This document obliges the police to meet highest European standards when dealing with both the citizens and other institutions. However, hitherto practice makes it obvious that it is not enough just to distribute copies of the Code of Ethics to police officers. In order to promote ethical principles and security culture of the police, the distribution of the Code should be accompanied by a national level campaign, which would actively educate the public and the police on the rights, obligations and consequences of violating the Code. This campaign should be initiated and supported by the Government, the senior officers of the Police Directorates, the MoI and the IAS.

³ Law Enforcement Department, *Police Reform in Serbia: towards Creation of Modern and Responsible Police Service*, OSCE Mission to Serbia, 2004.

⁴ Ljubomir Stajić, Saša Mijalković, Svetlana Stanarević, *Bezbednosna kultura [Security Culture]*, Draganić, Beograd, 2004.

⁵ Law Enforcement Department, *Police Reform in Serbia: towards Creation of Modern and Responsible Police Service*, OSCE Mission to Serbia, 2004.

⁶ Guidelines on Police Ethics and Methods of Conducting Police Work, "Official Journal of the RS", no.41/03.

⁷ Code of Police Ethics, "Official Journal of the RS", no.92/06.

According to the Code, a police officer is not required to execute the order of his superior if the execution means violation of laws or committing a criminal offense. The officers should be guided by the principle of impartiality, meaning that, when carrying out their tasks, they should not be guided by their personal opinion. However, the problem is that the Law on Police and the Law on Police Education do not define precise disciplinary actions for violation of the Code of Ethics and internal regulations. These measures should be incorporated also in the internal regulations of the MoI to ensure transparent, impartial and fair procedures when lodging complaints and petitions. Such legislation should provide protection to affected citizens, but also to innocent police officers.

It is stated in the Code that police officers are obliged to behave in a decent and responsible manner towards the citizens, and when communicating with the citizens, they are obliged to maintain their own integrity, dignity and reputation of the Ministry. In addition to taking clear and unequivocal view that any form of illegal behaviour will not be tolerated, neither minor incidents, nor serious violation of individual rights, Serbian MoI has to initiate concrete steps in that direction, which has not been done up to present.

On admission to the police service, men and women from different social groups should be admitted, including ethnic minority groups, so that the police force would reflect the structure of the society. Statistic goals to improve equitable ethnic representation in the police and to introduce monitoring of the ethnic composition of the police forces to measure progress must be set. It is also necessary to encourage the employment of members of the minorities that are underrepresented in the police. Appropriate initiatives should include special measures to encourage the candidates and help them to the necessary standards, as well as steps to eliminate all indirect and direct discriminatory barriers. These measures should be clearly emphasized and written in the Code of Police Ethics.

In the Code of Police Ethics it is stated that a police officer has the duty to oppose to every act of corruption and cannot be engaged in activities incompatible with the official duty and those that impair the reputation of the police. Police officers cannot allow their private interests to jeopardize their position in the civil service. Corruption hinders equitable service delivery⁸ and seriously harms the public image of the police. That is why fight against corruption requires application of anti-corruption policy and the Code of Conduct for the proper and dignified police action, as well as implementation of effective measures to implement these policies at all levels of law enforcement. The effective solution must aim not only at solving the basic problem of low incomes, and especially favourable opportunities for bribery at certain positions in the police, but also the effectiveness of the system of disciplinary and sanctions measures.⁹ In addition, the fight against corruption within the police requires public reporting about the adequacy of anti-corruption system,¹⁰ the extent to which it applies and how effective it is, as well as how active is participation of civil society in this process.

What can be seen as a change in police culture is an indicator of standards of the entire police reform process. With this in mind, police education plays a vital role in determining police culture in the future. The introduction of the newly recruited police officers during basic training in the principles of ethical and responsible police work and in the teaching contents defined in accordance with the

⁸ Bogoljub Milosavljević, *Nauka o policiji [Police Science]*, Policijska akademija, Beograd, 1997.

⁹ CoE, Resolution (97) 24 on the Twenty Guiding Principles for the Fight against Corruption, Article 10.

¹⁰ CoE, The Twenty Guiding Principles for the Fight against Corruption, Article 16.

human rights standards and accepted guidelines for the use of force can strengthen their attitudes and behaviour and make the unbreakable bond between the two. The aid to police education should focus on ensuring sustainable development by transferring modern training methods and teaching contents.¹¹

In the forthcoming period it is necessary to work on building the trust between the police and local communities. Municipalities in Serbia, apart from some common problems, have their own, specific security problems, which require flexible and decentralized approach to policing. This is important in the multi-ethnic municipalities, because the ethnic groups that in the past had extremely negative experience with the police, at present expect from the police to be a service of all citizens of Serbia, regardless of language, religion or national origin. An efficient police is not successful only when it comes to fight against crime, but is also an organization that presents an integral part of the community and is sensitive to the changes in the local community and to its needs. Greater support should be given to developing a unique model of community policing at the level of the whole Serbia. In this way, the engagement of police in dealing with citizens will be increased, and this will be the most effective mechanism of changes in the way police works in Serbia.

The MoI should work on formulating a policy that clearly indicates the importance of policing for inter-ethnic relations. The Code of Police Ethics should include the professional standards of policing in multi-ethnic municipalities in Serbia, and police training programs should have a component especially designed to achieve these standards. There should be corrective measures for breaching these standards, and exemplary good practice should be rewarded with professional and public acknowledgment. It is recommended that police managers have clear duties to ensure that their staff achieves these standards when working with minorities and that with their work give example of good practice.

Serbia still lags behind with the level of trust that similar services enjoy in democratic societies. IAS of the police existed before as Inspectorate General's Service of the former Public Security Service of the MoI. Although it was founded on 12 March 2001, the actual process of constituting the Service began with the appointment of the first Inspector General in June 2003.¹² Despite the high expectation from this kind of control, up to now it has not shown any visible results. Objectively speaking, the prerequisites for success of this type of control have not been created yet. In addition, it is obvious that in our conditions, full subordinations of the IAS to the MoI, who is at the same time responsible for police work, is not the idea that can match the expectations. There are several reasons for this, and one of them is certainly that the institution of ministerial responsibility is not developed yet. Therefore, the IAS is more some sort of Minister's Commissioner, with a role to balance between the demands of the public and the interest of the service embodied by ministerial command rather than by law. In order to enhance its role, the Sector has to acquire clear legal authority and open way of communication with the government and the public in case its action with the police is being limited. Also, its work has to be transparent in order to start gaining public's trust.

The desired behaviour of police officers and prevention of errors in their work should be significantly affected by certain control mechanisms of informal character. Self-control is a mechanism based on

¹¹ Law Enforcement Department, *Police Reform in Serbia: towards Creation of Modern and Responsible Police Service*, OSCE Mission to Serbia, 2004.

¹² Source: <http://prezentacije.mup.gov.rs/sukp/sukp.htm>.

adoption of ethical, legal and professional norms of conduct in the service and is activated as part of conscious reaction in some situations.¹³ In the police in Serbia for a long time a bureaucratic type of professionalism was being developed. It was based on formal discipline and insufficient motivation for taking personal responsibility in relation to the consequences of treatment. The development of self-control mechanisms can be speeded up through the character and content of police training, development of professional ethics, but mainly through the system of grading, promotion and responsibility in service. Self-control of police officers in Serbia should be developed primarily because it presents initial tool in the control system that stays at the beginning of the control process, and if it is developed, its actions make it easier or eliminate the need for action of other control instruments.

Trade union and professional associations of police officers as means of informal control should, among other things, appear as an asset that can significantly contribute to the reputation of the profession and the acceptance of higher standards of professional and ethical responsibility of police officers. The MoI should do more to support the work of professional associations of police officers and give them a role in development of professional standards, training models and some other aspects of improving the profession, particularly in adoption and ensuring compliance with profession's ethical standards.

Socialization process as a special control tool is meaningful in developing a more direct contact of police officers with the citizens, and thus, in their socialization, i.e. in the integration with the social environment.¹⁴ In the past, the police was kept isolated from the community, and the unofficial relations of the police with the citizens were limited in order to distance the police from public influence and from understanding its interests. The Serbian MoI should work to ensure that police officers accept the criteria of their environment as values that should be respected in their official capacity. This can be achieved by developing direct contacts with the citizens through various joint actions of both educational and informative character. By strengthening social contacts of police officers with the public, the MoI would contribute to the integration of the police in the social environment, thus making it more accountable for their actions, and giving to public the possibility to control the police in a more profound manner.

Conclusion

The overly centralized structure of the MoI, the lack of knowledge on fundamental ethical principles of police work by the police officers themselves, and their lack of knowledge on the way of communication with the citizens, as well as the very low level of public confidence in the police are all factors hindering the police reform in Serbia.

Continuation of reform processes means creating a responsible and controlled police, which acts with general public consent, follows the ethical principles of police work and is free of any political influence. Construction and development of stable and strong institutions for internal and external

¹³ Bogoljub Milosavljević, *Građanski nadzor nad policijom [Civilian Oversight of Police]*, Centar za mir i razvoj demokratije, Beograd, 2004.

¹⁴ Bogoljub Milosavljević, *Ljudska prava i policija – standardi ljudskih prava za policiju [Human Rights and the Police: Human Rights Standards for the Police]*, Centar za mir i razvoj demokratije, Beograd, 2004.

control of the police should therefore have a place among top priorities of the government and the reform forces of society.

The Serbian MoI has to pay attention that the ethical model of police behaviour upgrades constantly and in continuity, respects the logic of changes and is turned to the future, with clearly expressed intention to respond to all security challenges of the modern world.

The transition from declarative statements on ethically controlled work of the police onto concrete actions in achieving the goal, development of long-term strategies of the police reform and strategies of specialized fields of policing is vital for the continuation of the police reform process.

The Serbian MoI should attempt to make the police system an integral part of the community rather than a repressive apparatus with the monopoly of force alienated from the citizens. Insisting on direct police work with the citizens would lead to a meaningful police policy which would give the possibility of indirect control and supervision by the citizens, especially when speaking of the legality and ethics of policing. Thus, we would get a modern and professional police organization that represents a public service at the service of the citizens.

Literature:

- Bogoljub Milosavljević, *Građanski nadzor nad policijom [Civilian Oversight of Police]*, Centar za mir i razvoj demokratije, Beograd, 2004.
- Bogoljub Milosavljević, *Ljudska prava i policija – standardi ljudskih prava za policiju [Human Rights and the Police: Human Rights Standards for the Police]*, Centar za mir i razvoj demokratije, Beograd, 2004.
- Bogoljub Milosavljević, *Nauka o policiji [Police Science]*, Policijska akademija, Beograd, 1997.
- Council of Europe, Recommendation No. R (2000) 10 of the Committee of Ministers to Member States on Codes of Conduct for Public Officials, 2000.
- Council of Europe, Resolution (97) 24 of the Committee of Ministers on The Twenty Guiding for Democratic Policing in the Federation of Bosnia-Herzegovina, Sarajevo, 1996.
- Law Enforcement Department, *Police Reform in Serbia: towards Creation of Modern and Responsible Police Service*, OSCE Mission to Serbia, 2004.
- Ljubomir Stajić, Saša Mijalković, Svetlana Stanarević, *Bezbednosna kultura [Security Culture]*, Draganić, Beograd, 2004.
- Miroslav Hadžić et al. (eds), *Godišnjak reforme sektora bezbednosti u Srbiji [Yearbook of the Security Sector Reform in Serbia]*, Centar za civilno-vojne odnose, Dan Graf, Beograd, 2009.
- OSCE, High Commissioner on national minorities, *Recommendations for Policing in Multi-ethnic societies*, February 2006.
- Radomir Zekavica, "Saradnja policije i građana u okviru koncepta policija u zajednici [Cooperation between the Police and the Citizens within the Concept of Community Policing]", *Bezbednost*, vol. 47, br. 1, pp. 83-94, 2005.
- Senior Police Adviser to the OSCE Secretary General, *Guidebook on Democratic Policing*, Copenhagen 1990.
- United Nations International Police Task Force (IPTF), *Commissioner's Guidance Principles for the Fight against Corruption*, 1997.

Police Diplomacy Development: the Role of Liaison Officers

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Abstract:

Because of the suppression of the "new" security challenges, risks and threats, a special profile of the police officer who possesses analytical knowledge for utilization of criminal-intelligence data has been created. The police officer becomes a liaison officer or police attaché, and he is a coordinator of the exchange of information when tackling security challenges. Until July 2011, Serbia has sent four liaison officers without a previously established selection procedure, and the regional police cooperation obtained the status of a strategic priority, and during the last three years more than twenty agreements regulating different forms of police cooperation have been signed. The present work points out the importance of regulation of the selection procedure for liaison officers or police attachés, and proposes a model for selection procedure by answering two questions: how to choose the right police officer, and how to train him for the most efficient realization of police cooperation?

Recommendations:

1. The Bureau for International Co-operation and European Integration of the MoI in cooperation with the Sector for Finance, Human Resources and Common Affairs in the MoI should create a special by-law regulating the procedure for appointment of police officers to a work abroad, more precisely the selection procedure, the powers, the duties, the mandate, the job description and the termination of work.
2. The Bureau for Strategic Planning and the Bureau for International Co-operation and European Integration of the MoI together with the MFA should define with a plan these countries and international organizations where the MoI would like to assign its representatives in accordance with the available financial resources.
3. A state institution that is responsible for the work and that bears the cost of assigning a police officer to a certain diplomatic mission should be identified by an internal agreement between the MoI and the MFA.
4. The Bureau for International Co-operation and European Integration in cooperation with the ACPS and the MFA Diplomatic Academy should create a training program for future police representatives.
5. It is necessary to strengthen the culture of active information exchange among police officers for the purpose of more efficient and sustainable conducting of police cooperation.

Liaison Officers: the Context of Serbia

One of the priorities of the MoI in the last three years is the strengthening of the international police cooperation. This priority is confirmed as well by the Development Strategy of the MoI till 2016. The aim is to create the necessary legal, institutional, financial and human resources that will ensure the most efficient development of the regional political cooperation.¹⁵ Here should be also added the agreements (21 in total) that the MoI has signed in different forms since September 2008.¹⁶

The agreements regulate police cooperation with the neighbours, with other countries and international organizations with the purpose of strengthening cooperation in the field of internal security. One of them is signed with DCAF in November 2009 and regulates precisely the accreditation of liaison officers to the regional centre in Ljubljana.

The appointment of liaison officers or police attachés in the signed agreements is one of the ways for efficient police cooperation. The framework of liaison officers is mainly connected with the exchange of criminal-intelligence information or implementation of requests for mutual police assistance in criminal matters and it is entirely advisory by nature.

Till July 2011 Serbia has sent four liaison officers. One of them is sent to SECI centre in Bucharest, the second – to the above mentioned DCAF centre in Ljubljana. The other two liaison officers are in Skopje and Moscow. In Serbia, however, there are active liaison officers or police attachés from 24 states. The majority of the liaison officers in Serbia are responsible for the rest of the Western Balkan countries, too. Such a decision is meaningful not only because of the financial expenditures, but because of the proper insight into the regional context in the field of internal affairs.¹⁷ Thus, the amount of the liaison officer's work increases; moreover, there is a demand for greater knowledge and analytical skills. Police representatives in Serbia have strategic and/or operational character depending on the interests of the state accrediting a police representative.

For implementation of one of the strategic goals of the MoI till 2016 regarding the more efficient performance of the regional police cooperation, it is necessary to build human resources for strategic and operational conduct of the international police activities for efficient and effective maintenance of the international police relations. This does not stem only from the status of Serbia as centre of the so-called "Balkan route" or because organized criminal groups from Serbia "enjoy" the status of world's biggest illegal drug dealers.¹⁸ In the continuation of the processes of European integration and with the acquiring of the status of a candidate state, more intensive activities in the EU law enforcement agencies - EUROPOL, EUROJUST, FRONTEX - are ahead of Serbia.

¹⁵ Development Strategy of the MoI for the period 2011-2016, p.19.

¹⁶ Answer to the questionnaire of the BCSP, MoI, p.7.

¹⁷ Interview, representative of the Embassy of the Kingdom of the Netherlands in Serbia, June 6, 2011; Interview, representative of the UK Embassy, May 27, 2011.

¹⁸ See the following reports: United States Department of State, Money Laundering and Financial Crimes Country Database, May 2011 (available at: <http://www.state.gov/documents/organization/164239.pdf>); OCTA 2011, OCTA 2010, OCTA 2009 – EU Organized Crime Threat Assessment (available at: http://www.europol.europa.eu/latest_publications/3); Cocaine: a EU Perspective in the Global Context (available at: <http://www.europol.europa.eu/sites/default/files/publications/emcdda-europol-cocaine.pdf>); Serbian Mafia, the drug wholesaler, RAI News (available at: <http://www.rainews24.rai.it/it/video.php?id=23467>).

With the purpose of strengthening the police cooperation it is necessary to regulate the legal framework of assignment, the selection process and liaison officers' capacity building. It is necessary to elaborate a plan in which the MoI will set up the priorities between certain geographic areas or states with which it desires to cooperate according to its financial resources. Another possibility is to define partner states that could represent the interests of Serbia in the international police relations.

At the moment, it is unclear on the basis of which criteria the four liaison officers are accredited to Slovenia, Romania, Russia and Macedonia. Such a situation reminds of the situation in Spain before 2006 when the appointment procedure for liaison officers was held without a competition and established legislative framework.¹⁹ By the way, this is not a reason to conclude that these police officers should not be assigned. Additionally, most of the EU member states appoint their police officers to Russia, which confirms that the Serbian administration recognized such a trend.²⁰

The Necessity for Change of the Legal Framework

The present Law on Police does not recognize a liaison officer as a specialized police function that works in the international police relations and that possesses certain powers and duties.²¹ According to the existing Law, a police officer can be assigned to a work abroad on the basis of the international rules on police cooperation (Art.151) which is decided by the MoI (Art.19). Such a regulation is not sufficiently precise due to several reasons.

The selection process and the termination of work of a police officer working abroad are not regulated, neither clear criteria that should be met by a certain police officer for acquiring the status of liaison officer or police attaché are set. The international rules on police cooperation represent a vague definition which contains general principles valid for a state in broad sense, so, they should be operationalized for each concrete case. In the Croatian Law on Police there is an almost identical regulation (Art.77), but there is also an appendix that the regulation of the assignment of a police officer abroad will be prescribed by the minister according to the regulations.²²

Police officer's work abroad could involve various activities depending on the model of police cooperation (bilateral, regional or multilateral). A police officer can take part in the work of multinational operations, joint investigation team, international law enforcement body, or can be an integral part of the diplomatic mission of his own state. In the latter case, the question about the identification of the state institution that would be responsible for the oversight of the police officer's work and the expenditures of the financing arises. In our case, this is the establishing of the jurisdiction of the MoI or the MFA.

The powers and duties that a police officer would have when working abroad are not defined. Finally, the character of the police officer's work itself can differ depending on whether the strategic or the operational character of police cooperation vis-à-vis a certain state is in question. At the same time, it is necessary to take into account the profile of a police officer and the quality of the knowledge that he

¹⁹ Interview, Santiago del Toro Riera, police attaché in Serbia, Kingdom of Spain, May 30, 2011.

²⁰ Ludo Block, „Combating Organized Crime in Europe: Practicalities of Police Cooperation“, *Policing*, vol.2, no.1, 2008, pp. 74-81.

²¹ Law on Police, "Official Journal of the RS", no.101/05.

²² Law on Police, "Official Journal of the RC", no. 34/11.

possesses. For example, if a police officer is not trained to deal with classified information, it is impossible to expect that the operational analytics and the criminal-intelligence work can be conducted in an adequate manner.

According to the existing ruling, the decision on the police officer's assignment should be taken by the MoI. Such a ruling is a proper one when speaking of police officer's accreditation. By the way, it is necessary to specify the competences of the organizational units within the MoI in the process of assignment and during the work of a police officer abroad.

It is impossible to regulate all the details of a liaison officer's work within the legal framework. Sometimes the excessive bureaucratization is an aggravating circumstance that provokes a chain of negative effects. However, it is necessary to specify the basic guidelines of the work, the powers and the duties of liaison officers. In several states where the European continental legal system is represented (Spain, France, Slovenia, the Czech Republic, Croatia) the whole procedure is regulated by a by-law. As far as such a ruling is followed, it is needed to make amendments to the existing Law on Police that would bind the MoI to introduce a special by-law that should regulate the accreditation procedure of a police officer through:

1. identification of an organizational unit and its structure within the MoI that will be in charge of the selection procedure;
2. regulation of the selection procedure;
3. determination of the powers, duties and termination of work;
4. determination of the competent body that will conduct oversight and control of the work;
5. regulation of the way of reporting and communication of a police officer with the oversight and control body;
6. envisaging the way of financing of the police officer's work expenditures.

The Model of Assigning Procedure of a Liaison Officer

Further in the text institutional and procedural steps for liaison officer's assignment are proposed. They could be helpful for the creating a by-law that would regulate the sphere of assignment of a police officer to a work abroad.

In the preparation of a proposal for selection and training of a police officer for the position of liaison officer the practices of the European-continental and the Anglo-Saxon police system are observed, mainly the legal framework and practice of Spain, France, the Netherlands, Slovenia, Croatia, the Czech Republic, Great Britain and USA.

How to choose the right candidate?

At the beginning, it is necessary to identify the organizational unit within the MoI that will be responsible for police officers' assignment abroad. Having in mind that we speak about an activity that is connected with the international police relations, but as well as with the management of the police

officer's carrier and human resources, it is necessary to form a mixed commission. In this commission should present:

1. the director of the police;
2. the chief of the Cabinet of the Minister of Interior;
3. the chief of the Bureau for International Co-operation and European Integration;
4. the chief of the Bureau for Strategic Planning;
5. the chief of the Sector for finance, human resources and common affairs.

The Bureau for International Co-operation and European Integration should play the role of chief coordinator and leader of the assignment of a police officer to a work abroad.

In the practice of the mentioned states for the position of a police representative an internal competition is announced by the responsible organizational unit for international police relations and is published in an internal bulletin. The duration of the proceedings is up to six months.²³

The Bureau for International Co-operation and European Integration in cooperation with the Sector for Finance, Human Resources and Common Affairs should announce a competition in May and publish it in the police magazine "The Police Today" and on the web-page of the MoI. The Bureau for Strategic Planning and the Bureau for International Co-operation and European Integration should determine in advance the states where the MoI plans to appoint its police representatives according to its financial resources. In this part of the process it is possible to involve the MFA, mainly in the determination of the strategically important states where police representatives of Serbia should be present. This possibility exists for example in the practice of appointment in the Czech Republic.²⁴ Here, it should be reminded that quantity (the number of police officers) is not the decisive indicator for success; it is rather the quality of the work and the planning of the final destinations.²⁵

The competition for vacancies, as it is called in Spain, should be limited exclusively to the employees of the MoI, notably the police officers. The contents of the competition should be regulated by a by-law, mainly in the definition of the so-called first criteria for the position of police representative. The selection criteria are the following:

1. proficiency in English;
2. readiness and ability to learn a second foreign language;²⁶
3. strong motivation for advancement in the career in the field of police cooperation;
4. professional experience in police work, mainly as a team leader in strategic (management capabilities), namely operational actions;²⁷
5. direct experience in international police activities;

²³ Interview with the representatives of the embassies of Great Britain, the Netherlands, Spain and France in the period May-June 2011.

²⁴ Interview, Sector for Security Policy, Ministry of the Interior of the Czech Republic, June 16, 2011.

²⁵ Didier Bigo, „Liaison Officers in Europe: New Officers in the European Security Field“, in: J. W. E. Sheptycki (ed.), *Issues in Transnational Policing*, London and New York, Routledge, p. 68.

²⁶ For example, the language of one of the states for which the dispatch of a police officer is planned.

²⁷ This is one of the major indicators for selection of a police officer, according to the Dutch experience (Interview, representative of the Embassy of the Kingdom of the Netherlands in Serbia, June 6, 2011).

6. disciplinary, misdemeanour or criminal proceedings should not have being brought against the candidate.

The interested police officers should send their applications to the Bureau for International Co-operation and European Integration till the end of June the same year. On the basis of the successful applications a list of candidates that have passed the first round of testing should be made. Thus, the second round of testing of the selection procedure begins and it includes:

1. written and oral test of English language knowledge;
2. testing of the written and oral communication skills;
3. security check,²⁸
4. interview with the so-called mixed commission.

By the end of August, the mixed commission should appoint the candidates for the positions of police representatives. The proposal for the decision about the selected candidates is submitted by the director of the police, respecting the opinion of the rest of his colleagues from the mixed commission. The final decision is enacted by the Minister of Interior in September the same year. Then, the preparation for obtaining an *agrément* from the receiving state should start.

During the selection of candidates it is necessary to take account of the police officer's profile, notably of the expertise in specific fields of the police work that are required for a certain state. Due to this, at present, there are different types of liaison officers: ones that are responsible for fights against terrorism, illegal drug trafficking, illegal migrations, violence at international sport events.

How to train a candidate?

The second significant criterion for successful police cooperation is the candidate's training. The time duration of the training is different in the different countries. The training in Great Britain is three or four months²⁹, in Spain and France - a month³⁰, in the Netherlands – three months³¹. Since, according to the suggested model, the Minister of Interior makes the final decision about the assignment in September the same year, perhaps the best is if the training of the police officers from Serbia lasts till the end of the year, so that in January the work at the new position starts.

The training program should not necessarily be regulated by a by-law as it will be constantly changed according to the demands and the plans for police cooperation of the MoI. In the elaboration and the implementation of the training program should participate the ACPS and the MFA Diplomatic Academy as key actors that can cover all the elements of the work of a police attaché. For example, in the practice in Spain the Royal Diplomatic School in Madrid is responsible for the training of the candidates on public international law.³² Such a practice could be used in Serbia too. Another

²⁸ For meeting this criteria it is necessary to introduce an amendment to the Art.111 of the Law on Police that during the final selection of the police representative (liaison officer or police attaché) security check will be performed with the prior consent of the candidate.

²⁹ Interview, representative of the UK Embassy, May 27, 2011.

³⁰ Interview, Santiago del Toro Riera, police attaché in Serbia, Kingdom of Spain, May 30, 2011; Interview, Dominique Biffo, police attaché in Serbia, Republic of France, June 6, 2011.

³¹ Interview, representative of the Embassy of the Kingdom of the Netherlands in Serbia, June 6, 2011.

³² Interview, Santiago del Toro Riera, police attaché in Serbia, Kingdom of Spain, May 30, 2011.

additional reason is that some employees of the MoI have finished or are being trained at the moment at the MFA Diplomatic Academy. Knowledge on public international law is of vital importance for liaison officers, as their work, including both privileges and immunities, is based on the Vienna Convention on Diplomatic Relations.

Besides the lectures on international law, the training program should contain:

1. English language courses, or courses in the language of the receiving state as far as the selected officer possesses an adequate level of knowledge of English;
2. introduction to new practical mechanisms of police cooperation and work, mainly in the field of fight against serious crimes,³³
3. a seminar on the mechanisms of exchange of information and using criminal intelligence data with a focus on privacy protection;
4. lectures on management of classified information;
5. special trainings on the security status of the state where a police officer is sent.

During the training it is necessary to bear in mind the character of the function (strategic or operational) of the police representative, and on this basis to formulate special lectures. For example, in strategically sense, a police officer should recognize individuals (not exclusively from the police) in the receiving state who have the necessary police knowledge, and who at the same time could ensure presentation of his knowledge in Serbia. Besides, it is necessary to recognize the methodology of the strategic planning and the ways of evaluation of the work of a police system and on the basis of such knowledge to propose changes in the domestic system. From operational point of view, the work of a police officer is different and refers to the exchange of criminal-intelligence information and elaboration of purposeful analysis of the work and prognosis of the organized criminal groups. Notwithstanding the differences, the interpersonal contacts and personal relations between the policemen and their trust perhaps has a greater and more significant role in the joint work than the well done procedures and rules of communication and exchange of information.

Basic Precondition: Strengthening the Culture of Exchange of Information

The exchange of information is an essential "tool" in the work of the police liaison officers. That is why in 2011 FBI adopted National Strategy for Exchange of Information.³⁴ This does not exhaust the need for adoption of such strategies in Serbia, but rather the need that the goals which are laid down in the FBI strategy should be recognized in the training and work of the Serbian police representatives. These goals are:

1. the necessity of strengthening the new culture of exchange of information and knowledge by emphasizing the preference for the information of active character;

³³ In the future, it is possible to use the mentoring practice that exists in France.

³⁴ The Strategy is available at: <http://www.fbi.gov/stats-services/publications/national-information-sharing-strategy-1/national-information-sharing-strategy-2011>.

2. establishing of mechanisms enabling a more simplified exchange of information through creation of new and focused technologies and policies;
3. production of more effectiveness and clear results by exchange of information;
4. privacy protection.

Literature:

Didier Bigo, „Liaison officers in Europe: new officers in the European security field”, u: J. W. E. Sheptycki (ed.), *Issues in Transnational Policing*, London and New York, Routledge,.

Ludo Block, „Combating Organized Crime in Europe: Practicalities of Police Cooperation”, *Policing*, vol. 2, no, 1, 2008, pp. 74–81.

How Can Civil Society Contribute to the Lawfulness of the Treatment of Illegal Migrants and Asylum Seekers?

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Abstract:

Police actions in the area of illegal migrations and asylum are an issue that becomes increasingly important in Serbia, although Serbia is not a destination, but mostly transit country for illegal migrants. The number of illegal migrants and asylum requests is growing from year to year, and bearing in mind the developments in Northern Africa and in the Middle East and Near East, it is expected that in the forthcoming period this number will grow even faster. Effective border control and the treatment of migrants that is in line with international human rights treaties will surely, in years to come, be a major challenge for all European countries, whether they are EU members, or those seeking to become such. In the countries in our region significant contribution to the improvement of police work in this area, and especially to respecting migrants' human rights, was made by the CSOs, through overseeing the way the state authorities treat these individuals. In this text we will try to explain why is it necessary to have this type of oversight in Serbia too, and in which way it could be realized.

Recommendations:

1. It is necessary to ensure the presence of the CSOs in the actions that the competent state bodies, notably the police, take towards the illegal migrants and potential asylum seekers; the necessary precondition for the effective operation of civil society organizations in this area is to build their capacity.
2. The presence of the CSOs should be as wide as possible – it should not be limited to procedures when an asylum request is submitted, but should include all actions that the competent bodies and this is first and foremost the police, take towards illegal migrants and asylum seekers.
3. At the same time, with the establishment of oversight system by CSOs, it is necessary to remove the shortcomings of the Law on Asylum that make it conflicting with the basic international standards in this area, e.g. lack of provision on suspensive effect of appeal on asylum decision.
4. It is necessary to lay down clearer criteria for determining the list of safe countries of origin and safe third countries; in addition, this list should be regularly and carefully updated, always taking into consideration the reports and views of international bodies for protection of human rights, above all the European Court of Human Rights, the UN Human Rights Committee and the UN Committee Against Torture; currently, Greece should be removed from the list of safe third countries, as the European Court of Human Rights concluded it cannot be regarded as such.

Introduction

Actions of the police and other state authorities in the area of illegal migrations and asylum is a topic that up to now has not attracted a lot of attention of the civil society in Serbia, so, there are few CSOs activities related to this field. Unlike that, in other countries of Central and Eastern Europe activities of CSOs in this area have been much more intense, thus establishing in some of them more or less effective system of monitoring the actions of the competent authorities, especially the police, towards illegal migrants and potential asylum seekers. However, increased activity of non-governmental organizations and the willingness of states to cooperate with them in this domain were stimulated by the fact that these countries were, or are now in the process of accession to the EU, as countries whose borders represent external borders of the EU, or the countries whose borders will become such on their accession to the EU. It should be noted that for the most non-governmental organizations in Serbia this domain remained outside of the sphere of interest also because the number of asylum requests was for years very small.

In recent years the number of asylum requests began to grow rapidly and taking into account the developments in countries such as Afghanistan, Pakistan, Libya, Syria or Iraq, it is expected that this growth is not only to continue, but also to intensify. In 2010, in Serbia 522 persons asked for asylum, which is almost twice more than the previous year, 2009, when 275 persons sought asylum, and even ten times higher than 2008, when there were only 52 asylum seekers.³⁵ In addition, the structure of asylum seekers has significantly changed, so that there are more juvenile asylum seekers (nearly 30%), which is a new challenge for the state, having in mind specific needs and special vulnerability of the persons falling to this category. Of course, the number of illegal migrants that do not seek protection in Serbia is much greater (the organizations visiting prisons can be assured of that, seeing very often large groups of foreigners convicted in an infringement procedure for illegal crossing the border),³⁶ so the number of persons whose treatment by state authorities should be followed is fairly large. Serbia, like other countries in the region that are not members of the EU, is still primarily a transit, not a destination country for illegal migrants. This is confirmed by the fact that most of the asylum seekers (usually more than 90%) leave the country before the end of the procedure.

It is unnecessary to remind how much attention the EU, whose membership Serbia aims as well, pays to the issue of illegal migrants and asylum seekers. Hence, the effective control of the border and the state authorities' adequate treatment of illegal migrants and potential asylum seekers will certainly be one of the significant topics in the process of EU accession. It is therefore important that the policy and the practice of treating these people to be improved, and CSOs could make considerable contribution to this.

In several countries of Central and Eastern Europe (Hungary, Slovenia, Croatia, Slovakia, Ukraine), civil society organizations have carried out various activities aimed at establishment of some form of civilian oversight over the actions of the authorities towards illegal migrants and potential asylum

³⁵ Data taken from: Centar za zaštitu i pomoć tražiocima azila, *O azilu [On Asylum]*, Centar za zaštitu i pomoć tražiocima azila, Beograd, 2011.

³⁶ See, for example report of the Belgrade Centre for Human Rights on the situation in institutions for the enforcement of criminal sanctions – "Treatment of persons deprived of freedom 1", 2010.

seekers. This implied systematic presence of representatives of the non-state actors (including CSOs) and monitoring the proceedings with foreigners and possible asylum seekers at the borders and in all facilities associated to the border (police stations, detention centres for foreigners etc.). Usually, the one that implemented the activities in such projects (commonly referred to as *border monitoring*) was the UNHCR, with CSOs as its partners. It is interesting that in Croatia it was established the first systematic monitoring mechanism by non-state actors, which does not involve the UNHCR at all – the whole project, in cooperation with the MoI is led entirely by a non-governmental organization: the Croatian Law Centre. The range of actions followed by CSOs differs – sometimes it depends on the methodology, but more often on the capacities of an organization. Some organizations monitored the actions of the state authorities only when the request for asylum was submitted, whilst others, like the Croatian Law Centre, monitored the actions of the competent authorities in any case when a foreigner has been detained by the police for illegal crossing or attempt to cross the border, regardless of whether or not he sought asylum. The size of the territory where such supervision was carried out in all these examples differed. Generally, the activities of the organizations that have exercised monitoring were restricted to specific police departments or the most frequent border crossings.

Although in Serbia there was no such a systematic monitoring by civil society organizations or the UNHCR, certain information on the actions of state authorities towards illegal migrants and asylum seekers coming from non-state actors could be found. In fact, asylum seekers do turn to the UNHCR and CSOs (mostly to the Centre for Protection and Assistance to Asylum Seekers) for legal assistance, so that these organizations could gain direct insight into the activities of the state authorities towards this category of illegal migrants. However, all the illegal migrants who do not start the asylum procedure remain beyond the scope of monitoring by the civil society organizations, and these migrants represent a majority. With the purpose of protecting their human rights, it would be important to establish a system of civilian oversight that would encompass overall treatment of the state apparatus towards illegal migrants.

In this area there are also problems that can be recognized even without direct access to the action of the state bodies, namely the Law on Asylum which itself has drawbacks that make it inconsistent with the relevant international legal documents binding for Serbia. Additionally, state authorities rarely take into account the practice, opinions and reports of the international bodies for human rights protection, which might lead to violations of international obligations that the state has undertaken.

Civilian Oversight of the Treatment of Illegal Migrants and Asylum Seekers

As already mentioned, a systematic civilian oversight over the treatment of foreigners – illegal migrants and potential asylum seekers – means constant presence of independent, non-state actors aimed at monitoring the way the officials, primarily police officers and employees in bodies which are under the jurisdiction of the MoI, treat foreigners at the border and in the facilities associated to the border (police stations, different detention premises, detention centres for foreigners, asylum centres etc.). It is clear that this monitoring is impossible to be conducted without the consent of the state, i.e. the relevant ministry (usually the one in charge of internal affairs). This consent is usually expressed through the contract or memorandum of cooperation between the ministry and the organization or

group of organizations to conduct the oversight, which specifies the terms of the cooperation. The most important is to determine the list of activities that the representatives of the organizations will be allowed to attend to. We have already mentioned that in the situation as it is in Serbia, it is of major significance to establish oversight of the treatment of all illegal migrants, because it is vital to find out whether they all have had access to the asylum procedure, i.e. whether those who did not initiate this process and showed intention to seek asylum, really had a chance to do so. The basic principle of the so-called refugee law is that everyone should have the opportunity to seek protection from persecution. Therefore, the oversight should be primarily focused on the access to asylum procedure. Moreover, it must provide an insight into the implementation of another basic principle of the international human rights law: the principle of *non-refoulement*, i.e. prohibition of expulsion or return to a country where a person's life or freedom would be threatened on account of his/her race, religion, nationality, membership of a particular social group political opinion (usually it is a possibility to be subjected to torture or inhuman or degrading treatment or punishment). Finally, this type of oversight can provide an insight into the implementation of readmission agreements, which are very important and carry the possibility of violations of human rights.

In Serbia, bearing in mind the size of the territory, the length of the border, the number of border crossings and the number of police departments, and especially considering the lack of resources, it is impossible to provide civilian oversight throughout the country. Therefore, in the beginning, the best would be to establish an oversight system at several key border crossings, i.e. in police departments where illegal migrants are often deprived of liberty (Subotica, Sremska Mitrovica, Novi Sad, Belgrade, Vranje). Of course, before that, it is necessary to conduct a serious training of the persons who will carry out the oversight. They should be allowed to attend all the actions towards foreigners (of course, it is impossible to enable the presence of the representative of the civil society organisation to the very action of deprivation of liberty, so that their presence will practically be possible from the moment of deprivation of liberty) and have access to all relevant documentation. This is usually done by a cooperation agreement determining that immediately upon the arrest of a foreigner a representative of the CSOs will be invited and allowed to attend the proceedings implemented in accordance with the law. In order to ensure that this would not slow down the police work, it is necessary to determine a period in which the representative of the organization performing oversight should appear (this period should not be longer than a few hours), after which the police takes actions required by the law, regardless of whether this representative is there or not. The entire process of oversight should be accompanied by exchange of information and observations between the police, i.e. the MoI and persons involved in the oversight.

Shortcomings of the Law on Asylum and Problems in its Implementation

The adoption of the Law on Asylum in 2007 was certainly a positive step in regulating this matter in Serbia. However, it was not preceded by a proper public debate, so that the text adopted by the National Assembly has serious shortcomings. Here we will point out only the most important ones. First, the terminology and definition of terms used in the Law, although in principle taken from the UN Convention Relating to the Status of Refugees from 1951, are not fully in line with it, which might cause problems in its implementation (e.g. terms such as "membership of a group" or "membership of

a particular social group”, the ambiguity of the term “social group”, the meaning of the term “family member”). These discrepancies should be rectified as soon as possible, especially because it is not a too demanding task. In addition, the text of the Law does not contain provisions laying down rules on suspensive effect of appeal on the decision on granting asylum, which might lead to violations of the rights of the persons seeking protection. Fortunately, it seems that in practice the authorities do not expel people who have been refused asylum until the decision in the asylum procedure is not final.³⁷ However, in order to prevent possible bad consequences, the Law should contain explicit rule on the suspensive effect of appeal in the asylum procedure.

It is not necessary to emphasize the importance of the procedures of asylum applications implemented quickly and efficiently. The so-called *administrative silence* should not occur, and unfortunately, this is currently the case.³⁸

One of the serious shortcomings of the Law is the lack of criteria to determine the concept of *safe country of origin and safe third country*. Specifically, the Law did not define the criteria allowing us to determine which country might be considered as “safe”, except that it generally requires a state to comply with the Convention Relating to the Status of Refugees and its accompanying Protocol. When determining the list of “safe countries of origin” and “safe third countries”, the authorities should take into account the information on the states provided by various, reliable sources, such as reports of international organizations and decisions of the bodies for the protection of human rights (such as the European Court of Human Rights, the UN Committee for Human Rights and the UN Committee against Torture). For example, EU law provides that the procedure for granting protection to refugees takes into account the information that can be obtained from the UNHCR, the Council of Europe and “other relevant international organizations”.³⁹ Unfortunately, our state authorities, whether the judicial authorities or not, in the proceeding implemented by them, rarely take into account the information that could be obtained by examining the practice of international judicial and quasi-judicial bodies for protection of human rights or following the reports of the international organizations or the UN and the CoE bodies.⁴⁰ That is why it is possible, for example, that Greece was still on the list of safe third countries at the end of June 2011, despite the fact that the European Court of Human Rights ruled on 21 January the decision holding Belgium and Greece responsible for violation of the prohibition of ill-treatment in relation to extradition of an Afghan national who was transferred from Belgium to Greece. There, the European Court considers the conditions in the institutions and facilities for detention of illegal immigrants contrary to the Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which prohibits torture and inhuman or degrading treatment or punishment.⁴¹ Immediately after this ruling, the European countries, albeit reluctantly, one by one ceased to extradite the illegal immigrants to Greece, thus protecting their human rights.

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ “Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status”, Article 29.

⁴⁰ On the implementation of the international treaties on human rights in Serbia, including the jurisprudence of national courts and acts on decisions and recommendations of bodies established under the Council of Europe and United Nations, see more in the annual reports of the Belgrade Centre for Human Rights on Human Rights in Serbia (formerly Yugoslavia and Serbia and Montenegro), published regularly since 1998. All 13 reports are available on internet presentation of the Belgrade Centre for Human Rights, www.bgcentar.org.rs

⁴¹ *M.S.S v. Belgium and Greece*, 30696/09.

Finally, we can conclude that all the existing problems related to the Law on Asylum, whether related to its content or implementation, are not insoluble and that increased presence of non-governmental organizations in the field of its implementation would certainly help in resolving them. A fortunate fact is that resolving these problems should not depend on the so-called political will, since this is a field for which political parties have not shown particular interest, and it is reasonable to expect that it will not be the battlefield of various political options.

Literature:

- Belgrade Centre for Human Rights, "Human rights in Yugoslavia 1998, 1999, 2000, 2001, 2002", "Human rights in Serbia and Montenegro 2003, 2004, 2005", "Human rights in Serbia 2006, 2007, 2008, 2009, 2010", Belgrade Centre for Human Rights, 1999-2011.
- Beogradski centar za ljudska prava, *Postupanje prema licima lišenim slobode [Treatment of Persons Deprived of Their Liberty]*, Beogradski centar za ljudska prava, Beograd, 2010.
- Centar za zaštitu i pomoć tražiocima azila, *O azilu [On Asylum]*, Centar za zaštitu i pomoć tražiocima azila, Beograd, 2011.
- Davorin Lapaš, *Međunarodnopravna zaštita izbjeglica [International Legal Protection of Refugees]*, Hrvatski pravni centar, Zagreb, 2008.
- Dina Dobrković, *Pravo na azil – pravni okvir u Republici Srbiji, komentar Zakona o azilu Srbije [The Right of Asylum – Legal Framework in the Republic of Serbia, a comment on the Law on Asylum in Serbia]*, Beogradski centar za ljudska prava, Beograd, 2008.
- Goranka Lalić Novak, Ivan Pađen, „The Europeanization of Asylum Policy: From Sovereignty via Harmony to Unity”, *Politička misao*, vol. 46, no. 5, 2009, pp. 75–101.
- Hungarian Helsinki Committee, National Police Headquarters, United Nations High Commissioner for Refugees, *Report on the Border Monitoring Program 2008–2009*, 2010.
- Juraj Buzalka, Vladimír Benč, *EU Border Monitoring: Slovak – Ukrainian Border – Vyšné Nemecké/Uzhgorod and Veľké Slemence/Mali Selmenci*, Research Center of the Slovak Foreign Policy Association, Bratislava and Prešov, 2007.
- Kerstin Zimmer, *Migrants and Refugees in the Buffer Zone: Asylum Policy in Ukraine*, Multicultural Center, Prague, 2008.