



HOW LACK OF EVIDENCE IN POLICE WORK LEADS TO VIOLATIONS OF HUMAN RIGHTS IN SERBIA

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Abstract

After the Second World War, the police in the Republic of Serbia introduced the model of the practice of „criminal investigation“ which was used in the former Soviet Union. This model of policing practice was focused on finding enemies among the citizens and informing the public that the enemies had been discovered. Evidence was considered irrelevant in this model of policing practice. By applying this model of police work, human rights have been permanently violated and citizens have been subjected to various types of torture. The results of the research in this paper showed that many reported citizens have never been convicted of indicted crimes. Also, the results of the research showed that this model of police work out many reported citizens, accused a small part of citizens, while a very small number were convicted. By filing criminal charges against citizens who have never been convicted, the police violated basic human rights international legal instruments. One of such rights was the right to justice in criminal proceedings, which should be based not only on legal but also on ethical and moral principles on which modern society develops. This right belongs to the group of basic human rights and it has been permanently violated in the application of the „criminal investigation“ model from the end of the Second World War to the beginning of the second decade of the 21st century. The result of this model of policing was the mass torture of citizens, their imprisonment, arrests, accusations, and investigations without any evidence against them, with many open criminal files that marked a large number of citizens and their families for life.

Keywords: *reported, accused, convicted, model of police work, criminal investigation.*

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1 THE METHODOLOGICAL APPROACH

Purpose: The purpose of this research paper is to analyze the work model used by police in



the Republic of Serbia by which the police investigate and report citizens and how this work model leads to violations of citizens' human rights.

Methods: Application of basic analytical and synthetic methods of cognition, general scientific methods, primarily comparative methods (comparative law methods) historical methods, and statistical methods and its techniques, descriptive statistics, and correlation analysis, as well as methods for data collection, especially testing methods, survey research techniques and quantitative and qualitative techniques of the methods of analysis of the content of legal and policy documents, this research paper analysis the relevant sources of domestic and foreign literature on adult offenders against whom „criminal charges“ have been filed by the police. The results of the questionnaire for adults against whom the procedure was completed based on a criminal report submitted to the police to the competent prosecutor determine that the procedures have finally ended with the prosecutor's decision to: reject criminal charges, suspend investigations, reject the investigation or file on indictment. Also, data on accused and convicted citizens were collected based on a survey conducted using “questionnaires for convicted adults against whom criminal proceedings have been lawfully terminated”. The data collected using survey refers to the number of reported, accused, and convicted citizens, based on a single methodology, applying a single procedure and identical statistical instruments in the survey of reported adults, as well as in surveys on accused and convicted adults, in criminals. The investigation included all criminals against whom the police filed criminal charges with the competent state prosecutors' office and against whom proceedings were legally conducted to the articles and completed. The investigation includes the criminal offenses of money laundering and the Criminal Code of the Republic of Serbia. The purpose of this research paper is to analyze the model of investigating used by the police in the Republic of Serbia through which they investigate and report to citizens and how this model of police work leads to violations of human rights.

Data sources: Data related to adult offenders against whom "criminal charges" were filed were collected based on "questionnaires for adults

against whom the procedure was completed on the basis of a criminal complaint submitted to the police to the competent prosecutor's office." "The questionnaire is filled in by all competent state prosecutor's offices after the public prosecutor determines that the procedure has finally ended with a final decision that: rejects the criminal report, suspends the investigation, rejects the investigation, or files an indictment. The data collected using this survey refer to the number of reported, accused, and convicted citizens, based on a single methodology, using a single procedure and identical statistical instruments in the survey of reported adults, as well as in the survey of adult accused and convicted, so-called criminals.

Coverage: The investigation included all criminals against whom the police filed criminal charges with the competent state prosecutor's office and against whom the criminal proceedings were legally conducted and completed. The research work includes the criminal offenses of money laundering and the criminal offense of accepting bribes according to the articles of the Criminal Code of the Republic of Serbia for three years. Three years were deliberately chosen when a model of investigation began in Serbia in which the prosecutor's office was responsible for the investigation, and not the police.

Meaning of categorical terms in the paper: To understand the essence of the subject of research, in this paper the meaning of categorical terms is presented according to the Criminal Procedure Code of the Republic of Serbia: The term *police* means the body of the Ministry of Internal Affairs responsible for maintaining public order and constitutional order. The term *Procedure* means the procedure of preliminary investigation in criminal proceedings. The term *reasonable presumption* includes a set of facts that indirectly indicate that a crime has been committed or that a certain person has committed a crime. The term *detained* is a term that means arrest, detention of a criminal suspect. The term *criminal offense* means an offense provided for in the Criminal Code and the Code of Criminal Procedure. The term, *adult offender* means a person who has already reached the age of 18 at the time when he committed the crime. The term *reported individual offender* means an adult offender against whom criminal proceedings are

based and the pre-trial proceedings end with a prosecutor's decision that: dismisses the charges, suspends the investigation, withdraws the charge, dismisses the investigation, or files a charge. The term *decision of the public prosecutor's office* means a written decision according to which the criminal proceedings have been terminated. The term *accused* means an adult against whom an indictment or private lawsuit has been filed, against whom a criminal complaint has been lawfully terminated by a court decision according to which: a private lawsuit is dismissed, proceedings are terminated or dismissed, an offender acquitted, charges dismissed, etc. The term *convicted person* means an adult who has been found guilty and against whom criminal sanctions have been imposed by the Criminal Procedure Code.

Research limitations/implications: These study results are limited to gathering research material for the investigation of the existing work methods of police in Serbia for detecting and securing the evidence for criminal charges against a citizen as the committer of a particular criminal.

Practical application: The results of research in this paper can be of practical use to the competent state authorities in proposing and adopting legal and ethical regulations, rules, and measures, as well as for the education of police officers. The results of the research have a practical application in the work and treatment of adult citizens reported, accused, and convicted of the crime of bribery and money laundering.

Originality/importance of research results: The originality of this research paper is reflected in the critical examination of the validity of the model of practical conduct of the police in investigations of criminal offenses of bribery and money laundering.

2 MODEL OF POLICING IN SERBIA AND HISTORICAL ASPECTS

A practical model of police service known as "crime investigation" was constructed less than a century ago by Beria. His main goal at the time was to focus police work on the citizen, not on the evidence. It was important and sufficient for the enemy to be revealed to the public, but not for evidence to be presented in court. This practical

model of security and police service was accepted by all socialist countries, including the former SFRY - Serbia because the leaders of those countries were educated by this model. Therefore, it was enough for the security services to publicly say that the citizen was guilty, that he was the enemy, and that the case was resolved in front of the public, and thus informed the citizens. To clarify the crime, the police officer does not need any evidence with which the court would prove the guilt of the defendant. This model was designed so that the police and security services derogated and took over court duties, as opposed to the model that existed in societies that respected the rule of law and in which the court determined what happened considering all the evidence collected and presented to the court. Building their practice on shedding light on crimes without the obligation to provide evidence to support an indictment against a citizen, the police have violated and continue to violate human rights in a socially unacceptable manner. This model of police and security services was used in Serbia until the end of the 2000s when it slowly began to be abandoned, and the prosecution and courts took responsibility for determining the relevant evidence. In this model, the police and security services have a responsibility to collect credible evidence only in pre-trial proceedings on the order of the prosecutor. With the practical application of the new model, the standards of developed countries in this area have been reached and the state of respect for human rights in the Republic of Serbia has been significantly improved.

On the other hand, in a small part of the public, the impression was created, which was even expressed by some political representatives in their political programs, that the court is most responsible and bears all responsibility for slow and inefficient coverage of crimes because its decisions create fertile ground for development factors that endanger the safety of citizens. In individual cases, even some government officials expressed the opinion that the court "is unable to convict defendants for choosing inadequate sentences, e.g., prison sentences", which negatively affects the courts' general crime prevention". Further, some statements by political representatives went so far as to argue that such judicial treatment of "resolved cases" creates a

negative climate in society and contributes to discouraging foreign investment. The main argument for such was the statistical data that there is a negative correlation between the number of reported, accused, and convicted persons.

The results of this Empirical Research have confirmed the justification for changing the model of transferring the investigation from the police to the prosecution and the judiciary. Also, the results of this research showed that the new model of clarifying criminal acts affects the quality of evidence, reducing criminal activities, as well as increasing the legal and economic security of citizens, reducing human rights violations, and increasing Serbia's credibility in the international community.

3 THE RESULTS OF AN EMPIRICAL RESEARCH

In the period from 2000 to 2008, in the Republic of Serbia, an indictment was filed against 41% of registered adult citizens, and the court ruled in 75% of those who were indicted. Only 35% of the total number of reported persons were sentenced to an appropriate sentence by a final court judgment. From the comparative analysis of research results in several countries that are not members of the European Union, the following tendencies were observed: 1) in the Republic of Croatia there is a negative correlation between the number of reported and accused citizens (40%: 45%), as well as a negative correlation between accused and convicted persons, which corresponds to the results found in the Republic of Serbia. Similar results were found in research in other countries around the Republic of Serbia. (RZS, 2008)

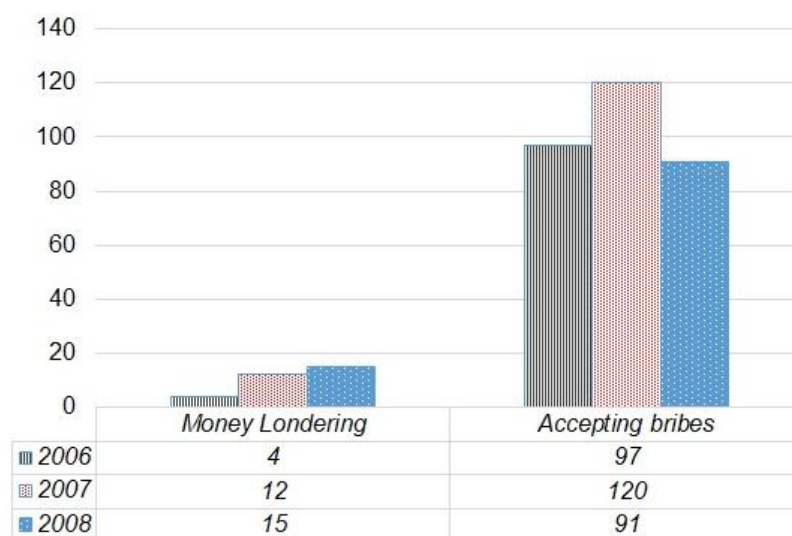


Chart 1. *The number of reported citizens for committing money- laundering offenses and criminal act of accepting bribes in the Republic of Serbia during the years 2006-2008.*

The analysis and interpretation of the results found in the Republic of Bosnia and Herzegovina reveal a positive correlation between the number of reported and accused individuals. In Bosnia and Herzegovina, in the same period, of the total number of persons reported for the crime of receiving and giving bribes, 70% were indicted, while the ratio between the number of reported and convicted persons was 80 " : 35%. Comparing the results found in neighboring countries such as

the Republic of Croatia, we notice a similar presence of the model of "clearing up criminal offenses", in which evidence does not support criminal charges against individuals and thus leads to flagrant human rights violations. The work of its police services, which are responsible for gathering evidence, has nothing to do with the 'crime investigation' model applied in developed countries.

Table 1. *The number of reported, charged, and convicted adults for money-laundering offenses and accepting bribes in the Republic of Serbia during the years 2006-8.*

	Reported	Charged		Convicted	
	<i>N</i>	<i>N</i>	Percentage (%)	<i>N</i>	Percentage (%)
2006					
Money laundering	4	0	0	0	0
Accepting bribes	97	43	44	38	89
2007					
Money laundering	12	1	0.8	1	100
Accepting bribes	129	38	29	31	80
2008					
Money laundering	15	4	26	4	100
Accepting bribes	91	33	36	23	70

The focus of this paper is the crimes of money laundering and corruption, two crimes that have a great impact on stability, more precisely the instability of the country, its institutions, its credibility abroad, and the possible investment of capital in this region by foreign companies on the one hand, and the model of policing and its impact on human rights violations and the quality of evidence on the other. The process of transition reform so far has shown that only the adoption of legislation and the establishment of institutional mechanisms by international standards by legislative bodies and other state bodies without building new foundations and principles of police work in Serbia did not give the expected results. Restoring old models and modernizing equipment is not efficient. On the contrary, they violate human rights even more.

The correlation analysis and comparative analysis of the research findings presented in Table 1 indicate the existence of a negative correlation between the number of reported and accused adults on the one hand, and a positive correlation between the number of accused persons and the number of convicted adults. State bodies that have not only the authority but also the legal duty to apply measures and methods to detect and collect evidence against perpetrators of money laundering and corruption, which will provide evidence to effectively combat this form of criminal activity. Instead, their model is focused on the individual. Namely, the results of the research unequivocally show that the number of accused

ranges from 0.8% to 44% of the total reported adults and that, regardless of all measures taken, the number of accused ranges from 56% to 90% of the total reported adults. On the other hand, of all the reported persons, the court ruled between 58% and 100% of cases.

4 CORRELATION BETWEEN THE NUMBER OF REPORTED AND CHARGED ADULTS AND COURT DECISIONS

The results of the research showed that in 2006, 43 charges were filed in the Republic of Serbia for the criminal offense of accepting bribes, which is only 44% of all reported adults for that criminal offense. Out of the total number of indictments, 88% of them were prosecuted in court, and for only 73% of those prosecuted, the court passed a final verdict sentencing them to prison for the crime of accepting bribes. In 2007, it was determined that out of 12 persons reported for the criminal offense of accepting bribes, only 28% of them were charged, while 80% of them were prosecuted before the competent court. Of the 80% prosecuted, 87% were sentenced to unconditional imprisonment. During 2008, an indictment was filed against 33 out of 91 reported persons for the criminal offense of accepting bribes, which is 36% of all reported citizens. The court passed a verdict in 70% of cases, and prison sentences without a suspended sentence were passed in 52% of cases.

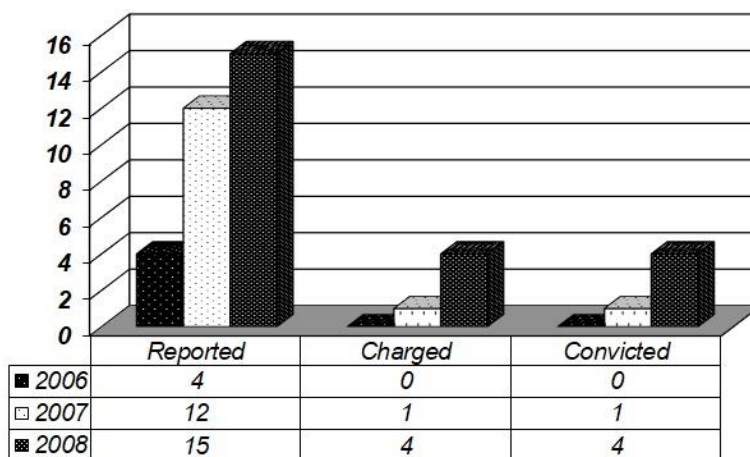


Chart 2. *The number of reported, charged, and convicted adults for money-laundering offenses during the years 2006-2008 in the Republic of Serbia*

Considering the results of the connection between the accused and those convicted of money laundering during 2008, we notice a significant negative correlation between the number of reported and accused adults. Namely, indictments were filed in only 26% of the total number of reported persons. The court sentenced four adults (100%) to unconditional imprisonment. The results of the three-year research show that there is a positive correlation between the number of accused and convicted adults, but also a negative correlation between the number of reported and convicted persons for the crime of accepting bribes in the Republic of Serbia in the period 2006-2009. when the investigation began to fall under the jurisdiction of the prosecution and the judiciary.

5 MODEL OF POLICE WORK TO GATHER EVIDENCE IN SERBIA

The model of police work based on "calculation" has been used in the Republic of Serbia since the end of the Second World War (1945). From the point of view of legal science, especially criminology (criminal process), this model is considered very regressive and significantly contributes to the inability of the prosecution to confirm its accusations with evidence, which is confirmed by the findings of this research. This model does not belong to the category of traditional models of police work which are partly aimed at proving criminal acts. Her focus is on

crime and the offender. This model is unproductive because it creates damage to civil rights and spends too much money from taxpayers to achieve insignificant efficiency and effectiveness. This model of policing aims to show the public in very visible and "proven" ways (often in front of TV cameras or in direct public statements) how the police managed to clear up a criminal event and catch the citizens who committed the crime, ignoring the fact that the citizen the perpetrator of a criminal offense may be found guilty and convicted only by a final court judgment, only by a court, and that this judgment may be challenged by ordinary or extraordinary legal remedies. This means that a citizen can suffer serious legal consequences, as well as other consequences imposed by law. The model of police practice in developed countries is not aimed at "clearing", but at gathering evidence that would support accusations against citizens.

Chart 3. This chart illustrates the number of reported, charged, and convicted adults for committing the crime of accepting bribes from 2006-2008 in the Republic of Serbia. This is yet another research finding illustrating a negative correlation between the numbers of reported, charged, and convicted adults of all reported adults, and a positive correlation between the number of charged adults and the number of convicted adults of all charged adults before the court.

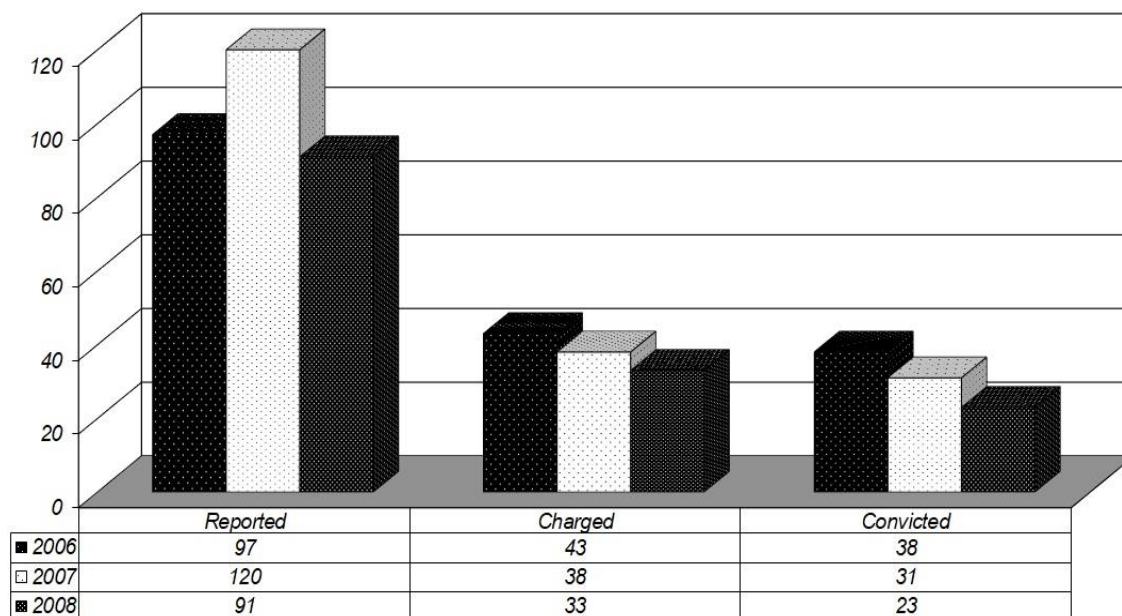


Chart 3. Numbers of reported, charged, and convicted adults for committing the crime of accepting bribes from 2006-2008

The application of this model of policing for more than sixty years in Serbia has resulted in a negative correlation between the number of citizens as "criminals" and the number of accused and convicted citizens. In more than two-thirds of reported criminal cases, charges are never filed, resulting in the production of crime and criminal activities, as well as huge financial outlays. This model of policing violates human rights because it imposes the detention of a person as well as the long time required to resolve a case. In developed countries, however, keeping a person in police custody is the exception, not the rule.

European Union countries do not use this model of policing. Europe is aware of different models of detecting and proving criminal activities. Therefore, two models can be distinguished at opposite ends of a wide range of models. One that is considered a modern model of policing, and the other a traditional model. Structurally speaking, in all developed countries, which have recognized what criminal activity is and how it is investigated, there are no examples of criminal investigation units and police units being structured according to the criminological categorization of crimes, except in Serbia.

We could say that to combat corruption and money laundering that destroy society and its economic and legal values, it is necessary to apply the idea of the famous Chinese philosopher

Confucius (K'ung Tzu (551-479 BC)) - "giving every object and concept the appropriate names such as son, father, minister, ruler, police officer, prosecutor, judge or president, implies certain responsibilities and duties". (Ch'ien, 1974)

6 CONCLUDING DISCUSSION OF THE RESEARCH RESULTS

The model of "cleansing of criminal acts" that is currently being applied in Serbia should not only be transformed, but also completely abolished. In Serbia, it is necessary to build a completely new model of police work based on longitudinal police operations. Such a model of policing would be independent of any type of crime or person. This model would be harmonized with the models of developed countries of the European Union and would be focused on the detection and collection of evidence, and not on the public, crimes, and persons. This would prevent human rights violations and reduce huge costs. Applying such a model would also achieve greater efficiency and effectiveness.

If by applying scientific methods, techniques, instruments, and procedures, we analyze the quality of the evidence offered in the investigation and analyze in detail the correlation between the number of reported, accused, and convicted adults, we will find that the court handled the cases in the most appropriate way. However, it should be

noted that the court is not a party to the proceedings and does not represent either of the two parties to the dispute. Only understood in this way, the role of the court makes sense in democratic societies and countries.

The results of this research showed that of all citizens reported for the crime of accepting bribes, 67% of them have never been charged. Charges were brought against only 29% of all registered citizens, and 4% of them were acquitted of all charges. In only 29% of cases, the court sentenced him to imprisonment with the possibility of imposing a suspended sentence.

An analysis of the results related to money laundering offenses shows that no indictment was ever filed against 87% of all reported adults, while charges were filed in only 13% of cases. Of all the adult defendants, the court in 100% of cases sentenced them to imprisonment, without any suspended sentence.

To change the structure and model of policing that would be focused on gathering evidence, it is necessary to have competent leading police experts, a new basis of education with new training programs, and a philosophy of decentralization and depersonalization of police powers.

In this regard, another key question arises regarding the Protector of Citizens' Rights, who from the point of view of the imbalance between

the number of reported and accused citizens would have to react in most cases and stand for the protection of human rights. On the other hand, all citizens who are reported but not charged with a crime, and then found guilty and convicted, suffer lasting consequences, as do their current and future descendants. This inflicts inestimable damage on the reputation of these people and their families, which cannot be compensated by anything.

7 SUGGESTIONS BASED ON THE FINDINGS IN THIS PAPER

The results of the research announced in this paper, as well as similar research conducted in Serbia in the last 20 years, indicate that the Republic of Serbia should completely abandon the model of police work based on "clearing criminal acts" which was applied until the beginning of the second decade of the 21st century. abandoning this model of policing is crucial for building legal security, respecting the human rights of citizens, and strengthening Serbia's credibility at the national and international levels.

The new model of police work in the Republic of Serbia must be based on longitudinal operations that are conducted independently of the existence of a crime and whose practice aims to detect and collect evidence, and not be focused on the individual and the crime.

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