

Powers of Private Security Officers in Serbia and Human Rights and Freedoms: Some Dilemmas and Possible Solutions

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Abstract: In modern society and the state, the delegation of the power levers is noticeable, especially the possibility of applying coercion, which is also observed in the field of private security. As it is a new approach in practice, it causes certain dilemmas. In order for the respect for human rights and freedoms to be at a reasonable level during the exercise of powers by private security officers, certain principles that the authors arrive at by abstracting legal norms must be respected. In order to better understand the relationship between the powers of public authorities and private security, the authors tried to reach certain conclusions using the comparative law method. Most controversies are caused by powers that are enforced in practice but are not regulated by law (protection of crime scene, regulating traffic and identifying the presence of alcohol and other psychoactive substances in the body), so the authors tried to find the best possible solutions through observation with participation. It is concluded that the best solution is to regulate the enforcement of these powers through amendments to the law.

Keywords: human rights and freedoms, powers, private security officers, law enforcement agency officers, law.

INTRODUCTION

Despite the scientific and technological progress, today's world has not become a safer place to live in. The dominant military threats, characteristic of the Cold War period, are replaced by multiple risks. New security threats, risks and challenges today come both from nature and human attitude towards it (climate change, an increasing number of natural disasters with increasingly serious consequences), from technology (nuclear energy, genetic engineering, nanotechnology, etc.), as well as from (malicious) deliberate action of people (wars, civil wars, terrorism, organized crime, migration) (Kešetović, 2021: 142). The state, as a social entity, has a monopoly over coercive measures, the direct implementation of which is entrusted to state bodies with the limitation of respect for human and

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minority rights and civil liberties guaranteed by the constitution and international legal acts, the principle of legality, proportionality, restraint, and subsidiarity.

More likely than citizens, the members of the police are to find themselves in a situation where their actions can be valued as legal or illegal, moral or immoral. Namely, the very nature of the police profession is such that it requires from the members of the police not only legal, but also moral judgment in almost all everyday situations, and this then means the possibility to make mistakes and do something that is not only socially unacceptable, but also unacceptable from the point of view of personal moral values (Kesić & Zekavica, 2020: 271). The aforementioned also applies to private security officers (hereinafter: PSO). Police officers, members of the Army (Military Police), security services, tax police and other law enforcement agencies have the general legal authority to exercise powers when the conditions issued by law are met. Private detectives no longer only collect data on the behaviour of individuals, their personal and business loyalty, but determine property ownership, search public or real estate records, they are involved in civil proceedings, perform computer forensics services, search for property in cases of fraud and theft, and discover hidden property or accounts and thus accelerate the availability of those funds for court proceedings, obtain information for lawyers in the preparation of criminal and civil cases, work for corporations collecting and protecting trade secrets, investigate the segment of economic espionage and counterespionage (Đukić & Gostimirović, 2024: 152).

With the adoption of the Law on Private Security (hereinafter: LPS) and the Law on Detective Activities (hereinafter: LDA) after full ten years, the legal framework for the application of powers by the PSO was created. In addition to the general legal authority to apply powers, the legislator limited the PSO's application of powers by concluding contracts and contracting the scope of powers that can be applied in the protection of objects, premises, businesses or persons, more closely regulated the manner of application and duties of the PSO (Nikač & Leštanin, 2023b: 69). Looking at the legal framework of the EU, it is concluded that there is no special regulation regulating private security services at the strategic level. At the level of the EU member states, we see different systems, where individual states regulate the issue of private security with general legal regulations (Germany) or others that have a special law regulating the area of private security (Leštanin & Nikač, 2023).

In exercising their powers, the PSO have time and space limitations with certain exceptions. As a rule, a PSO can apply and use powers only during physical protection operations in a protected facility or area. Outside the protected facility and area, they can apply their powers when securing the transport and transfer of money and valuable shipments, as well as during patrolling. The application of the PSO's powers outside the protected facility is also allowed when they secure a person, according to the security plan, in a public place and in the immediate vicinity of the person being secured (Art. 46 of the LPS). On the one hand, this legal solution is justified because it protects the public interest, since only officials of public authorities can have the right to exercise powers based on general legal authority and towards all citizens at any time on the territory of Serbia. On the other hand, this restriction can be a problem in certain particularly critical and urgent situations (e.g. if it is necessary to secure the crime scene outside the protected area, if it is necessary to provide assistance to the police outside the protected area, if it is necessary to remove the danger to people and material goods, etc.).



METHODS

In order to explore the issue of the power of PSOs and their impact on human rights and freedoms, the authors used the legal-dogmatic method, the comparative legal method and content analysis of literature and case law. First of all, the analysis of the law in the field of private security led to the basic principles in the application of power. Then, other laws regulating the powers of law enforcement officers were analysed. Systematization resulted in a list of potential powers that are applied by all law enforcement officers. The use of force is singled out as the most important power, where the law enforcement officers have been identified and have the power to apply them under the conditions issued by law. The obtained results are presented in tables. The comparative legal method has led to the identification of powers of private security officers in other countries. In the course of the research, several powers were singled out that cause certain doubts, which is why the authors considered that their analysis and further innovation is necessary and presented them in the paper.

PRINCIPLES IN THE APPLICATION OF THE POWERS OF PRIVATE SECURITY OFFICERS

Violation of human dignity will exist until man changes himself – until he overcomes the impulsive-destructive potentials of his nature and develops a mindfulness of his own. This change is at the same time the hardest one, because it requires serious effort from an individual. It requires a kind of individual revolution and accepting the highest ethical principles that must be supported by the practical acts of the individuals' will (Zekavica, 2019: 27). Bearing in mind that the exercise of powers may lead to the violation and restriction of certain human rights and freedoms, the legislator has foreseen the observance of certain principles, namely: the principle of legality, the contractual principle, the principle of proportionality, the principle of gradualism and the anti-discrimination principle.

The principle of legality is reflected in the obligation of the PSO to exercise powers only if the conditions issued by law are met, only those powers issued by law and to act only in the manner established in the LPS, the LDA and other regulations.

The contractual principle implies that the PSO can only exercise the power that is contracted, if the conditions issued by law are met, in the issued manner with the limitations provided for in the contract. The PSO were given the widest framework for the exercise of their powers by law. The provision of private security and private detective services must be contracted (Art. 20 of the LPS and Art. 12 of the LDA) between a licensed business entity as a service provider and a business entity or a person as a service user. The contract must define the framework for the exercise of PSO's powers, which cannot be wider than the legal framework, but can be narrowed. The will of the contracting parties cannot go beyond the framework issued in the LPS and the LDA, i.e. they cannot contract for the protection of persons and property that are under the exclusive competence of state authorities (police and security services) and the application of operational methods and means, i.e. operational-technical means and methods applied by state authorities on the basis of special regulations (Nikač & Leštanin, 2023b: 198). There is even a duty to refuse the conclusion of a contract if the service user's request refers to the performance of tasks



that are not within the competence of the private detective, when the processing of data that may not be processed is requested and when the performance of detective services is contrary to the interests of other service users with whom they have already concluded a contract, other laws and public morality (Art. 12 of the LDA).

The principle of proportionality means that restriction of certain rights and freedoms of citizens and the use of force must be proportionate to the endangered good that is being defended against the threat of an individual or group that behaves illegally. In the case of restrictions on the rights and freedoms of citizens, the PSO must keep in mind the purpose, nature and extent of the restrictions, as well as the principle of proportionality. Disproportionate restriction of rights and freedoms or disproportionate use of force can lead to exceeding the limits of authority, which constitutes a felony. In accordance with internationally proclaimed standards in the field of human rights, legislator also imposes a ban on torture, inhumane or degrading treatment by the PSO (Art. 46 of the LPS). PSO are obliged to stop exercising the powers when the reasons for which the powers were applied cease or when they determine that they will not be able to perform the task in that way. Before exercising the powers, PSO must, in each specific case, assess whether they can exercise the powers in a safe manner, i.e. without endangering their own safety and that of other persons. If it not so, he/she informs the control centre about this without delay (Art. 3, par. 2 of the Rulebook on the method of applying the powers of private security officers). The law does not regulate further action of the operator in the control centre, but what should follow is that the operator informs the police about everything, who must go to the scene.

The principle of gradualness emphasizes the duty of the PSO to achieve the execution of the task with the least harmful consequences when applying the powers, i.e. to apply first those powers that cause the least harm to the person, if in relation to the circumstances it is allowed to apply more measures. The exercise of the PSO's powers must not cause more harmful consequences than those that would have occurred if it had not applied them. This principle also implies that, before exercise of the powers, the PSO must introduce himself/herself to the citizen against whom he/she intends to apply the authority and warn him/her that he/she will exercise powers, unless it could endanger the safety of the PSO or another person.

The PSO's exercise of the powers should be devoid of discrimination on any basis (gender, race, skin colour, ethnic or social origin, language, religion, belonging to minorities, political, sexual or other orientation, disability, etc.). This is particularly important when assessing whether and which power will be applied, and in what way, where the anti-discrimination principle comes to full expression. This principle is particularly important given the results of a study that showed that the level of recognition of the essence of discrimination is still low and unsatisfactory, that the perception of the responsibility and potential influence of the police on the level of discrimination in society is erroneous, etc. (Zekavica, 2023: 39–40). This principle also has its roots in Serbian criminal legislation. The legislator protects citizens from discrimination through the incrimination of the felony 'Violation of equality' in Art. 128 of the Criminal Code (CC). The act of committing this felony has two alternative forms: denying or limiting the rights of citizens (negative form), or giving citizens privileges or benefits (positive form). The act of execution must be carried out contrary to the Serbian Constitution, the law or other regulations and due



to nonbelonging to a certain group, that is, the existence of certain differences in beliefs, life orientation and the like. The perpetrator of this felony can be any person, including a police security officer, and it can only be committed with intent. This felony is punishable by a prison sentence of up to three years.

THE RELATIONSHIP OF POWERS IN THE FIELD OF PRIVATE SECURITY WITH OTHER LAW ENFORCEMENT AGENCIES IN SERBIA

In order to properly understand the relationship of powers in the field of private security with other law enforcement agencies, Table 1 shows the officers who have certain powers in the legal system of Serbia and the regulations governing the area of carrying out of powers.

Table 1. *Officers and Regulations Governing the Area of Powers*

Officer	Regulation
Police officer	Police Law (PL)
Security Information Agency (SIA) officer	Law on Security Information Agency (LSIA)
Military Police (MP) officer	Ordinance on police measures and actions and police powers, appearance, issuance, use and destruction of official identification and badges of authorized officers of the Military Police (Ordinance)
Military Security Agency officer	Law on Military Security Agency and Military Intelligence Agency (LMSA and MIA)
Military Intelligence Agency officer	Law on Military Security Agency and Military Intelligence Agency Law (LMSA and MIA)
Communal police officer	Law on Communal Militia (LCM)
Tax Police officer	Law on Tax Procedure and Tax Administration (LTPTA)
Customs officer	Customs Law (CL)
Warden (prison guard)	Law on Execution of Criminal Sanctions (LECS)
Judiciary guard	Rulebook on Judiciary Guard (RJG)
Private security officer	Law on Private Security (LPS)
Ski slope steward	Public Ski Resorts Law (PSRL)
Private detective	Law on Detective Activities (LDA)
Nature guardian	Law on Nature Protection (LNP)
Forest guardian	Forest Law (FL)
Game warden	Law on Wild Animals and Hunting (LWAH)
Fish warden	Law on Protection and Sustainable Use of Fish Stocks (LPSUFS)



The starting point consists of police officers who, based on Art. 64 of the PL carry out more than 15 powers and 13 means of coercion. Identical powers by the connecting provision from Art. 12 of the LSIA are also given to authorized SIA officer. Likewise, according to Art. 3 of the Ordinance, MP Officers have the same scope of powers as police officers. Apart from these three groups of civil servants, as law enforcement officers with certain powers in the legal system of Serbia, there are military security and intelligence officers (Art. 23 and 33 of the LMSA and the MIA), communal militiamen (Art. 18 of the LCM), tax police officer (Art. 135 of the LTPTA), customs officer (Art. 30–42 of the CL), warden (Art. 21, 143 and 197 of the LECS), judiciary guard (Art. 7 and 8 of the RJG), private security officers and stewards (Art. 46 of the LPS), ski slope stewards, i.e. ski stewards (Art. 54 of the PSRL), private detectives (Art. 10–21 of the LDA), guards of the protected area, i.e. nature guardians (Art. 110 of the LNP), forest guardians (Art. 41 of the FL), game wardens (Art. 58 of the LWAH), and fish wardens (Art. 14 of the LPSUFS).

Table 2. Powers of Law Enforcement Officers

Power/officer	Police	Custom	Communal	Milit. Security	Mil. Intelligence	Tax police	Warden	Judiciary	Private security	Steward	Ski steward	Private detective	Nature guardian	Forest guardian	Game warden	Fish warden
Warning and Order	*	*	*						*	*	*					
Persons ID Verification	*	*	*	*		*		*	*	*			*	*	*	*
Identification of Objects	*	*		*		*										
Summons	*			*		*										
Conveyance	*					*									*	
Detention of a Person	*	*					*	*	*	*						
Temporary Restriction of Freedom of Movement	*	*					*	*			*					
Official interview	*	*	*	*	*	*						*				
Temporary Seizure of Objects	*	*	*	*		*		*	*	*	*		*	*	*	*
Search of Facilities, Assets, Premises and Documentation	*	*		*		*										*
Counter-diversion Search	*															
Stop of Persons, Objects and Means of Transportation	*	*	*				*		*	*				*	*	*



Search of Persons, Objects and Means of Transportation	*	*	*			*	*	*	*		*	*	*	*
Crime Scene Protection	*													
Use of Other People's Means of Transportation and Communication	*			*	*									
Identifying the Presence of Alcohol and/or Psychoactive Substances	*													
Security Checks	*													
Receipt of Found Items	*													
Coercion Means	*	*	*	*	*		*	*	*	*		*		

As it can be seen from Table 2, police officers, MP Officers and authorized SIA officers have the greatest range of powers. Powers such as persons ID verification, temporary confiscation of objects, and the stop and search of vehicles and luggage are held by all law enforcement officers, with exception of warden (even forest guardians, game wardens and fish wardens have these powers). With the exception of tax police officer, ski stewards, nature guardians, forest guardians, game wardens and fish wardens, all other law enforcement officers have the right to use coercive means.

Table 3. *Coercive Means of Law Enforcement Officers*

Coercive means/officer	Police/SIA	Military police	Customs	Communal	Milit. Security	Mi. Intelligence	Warden	Judiciary	Private Security	Steward	Priv. Detective
Physical Force	*	*	*	*			*	*	*	*	*
Sensitizing Agent Spray (Gas Spray)	*	*	*	*					*		*
Electromagnetic Devices	*	*	*								
Baton	*	*	*	*			*	*			
Handcuffs	*	*	*	*			*		*		
Special Vehicles	*	*	*								
Dogs	*	*	*						*		
Horses	*	*	*								



Passage Blocking Means	*	*	*						
Water Cannons	*	*	*				*		
Chemical Agents	*	*	*				*		
Special Types of Weapons and Devices	*	*	*						
Firearms	*	*	*		*	*	*	*	*

As it can be seen from Table 3, there is a difference in the types of coercion means. Physical force, as the mildest coercive means, can be used by police officers, the MP Officer and authorized SIA officer, warden, judicial guards and PSO. As a novelty in our legal system, the so-called gas spray can be used by police officers, MP officer, SIA officer, communal militia and PSO and private detective. Police officers, MP officer, SIA officer, Military Security and Intelligence officer,³ customs officer, warden, judicial guards, PSO and private detective have the right to use firearms under legally issued conditions, as the most severe coercive means.

Table 4. Powers of Private Security Officer by States

Powers of private security officer/state	Serbia	England	Germany	Croatia	Slovenia	North Macedonia	Montenegro	Republic of Srpska	Federation of B&H	Brcko District
Warning	*	*		*	*	*	*		*	
Order	*	*			*		*	*		*
Persons ID Verification	*			*	*	*	*	*	*	*
Detention of a Person	*		*	*	*	*	*	*	*	*
Prohibition of Access to the Facility	*	*	*	*	*	*	*	*	*	*
Prohibition of recording						*				
Temporary Seizure of Objects	*		*	*	*		*			
Stop of Persons, Objects and Means of Transportation	*						*		*	
Search of Persons, Objects and Means of Transportation	*	*	*	*	*	*	*	*	*	*

³ The police officers, SIA, Military Security and Intelligence officers also have special powers to carry out tasks within their jurisdiction secretly and covertly, such as secret monitoring, secret recording, secret electronic surveillance of telecommunications, operative penetration into organizations, institutions and groups, simulated operations, but they are not the subject of this paper.



Crime Scene Protection				*			*		*	
Coercion Means (Use of Force)	*	*	*	*	*	*	*	*	*	*
Physical Force	*	*	*	*	*	*	*	*	*	*
Sensitizing Agent Spray (Gas Spray)	*			*	*	*	*			
Baton		*				*	*			
Handcuffs	*			*	*	*	*			
Dogs	*	*		*	*	*	*			
Firearms	*	*	*	*	*	*	*	*	*	*

Comparatively, Montenegro gives its PSO the widest range of powers. Warning and order are the mildest forms of power and are present in almost all legal systems, with the exception of Germany, but we also notice differences in the Bosnian legal system. ID verification, detention, prohibition of access to a protected object, search of persons, objects and vehicles and the use of force are issued in almost all observed legal systems in the Serbian neighbourhood states. In the German legal system, detention can only be undertaken if they are performing tasks for the needs of the army. North Macedonia is distinguished by the fact that, as a power, there is also a ban on filming a protected object. In Croatia, Montenegro and the Federation of Bosnia and Herzegovina, it is expressly issued that a PSO can protect the crime scene. The stopping of persons and vehicles is expressly provided for PSO in Montenegro, the Federation of Bosnia and Herzegovina and Serbia. Of the means of coercion, Montenegro, North Macedonia and England offer the possibility of using (rubber) batons, while the other countries do not offer such an opportunity. PSO in Bosnia and Herzegovina (all three entities) can only use physical force and firearms. In all countries, PSO can use physical force and firearms if the conditions issued by law are met. PSO in UK, in addition to being able to carry out a limited search of persons and things and confiscate objects, do not have special powers compared to those they have as citizens. This practically means that the PSO has the same powers as any other citizen, which means that they are not even allowed to search and confiscate property (Leštanin, 2021b: 108–109).

Nemeth (2018: 131), according to case law, statutory materials, and common law principles in the USA, concludes that the expansionists' theory of constitutional protection, as to the arrest, search, and seizure principles in private security, garners little intellectual or judicial support. Scholarly and academic materials urge increased constitutional oversight in private sector justice, but jurists and legislators alike have turned a deaf ear. The arguments posed throughout this section have included attempts, disguised in different forms, to show that the task of private sector justice is, at best, mimicry of public law enforcement (Nemeth, 2018: 131). Considering the legal system in the US and case law as the primary source of law, this is a potentially major problem for private security.

In the private security system in Serbia, there are also certain powers of the PSO that are applied in practice but are not regulated by law. These are crime scene protection, regulating traffic and identifying the presence of alcohol and other psychoactive substances in the body.



CRIME SCENE PROTECTION

There is no express provision of the LPS authorizing PSO or stewards to provide security at the scene of a (harmful) event (further: crime scene). However, the Rulebook on Programs and Methods of Conducting Professional Training of Private Security and Stewards, in the Training Program for the performance of physical and technical protection within Topic 1 'Regulatory regulation of private security activities' provides for training in the field of crime scene protection.

Crime scene protection involves a set of activities undertaken by a PSO in order to preserve the situation until the arrival of police officers, which include the prohibition of unauthorized access, prevention of damage or destruction of objects and traces, changes in their position and mutual relationship, as well as prevention of leaving traces that are not related with the event.

The crime scene to be protected is usually located in the protected object or area or in its immediate vicinity, i.e. in the object/area where the protected person is located, where the PSO has visibility from the protected object to the crime scene to be protected.

The first and basic duty of a PSO is to call for emergency medical assistance and provide first aid to persons who may be presumed to be in danger. Also, elimination of possible danger to life and health of people (e.g. turning off electricity or gas installations in the event of a fire) and informing other services (police, fire and rescue service, etc.) are basic obligations. As far as possible, the PSO should observe the schedule of all objects and traces before the scene is possibly disturbed and should notice any disturbance of the scene in order to point it out to the police officers and the investigation team. Mobile phones, tablets and other devices that have a camera can significantly help PSO in this, where the scene can be fixed by recording or photographing (Leštanin, 2021a: 164–165). After the 9/11 terrorist attacks, security measures such as the use of cameras, requiring electronic ID cards, etc. were considered extreme. Today, they are applied everywhere and are considered standard protection measures (Keković, 2022, 33–34). It would be ideal if, in addition to physical protection measures, a specific space or object is protected by technical protection measures, i.e. video security, where important data can be obtained by playing back the archived recordings.

The movement of both your own and other persons around the site should be completely disabled as much as possible in the given situation. The security officer can be helped in this by any handy means (motor vehicle, agricultural and other tools, light-reflecting vest, light-coloured fabric, etc.). With that, the security officer will set the boundaries of the place and mark it in a suitable way. In addition to the obvious psychological barrier, the installation of obstacles and officials will physically prevent the entry of unauthorized persons who could move, damage or destroy evidence. Items and traces on the scene are subject to changes both due to the mechanical action of the persons present and due to climatic conditions. That is why the PSO, until the arrival of the police officers, should take measures to protect items and traces from the influence of unfavourable climatic conditions (rain, snow, wind, strong sun, high temperatures, etc.). Special protection of important objects and traces is achieved by covering, i.e. by adequately placing temporary means (nylon, waterproof canvas, boards, various containers, etc.) over the most important objects and traces, and only when this is not possible, by removing them and moving them to a more convenient place.



All persons found at the scene should be identified and their data should be recorded, which should be handed over to the police officers. Such persons may be asked to remain on the scene until the arrival of police officers, but they may not be detained unless they have items with them that can serve as evidence. Only a suspect, i.e. a person suspected of having committed a felony and caught in the crime, a person caught committing a misdemeanour with elements of violence, and a person who has items that can be used as evidence in criminal and misdemeanour proceedings or items for assault or self-harm, can be detained (Art. 50 of the LPS). Apprehension in the commission of a crime or misdemeanour should be understood as apprehension of the perpetrator at the place of commission of the crime or in the immediate vicinity of that place, at the time of commission or immediately after the commission of the crime or misdemeanour (Leštanin, 2021b: 100). This is a temporary detention that can only last until the arrival of police officers and can be carried out in a protected facility or area. The PSO is obliged to immediately inform the police about the temporary detention of a person. The detained person must be under the direct physical supervision of a PSO, in order to prevent the person from endangering his/her own safety or the safety of other persons, causing damage or destruction of property, or causing damage to other property protected by law (Leštanin, 2021b: 165).

It must be emphasized that a PSO can also be criminally responsible if he/she knowingly hides the perpetrator of the crime or helps him/her not to be discovered by concealing the means by which the crime was committed, traces or in some other way (Art. 333 of the CC).

The PSO must inform the police officers about the situation and the measures taken during the crime scene protection after their arrival at the scene. The arrival of the police officers does not end the activity of the PSO, but it must act in everything according to the orders of the police officers and provide them with all the necessary assistance in the further security of the scene if this is required. Taking into account the objectives of engaging the PSO, which is the securing of the protected person, facility, business or space, the protection of crime scene is an obligation and a duty, regardless of whether such an obligation is contractual (Nikač & Leštanin, 2023b: 89).

The PSO's obligation to inform the police and other public services about events and phenomena within their jurisdiction that require their involvement can be general or special. Notification can be direct or indirect. Immediate notification implies that the PSO personally informs the police or other public service about an event within their jurisdiction. Indirect notification exists when a PSO notifies a control centre, and the control centre notifies the police or other public service. The general obligation of a PSO to inform the police and other public services about events and occurrences under their jurisdiction is equated with the obligation of all citizens to report certain serious crimes and preparations for committing crimes. Citizens are obliged to report the preparation of the crime for which, according to the CC, a prison sentence of five years or a severe sentence can be imposed, at a time when it was still possible to prevent its execution, and the crime was attempted or carried out. In addition, there is an obligation to report a crime that has already been committed, for which life imprisonment can be imposed, before both the crime and the perpetrator are discovered (Art. 332 of the CC). From all of the above, there is a general obligation to inform the police or the prosecutor's office about the commission of a crime by a PSO, regardless of whether they are employed or not.



The special notification obligation implies that the operator in the control centre or the leader of the patrol team is obliged to immediately, without delay, inform the police about the crime or misdemeanours with elements of violence in the protected object/area or the space that is visible from the protected area or object or on the direction movements. This obligation also refers to the notification of other public services (firemen, emergency medical assistance, etc.) when there is a need for their engagement (Art. 44 of the LPS). Acting contrary to this obligation is a misdemeanour punishable by a fine and a protective measure prohibiting the performance of certain activities for a period of three months to one year. In order to protect the human rights and freedoms in Serbia and the purposeful legal security of all citizens, the authors of this paper dared to propose that the crime scene protection should be regulated by amendments to the LPS, as follows:

“The private security officer is obliged to protect a scene of a crime or an accident or any other event for which it is necessary to determine the facts and circumstances of the event by direct observation.

As an exception to the law, the private security officer is obliged to protect a crime scene outside the protected object or area if in this way the execution of the contract with the service user is not hindered.

The private security officer can temporarily detain a person who can provide important information about crime or other procedure, which he/she immediately informs the control centre about. Upon their arrival, the detained person is handed over to the police.

When protecting a crime scene, the private security officer is obliged to take all measures to protect and preserve the items and traces of the crime or misdemeanour and to ensure that the scene remains unchanged until the arrival of the police.”

TRAFFIC REGULATION BY PRIVATE SECURITY OFFICERS

Can a PSO regulate traffic? In order to give an answer to this question, the authors started by determining a possible express provision in the LPS. However, there is no express provision authorizing traffic regulation, but there is a PSO power entitled ‘Stop and search of persons, items and means of transport’ issued in Art. 49 of the LPS. Access control is performed at the entrance/exit to/from the protected object/area, which should be specially marked and contain the necessary information for persons and vehicles accessing the control. The primary duty of the PSO is to verify the ID of the person who intends to enter the facility and to verify the authorization to enter the facility. ID verification is performed by comparing the photo in the document, that is, the photo from the electronic database with the person whose identity is being verified. If there is doubt about the credibility of the document, the PSO can check personal data by asking the person questions.

When performing physical security tasks, various situations are possible during ID verification in access control. In case of refusal of ID verification, two situations are possible:

- 1) a situation in which a person refuses ID verification when entering a protected facility/area, the PSO will simply not allow entry into the protected area;
- 2) the situation when leaving or being found in the protected area/object itself when the person refuses to show a document and refuses any communication and co-



operation with the PSO that can determine its ID, the PSO informs the control centre about this, inspects and detains the person until the arrival of the police, if the conditions for detaining a person are met.

In order to preserve its own safety, the PSO warns the person to find and hand over the document with only one hand, without sudden movements, and to keep the other hand down next to the body so that the palms are visible. If it is a driver or a person in a vehicle, the other hand should be on the steering wheel or in front of the PSO so that palms are visible. If the person whose identity is being checked requests from the PSO the information about the reasons for the check, they are obliged to provide such information to that person immediately after the check has been carried out.

If the PSO determines that the person has permission to enter the facility, they record the data about the person (and the vehicle) in the proper records and lets the person pass. Upon assessment, a search of the person, means of transport and luggage may be carried out and items may be temporarily confiscated. At the exit of the person (and vehicle) to which he/she has previously approved entry, the PSO records the data in the proper records (notes the time of exit, items, etc.).

The user of physical security services should provide the licensed service provider with a list of the vehicles they use and are authorized to enter the protected area. Use written procedures to organize the documentation that should accompany official vehicles (order, permit, etc.), items that employees can bring in/out, and goods that can enter/exit. The PSO is obliged to prevent any entry/exit of objects that are not allowed. It can also be arranged who is the contact person of the service user who approves the entry/exit of goods (raw materials, finished products, etc.) with a signature. In this way, it is given clear and precise authorizations in access control.

If it is contracted, a PSO can control compliance with the internal rules of movement and parking of vehicles. All vehicles in the protected area of the facility must be parked in a proper place in accordance with written procedures or some other internal document of the protection service user. The PSO does not have the right to control vehicles or regulate traffic outside the protected area, but it can point out irregularities or the possibility of endangerment to police officers.

If the regulation of the movement of means of transport has been agreed in the protected area, PSOs can issue warnings and orders in the protected area with light or sound signals, hand and body movements. The method of issuing warnings and orders by means of light or sound signals, hand and body movements is issued by the Law on Road Traffic Safety and the Rulebook on Signs Given to Road Traffic Participants by Police Officers.

For example, when stopping a vehicle at the entrance to a protected facility, the PSO raises its right hand vertically with the palm of open hand facing forward – which means a mandatory stop for all drivers towards whom the PSO's palm and chest are facing. The PSO may have a stop sign or a flashlight in the right hand. Similarly, if the PSO lightly waves free hand horizontally up and down, with the palm of open hand facing down, it means that the driver in whose direction that signal is given should reduce the speed of the vehicle, or e.g. if the PSO raises right hand vertically and extends left hand horizontally with the palm of open hand pointing to the left/right – it means showing the driver where to stop/park vehicle in the protected area/object.



IDENTIFYING THE PRESENCE OF ALCOHOL AND/OR PSYCHOACTIVE SUBSTANCES

What causes controversies in theory and practice is the possibility of identifying the presence of alcohol, narcotic drugs and other psychoactive substances in the body by a PSO in a person who intends to enter and stay in a protected area. On the one hand, the LPS did not give the PSO a clear and unambiguous authorization to apply any medical procedures. The Law on the Prevention of Violence and Misbehaviour at Sports Events gives the opportunity to the steward at a sports event to prohibit access to the facility where the sports event is held to persons under the influence of alcohol or other intoxicants. Here the question arises how the steward will determine whether a potential participant in a sports event is under the influence of alcohol or other intoxicants. In the absence of adequate legislation, the steward is left with the help of a visual inspection of the person, his/her behaviour and its own assessment to decide which person to ban and which to grant access to the sports event.

On the other hand, in practice, protection service users require from private security providers to prohibit access to persons under the influence of alcohol, narcotic drugs and other psychoactive substances. Employment Act in Art. 179, par. 4 gives the employer the opportunity to refer the employee to an appropriate analysis in an authorized health institution designated by the employer, in order to determine the presence of alcohol or other intoxicants in the body. The same provision gives the employer the possibility to determine the presence of alcohol or other intoxicants in the employee's body in another way if it is issued by the general legal document of the company (e.g. collective contract or internal labour regulations). The employee's refusal to respond to the employer's invitation to perform the analysis is considered an offence of labour discipline, which may result in the termination of the employment contract. Jurisprudence in cases of labour disputes due to the termination of the employment contract has so far had no objections to the application of breathalysers by a PSO (verdicts of the Appellate Court in Novi Sad – Posl. No Gž1. 214/11 from October 9, 2011; Posl. No Gž1. 281/12 from June 1, 2012; Gž1. 1948/12 from October 24, 2012; Gž1. 1526/14 from December 9, 2014).

The authors believe that the basic rules that should be met when determining the presence of alcohol or psychoactive substances in the body by a PSO are:

- 1) Identifying the presence of alcohol or psychoactive substances in the body must be issued in the internal general legal document of users of private security;
- 2) The application of identifying the presence of alcohol or psychoactive substances in the body of persons entering and staying in a protected facility must be contracted with the user of private security;
- 3) Warnings and prohibitions against the entry and stay of persons under the influence of alcohol and psychoactive substances must be displayed in a visible place at the entrance to the protected facility/area;
- 4) It should insist that the identification of the presence of alcohol or psychoactive substances in the body is done by the commission. The members of the commission should be composed of representatives of the employer and representatives of the security service;



- 5) The means used to determine the presence of alcohol or psychoactive substances in the body must be correct and accurate, which is achieved by regular checking of correctness and accuracy (calibration) at authorized organizations for measures;
- 6) The employer's representative, as a member of the commission, should be the first to invite the person (employee) to submit to the test and warn him of the consequences of refusal;
- 7) A record of the conducted test, regardless of the results, should be drawn up and signed by the members of the commission and the person tested.

If it is contracted and regulated by the internal general legal document of the private security user and the written procedures of the PSO, a person who is found to have alcohol or psychoactive substances in body may be prohibited from entering the protected facility. Similarly, a person who is already staying in a protected facility/area can be removed from the protected facility/area by the PSO.

CONCLUSIONS

Although the state has a monopoly over coercion, recently a process of delegating part of public powers to private entities has been observed. This especially applies to private security services that, with the entry into force of the LPS and the LDA, officially received the right and the ability to exercise their powers. These powers are similar to those held by other law enforcement officials, particularly the police powers.

The exercise of powers by private security officers can also lead to the violation and limitation of certain human rights and freedoms, so the legislator in Serbia has issued some limitations and principles that must be respected. Looking in comparison with other law enforcement services in Serbia, differences in the nomenclature of powers can be observed from service to service, but also from state to state, depending on the assessment and needs imposed by the social moment.

What must be objected at this point is the manner in which the grounds for the carrying out of powers for individual law enforcement officials are regulated. First of all, it concerns MP Officers and judicial guards, whose basis for the exercise of authority is regulated by secondary legal documents (the Ordinance for MP, and the Rulebook for judicial guards). Taking into account that the carrying out of powers in a small number of cases implies the limitation of human rights and freedoms guaranteed by constitutional and international legal documents, such solutions are inconsistent with the basic principles in the area of guarantees of human rights and freedoms. Also, the authors believe that the range of coercion means should be expanded to the wardens, and especially that they should be allowed to use gas spray, electromagnetic devices and specially trained dogs as a 'substitute' for the use of firearms.

As we could see in the private security system in Serbia, there are powers such as crime scene protection, regulating traffic and identifying the presence of alcohol and other psychoactive substances in the body, which are not regulated by law but are applied in practice. Some of these powers can be carried out through other powers and thereby 'cover' the legal gap, but for some there is a 'daily' need to be regulated by law and by-laws. In



order to ensure adequate protection of the human rights and freedoms in Serbia and equal legal security for all citizens, the authors believe that these powers should be regulated by amendments to the LPS.

Comparative analysis has shown diversity, with two groups of states being distinguished. The first group are the states with case law (the USA and the UK) in which the laws have not dealt too much with the powers of private security officers and it is left to the courts to interpret the constitution in a specific case that appears in court. The second group includes continental European states that largely regulate the powers of private security officers by law and secondary legislation, with the possible participation of case law (especially in assessing the legality of the application of powers).

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