SPECIAL EVIDENTIARY MEASURES – A COMPARATIVE STUDY OF SERBIA AND SLOVAKIA

Review Article

DOI: 10.5937/zurbezkrim2402023I	COBISS.RS-ID 141414401	UDK 343.14/.15:343.98

Zvonimir Ivanović[1]
University of Criminal Investigation and Police Studies in Belgrade, Republic of Serbia

Adrian Vaško
University Matej Bel in Banska Bystrica, Slovakia

Abstract: There is a trend across European countries to incorporate various successful measures into national legislation, and the two cases presented in this article are no exception. However, these implementations vary due to the legal cultures and attitudes of legislatures in each country. Naturally, the Republic of Serbia faces specific demands related to its obligations, which are strict, pertaining to accession to the EU, with the negotiation process imposing numerous conditions on legislative efforts and outcomes. This article examines special evidentiary (investigative) measures, their status within the legal systems of both countries, and the variations between them. The originality of this work stems from the relevance of the legal, practical, and evidentiary solutions provided by both legislatures, as well as the trials conducted by European Community courts and practices based on Slovak results within the legal system of the European Community.

Keywords: special evidentiary measures, proving, evidence, police, criminal procedure.

INTRODUCTION

When considering media and its influence on the masses, one cannot ignore the role of state surveillance, which shapes such influence. Countries are closely monitored by various actors, ranging from international bodies to NGOs. This also raises concerns about human rights violations and intrusions, which must be analyzed in this context. In this regard, numerous rules are established for enforcers, rather than offering opportunities to track these activities in the region. The many interested parties and their pursuit of results make it nearly impossible to assist them all in overcoming the standards and significant ob-

1 Corresponding author: Dr. Zvonimir Ivanović is Full Professor at the University of Criminal Investigation and Police Studies in Belgrade and at the Law Faculty of University of Kragujevac. Email: zvonimir.ivanovic@kpuedu.rs.

stacles imposed by lawmakers and control mechanisms to ensure success. This is due to a democratic understanding of law enforcement and the prevailing failure to recognize the real intrusions by state agencies into citizens' rights, as potential shortcomings in the implementation of these measures often remain unaddressed. Ultimately, various questions arise regarding the enforcement of surveillance measures, and this article discusses two different yet similar approaches. The similarity stems from the legacy of previous communist regimes and legal systems, with one country already having joined the EU and the other in the accession process for over 15 years. In the context of Serbia's EU accession and negotiations, Chapters 23 and 24 of the Acquis are of utmost importance, as they outline key milestones and conditions for the accession process. Therefore, more attention should be given to judicial rules, measures under judicial oversight, and measures that involve the deprivation of fundamental freedoms and liberties, which this article seeks to explore. The overall aim is to identify the obstacles Slovakia overcame in its compliance with the European Acquis, so Serbia can avoid repeating these challenges or, at the very least, attempt to implement Slovakia's solutions.

DISCUSSION

In Serbia, various actions are defined by the Criminal Procedure Code – CPC[2] in a procedural sense. These include: search activities, evidentiary actions, and special evidentiary actions. Among search activities, the first is the search of vehicles, passengers, and luggage. This is a very common action and includes police powers as outlined in Article 286, Paragraph 2, Article 64, Paragraph 9, and partially in Article 98 of the CPC for:

- Stopping the vehicle
- Public or private and search
- People in it
- There are some differences depending on what kind of luggage
- Closed parts of the vehicle are tackled by Law on police art.97, but for water vessel art. 98.
- Report is mandatory

Specific search activities in Serbia include counter-diversion searches (Ivanović & Baić, 2020), which are prescribed by Article 96 of the Law on Police. Another key search type is the focused and directed search, as outlined in Article 47, Paragraph 10, and more comprehensively in Article 60 of the Law on Police. What distinguishes the focused and directed search is the following:

- The Director of Police initiates the focused and directed search, and in the case of a directed search, it must be acknowledged and authorized

2 Службени гласник Републике Србије, бр.. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014, 35/2019, 27/2021 – Одлука Уставног Суда 62/2021.

by the Supreme Cassation Court (oral approval is possible, but it must be certified in writing within 24 hours by the Supreme Cassation Court).

- It requires special criteria, such as the involvement of a criminal act.
- It mandates the special engagement of various police units.
- The operation is limited in duration.
- It involves coordinated activities among different units.
- There are specific aspects of court involvement, and evidence obtained during the procedure may be inadmissible in court.

RAIDS are also classified as search activities in Serbia and involve both uniformed and CID police. These operations include:

- Coordinated, focused actions targeting the proceeds of criminal activities
- Forced deprivation of freedom of movement
- A time limit of up to 8 hours (CPC Article 286, Paragraph 2, and Article 88 of the Law on Police), which may be extended under Article 89 of the Law on Police (in cases of security threats caused by natural disasters, epidemics, or other circumstances necessary to protect the security of individuals and their property while such threats persist)
- Activities aimed at identifying an undefined number of people in a specific location

The next search activity is the search and seizure of facilities belonging to state agencies. Some key characteristics include:

- A representative of the state agency must be present
- Colleagues or "work buddies" may assist, and sometimes show leniency toward the person being searched or whose belongings are being searched
- Unknown or undisclosed areas may become points of interest
- The involvement of specialists in these activities is quite common
- Results can vary significantly
- A report must be filed, along with any preceding documentation

Evidentiary actions

- The conditions prescribed by the Criminal Procedure Code (CPC) must be met.
- Specific agencies are responsible—only the procedural agency, as the subject of the procedure, and the procedural actor are authorized and capable of performing evidentiary actions (Žarković, Ivanović, & Žarković, 2016).

- The police are only authorized to perform these actions in exceptional cases; however, in practice, this has become the rule rather than the exception. All conditions for evidentiary actions, including actors and subjects, are:
- Strictly defined by the CPC, along with:

Special evidentiary measures are defined by the CPC of the Republic of Serbia and include:

- Secret surveillance of communications
- Secret following and recording
- Use of a covert investigative agent
- Covertly surveilled shipments
- Automated computer searches
- Simulated services

In the enforcement of the mentioned measures, it is important to highlight the following: Special evidentiary actions (PDR) are generally authorized through a document in the form of an order issued by the judge for the preliminary proceedings, based on a reasoned proposal from the public prosecutor in charge, provided that the conditions stipulated by the Code are met—both general (Articles 161 and 162 of the CPC) and, for each measure, specific. This procedure is applied when the Ministry of the Interior of the Republic of Serbia participates in the execution and implementation of the PDR. However, special laws (such as the Law on the Security and Information Agency and the Law on the Military Security Agency and Military Intelligence Agency) govern the handling, approval, and oversight of other entities with procedural authority (activity). The specifics of the application area and the authorities involved necessitate different procedures and circumstances for application (Čudan & Ivanović, 2019). The legislature's clear intent is to place the decision on the application of this procedural institute in the hands of a judicial body (the judge for the preliminary proceedings), particularly in standard cases where the police carry out the application and enforcement. This is because the court, in the functional role of a judge for the preliminary proceedings, is tasked with safeguarding human rights and freedoms, while the prosecuting authority, that is, the competent public prosecutor, holds the primary role in the pre-investigation procedure.

Articles 161, and 162. of the CPC provide general terms for Special evidentiary actions. Conditions for measure determination are provided by the article 161. of CPC. So, special evidentiary actions can be determined toward (against) the person for whom there are grounds to suspect that he or she has committed a criminal offense from Article 162 of this Code, and in additional condition that the evidence for criminal prosecution cannot be collected in any other way or, it would be much more difficult to collect it. Exceptionally, special evidentiary actions can also be determined against a person for whom there are grounds for suspicion that he is preparing one of the criminal offenses from paragraph

1 of article 162, and the circumstances of the case indicate that otherwise the criminal offense could not be detected, prevented or proven, or that could cause disproportionate hardship or great danger.

Articles 161 and 162 of the CPC provide general terms for special evidentiary actions. Conditions for determining these measures are outlined in Article 161 of the CPC. Special evidentiary actions can be authorized against a person for whom there are grounds to suspect that they have committed a criminal offense listed in Article 162 of this Code, provided that evidence for criminal prosecution cannot be collected in any other way or would be significantly more difficult to obtain. Exceptionally, special evidentiary actions can also be applied to a person suspected of preparing one of the criminal offenses listed in paragraph 1 of Article 162, if the circumstances indicate that otherwise, the criminal offense could not be detected, prevented, or proven, or if it would result in disproportionate hardship or significant danger. When deciding on the authorization and duration of special evidentiary actions, the procedural agency must assess whether the same result could be achieved with less infringement on citizens' rights. Criminal offenses for which special evidentiary actions are implemented are defined by Article 162 of the CPC. Under the conditions specified in Article 161 of the CPC, special evidentiary actions may be determined for the following criminal offenses:

1. Criminal offenses for which a special law designates that the public prosecutor's office of special jurisdiction acts—general jurisdiction;

   Additionally, criminal offenses specified by the Code of Criminal Procedure (Article 162, Paragraph 1, Point 2) include:

   – Aggravated murder (Article 114 of the Criminal Code),
   – Kidnapping (Article 134 of the Criminal Code),
   – Showing, obtaining and possessing pornographic material and exploiting a minor for pornography (Article 185, paragraphs 2 and 3 of the Criminal Code),
   – Robbery (Article 206, paragraphs 2 and 3 of the Criminal Code),
   – Extortion (Article 214, paragraph 4 of the Criminal Code),
   – Abuse of the position of a responsible person (Article 227 of the Criminal Code),
   – Abuse in connection with public procurement (Article 228 of the Criminal Code),
   – Receiving a bribe in the performance of economic activity (Article 230 of the Criminal Code),
   – Bribery in the performance of economic activity (Article 231 of the Criminal Code),
   – Forgery of money (Article 241, paragraphs 1 to 3 of the Criminal Code),
   – Money laundering (Article 245, paragraphs 1 to 4 of the Criminal Code),

- Unauthorized production and distribution of narcotic drugs (Article 246, paragraphs 1 to 4 of the Criminal Code),
- Endangering independence (Article 305 of the Criminal Code),
- Endangering the territorial integrity (Article 307 of the Criminal Code),
- Attack on the constitutional order (Article 308 of the Criminal Code),
- Calling for a violent change of the constitutional system (Article 309 of the Criminal Code),
- Diversion (Article 313 of the Criminal Code),
- sabotage (Article 314 of the Criminal Code),
- Espionage (Article 315 of the Criminal Code),
- Disclosure of state secrets (Article 316 of the Criminal Code),
- Causing national, racial and religious hatred and intolerance (Article 317 of the Criminal Code),
- Violation of territorial sovereignty (Article 318 of the Criminal Code),
- Association for unconstitutional activity (Article 319 of the Criminal Code),
- Preparing an act against the constitutional order and security of Serbia (Article 320 of the Criminal Code),
- Serious crimes against the constitutional order and security of Serbia (Article 321 of the Criminal Code),
- Illegal production, possession, carrying and trafficking of weapons and explosive substances (Article 348, paragraph 3 of the Criminal Code),
- Illegal crossing of the state border and people smuggling (Article 350, paragraphs 2 and 3 of the Criminal Code),
- Abuse of official position (Article 359 of the Criminal Code),
- Influence peddling (Article 366 of the Criminal Code),
- Receiving a bribe (Article 367 of the Criminal Code),
- Paying a bribe (Article 368 of the Criminal Code),
- Human trafficking (Article 388 of the Criminal Code),
- Endangering a person under international protection (Article 392 of the Criminal Code) i
- Criminal offense contained in Article 98, Paragraphs 2 to 5 of the Data Privacy Act,
- (Article 162, Paragraph 1, Point 3) preventing and obstructing evidence, (Article 336 of the Criminal Code) if it was committed in connection with one of the listed criminal offenses and criminal offenses for which the prosecutor's office has special jurisdiction.

There is a deviation concerning the special evidentiary action of an undercover investigator. According to this deviation, it can only be ordered for crim-

inal offenses for which the prosecution has special jurisdiction. Additionally, secret surveillance of communications can be authorized not only for the criminal offenses listed but also for the following offenses: Unauthorized use of a copyrighted work or subject of related rights (Article 199 of the Criminal Code), Damage to computer data and programs (Article 298, Paragraph 3 of the Criminal Code), Computer sabotage (Article 299 of the Criminal Code), Computer fraud (Article 301, Paragraph 3 of the Criminal Code), Unauthorized access to a protected computer, computer network, and electronic data processing (Article 302 of the Criminal Code)

Slovak solutions

Similar activities, ranging from search to special evidentiary measures, involve very similar conditions for implementing special evidentiary actions, particularly regarding the conditions that must be met and the special police units or agents involved in enforcing the measures. However, there are some differences in the solutions provided, and while this is not true for all measures, it is particularly relevant for some that are of great interest to Serbia. One of the significant differences is as follows:

- Difference between criminally oriented activities – in cases of suspected criminal activity and other situations
- Intelligence activities – with evidentiary capacities

This is legally and technically stipulated as follows: Special evidentiary actions can be carried out (enforced) without a court decision, provided that approval for their implementation is obtained within 24 hours from the start of the enforcement. This is similar to the directed focused search activity outlined in the Law on Police in Serbia, but it is limited in its operative reach, as all material gathered this way cannot be used as evidence in the procedure. This approach is more advantageous in Slovakia. Additionally, while the Supreme Cassation Court is involved in Serbia, the basic court jurisdiction handles these measures in Slovakia. For instance, the Criminal Procedure Code of the Republic of Slovakia (Zákon trestný poriadok 301 z 24. mája 2005) covers this under § 113, titled "Tracking of People and Things." Interception and recording of telecommunications traffic are addressed in § 115 of the Slovak CPC. (1) Surveillance of a person and thing (hereinafter referred to as "surveillance") involves obtaining information about the movement and activities of a person or the movement of an object in a secret manner. Monitoring can be carried out during criminal proceedings for an intentional crime if it can be reasonably assumed that it will reveal information important for the criminal proceedings (Vaško, 2022). The surveillance order is issued in writing by the chairman of the court council before the initiation of criminal proceedings or by the prosecutor during the preliminary proceedings. The monitoring (surveillance) is conducted by the competent authority of the Police Force. If, during surveillance, it is discovered that the accused is communicating with their lawyer, any informa-

tion obtained in this manner cannot be used for the purposes of criminal proceedings and must be destroyed promptly in the prescribed manner. This does not apply if the information relates to a matter in which the lawyer does not represent the accused as their defense attorney (Vaško, 2022). If it is absolutely necessary for surveillance to be conducted on premises or land that is not publicly accessible, or if information and technical means need to be used during the surveillance without involving entry into a dwelling, a surveillance order must be issued by the chairman of the council before the initiation of criminal prosecution, or by the judge for the preliminary proceedings upon the prosecutor's proposal during the preliminary phase. This applies when facts crucial for criminal proceedings cannot be obtained through surveillance conducted in any other way. The order must specify the premises or land not accessible to the public where surveillance will be conducted and the type of technical means to be used. If the situation is urgent and cannot be postponed, the pre-trial judge of the court in whose district the surveillance will take place may issue the order instead of the competent pre-trial judge. During entry into non-residential premises or non-publicly accessible lands, only actions necessary for carrying out the surveillance may be performed. This provision differs significantly from Serbian legislation, and it suggests the need to amend the measure regarding secret tracking and recording under Article 171 of the CPC to better align with operational capabilities and demands. A surveillance order under Paragraph 2 of §113 may only be issued based on a written request by a police officer or a competent authority of the Police Force, and during court proceedings, upon a written request by the prosecutor. The request must be justified by suspicion of a specific criminal activity and include any available information about the persons or objects to be monitored, if known. The order must specify the duration of the monitoring with a maximum initial period of six months. The person who issued the order may extend the monitoring in writing for another six months, and this extension can be granted repeatedly. If the monitoring continues beyond twelve months, the monitoring order must be issued by a pre-trial judge both before the initiation of criminal prosecution and during the preliminary proceedings. (Paragraph 6) A police officer or the relevant unit of the Police Force is required to continuously assess whether the reasons for issuing the surveillance order still exist. If those reasons have disappeared or changed, the surveillance must cease, even if the time specified in Paragraph 5 has not yet expired. This must be immediately reported in writing to the person who issued the order, as well as to the prosecutor during the preliminary proceedings. (Paragraph 7) If the situation is urgent and a written order cannot be obtained in advance, surveillance may be initiated without an order, provided it does not involve the cases mentioned in Paragraph 4. However, the police officer or relevant department of the Police Force must request an order as soon as possible thereafter. If the order is not issued within 24 hours, the monitoring must cease, and any information thus obtained cannot be used as evidence and must be destroyed promptly in the prescribed manner. (Paragraph 8) If the recording made during surveillance is intended to be used as evidence, the appropriate

procedure must be followed in accordance with § 113, Paragraph 6. (Paragraph 9) In a criminal matter other than the one for which the surveillance was originally conducted, the recording may be used as evidence only if it pertains to a criminal proceeding involving an intentional crime. If the surveillance does not uncover facts relevant to the criminal proceedings, the recorded material must be destroyed without delay in the prescribed manner. During the procedure described in Paragraph 1, if necessary, recording devices and technical monitoring means may be used to document the progress of the act.

Interception and recording of telecommunications traffic are governed by § 115 of the CPC. Paragraph 1 states that in criminal proceedings related to crimes such as corruption, acts of extremism, abuse of power by a public official, the offense of money laundering under Sections 233 and 234 of the Criminal Code, or any other intentional criminal offense requiring action under an international treaty, an order for wiretapping and recording telecommunications traffic may be issued if it is reasonably assumed that relevant facts for the criminal proceedings will be uncovered (Vaško, 2019). Such an order can be issued if the intended purpose cannot be achieved by other means or if achieving it by other means would be significantly more difficult (Vaško, 2022). If, during the interception and recording of telecommunications traffic, it is found that the accused is communicating with their lawyer, the information thus obtained cannot be used in criminal proceedings and must be destroyed immediately in the prescribed manner. This does not apply if the communication concerns a matter in which the lawyer does not represent the accused as a defense attorney. The president of the court council issues the order for wiretapping and recording telecommunications traffic, either before the initiation of criminal proceedings or during the preliminary proceedings, upon the prosecutor's proposal, by the judge for preliminary proceedings. If a situation arises where action cannot be delayed, and a judge's order for the preliminary proceedings cannot be obtained in advance, the prosecutor may issue the order before the initiation of criminal prosecution or during the preliminary proceedings, provided the interception and recording of telecommunications traffic do not involve entering a dwelling. However, this order must be confirmed by the pre-trial judge within 24 hours; otherwise, it becomes invalid, and any information obtained in this manner cannot be used for criminal proceedings and must be destroyed immediately in the prescribed way. The role of the prosecutor in issuing such orders during pre-trial proceedings is crucial to consider in Serbian legislative reforms (Žarković, Ivanović & Žarković, 2016). The order for wiretapping and recording telecommunications traffic must be issued in writing and supported by factual circumstances specific to each participating station or device. It must detail the station or device being monitored, the person (if known) whose communications are being intercepted, and the duration of the surveillance. The time period for interception and recording can last up to six months, with the possibility of extending it for an additional two months at the prosecutor's request during the pre-trial proceedings, even repeatedly. The wiretapping and recording of telecommunication traffic are carried out by the relevant de-

partment of the Police Force (Paragraph 3). A police officer or the relevant Police Force department is required to continuously monitor the validity of the reasons that justified issuing the wiretapping and recording of telecommunications traffic order. If the reasons for wiretapping and recording telecommunications traffic cease to exist, the activity must end, even before the period specified in Paragraph 3 expires. This must be reported in writing without delay to the authority that issued the order for wiretapping and recording of telecommunications traffic, as well as to the prosecutor in the preliminary proceedings. In criminal proceedings for an intentional crime other than that referred to in paragraph 1, the president of the court council may issue an order for wiretapping and recording of telecommunications traffic, before the initiation of criminal proceedings or in preliminary proceedings, by a judge for preliminary proceedings at the proposal of the prosecutor only with the consent of the user intercepted or recorded telecommunications equipment. If the recording of telecommunications traffic is to be used as evidence, it must be attached, if the prepared recording allows it, to a verbatim transcript of the recording made by the member of the Police Force carrying out the wiretapping, to the extent of the established facts significant for the criminal proceedings, with information on the location, the time, the authority that made the recording, and the legality of the wiretapping. The record of the telecommunications operation is kept in its entirety in a file on suitable electronic carriers, copies of which may be requested by the prosecutor and the accused or defence counsel. After the eavesdropping and the recording of the telecommunications traffic have ended, the accused or the defence attorney may, at their own expense, make a transcript of the recording of the telecommunications traffic to the extent they deem appropriate. In Serbia there is another law proscribing rules and procedure of the wiretapping, then CPC. The obligations mentioned in the first sentence apply to them accordingly. The court evaluates the reliability of the transcript. If the transcript of the record was made during the preliminary proceedings, the president of the senate can order its addition, which will be completed by a member of the Police Force mentioned in the first sentence. A verbatim transcription of a record in a foreign language and additions to a verbatim transcript of a record in a foreign language can be prepared by an interpreter. When hiring an interpreter, the appropriate procedure is followed according to § 28 of the CPC. A transcript of the recording of the telecommunications operation, which is not classified, signed by a member of the Police Force or the interpreter who made it, is included in the file; if the verbatim transcript of the record contains classified information, it is classified according to the regulations on the protection of classified information. The recording of telecommunications traffic can be used as evidence only after the wiretapping and recording of telecommunications traffic is over. In preliminary proceedings, if the circumstances of the case justify it, a record of telecommunication operations can be submitted to the court even without a transcript of this record, if the accompanying report shows data on the place, time, authority that made the record, and the legality of the wiretapping, as well as on the per-

sons whose record of telecommunications traffic is concerned, and the record of telecommunications traffic is comprehensible. This is very different than in Serbia. In a criminal matter other than the one in which the wiretapping and recording of telecommunication traffic was carried out, the recording may be used as evidence only if it is a criminal proceeding for the criminal offense referred to in paragraph 1. If no relevant facts for the criminal proceedings are obtained during wiretapping and recording of telecommunications traffic, the authorities or the relevant Police Force department must destroy the recordings immediately in a prescribed manner (Žarković, Lajić & Ivanović, 2010). The destruction is documented, and the minutes are filed. The person referred to in paragraph 3, if known, is informed about the destruction of the record by the police officer or the prosecutor whose decision legally ended the case, and in proceedings before the court by the president of the senate of the court of first instance after the legal end of the case. The information contains the designation of the court that issued or confirmed the wiretapping order and indication of telecommunications operation, duration of wiretapping and date of termination. A portion of information refers to instruction on the right to submit, within two months from its delivery, a motion to review the legality of the order for wiretapping and recording of telecommunications traffic to the Supreme Court. The information shall be submitted by the authority whose decision legally ended the case, and, in proceedings before the court, by the president of the chamber of the court of first instance within three years from the legal termination of the criminal prosecution in the given case (Ivanović & Zirojević, 2021). The chairman of the court council, a police officer or a prosecutor shall not provide information pursuant to paragraph 9, if it is a person who has the opportunity to view the file according to this Act, or in proceedings concerning a particularly serious crime or a crime committed by an organized group, criminal group or terrorist group, or if more than one person was involved in the crime and in relation to at least one of them, the criminal prosecution was not legally terminated, or if the purpose of the criminal proceedings could be defeated by providing such information. The provisions of paragraphs 1 to 10 also apply to data transmitted in real time through a computer system (Ivanović & Baić, 2020).

Article § 118 of the Slovak CPC titled: Comparing data in information systems (1) In criminal proceedings for an intentional crime for which the law provides for a prison sentence with a maximum penalty exceeding three years, corruption or for another intentional crime for which an international treaty obliges the proceedings, comparison of data in information systems can be carried out, which contain characteristic or exclusionary features regarding persons or things important for criminal proceedings, with data in other information systems, if necessary to clarify the crime. The order to compare data in information systems is issued in writing by the chairman of the council, before the initiation of criminal proceedings or by the prosecutor during preliminary proceedings, which presents the constant in Slovak CPC, and quickens procedure, providing to it much more operational capacity. The order according to

paragraph 1 must contain the designation of the operator of the information system who is obliged to provide the data, and the definition of the data and test characters necessary for comparison (Paragraph 3). The person referred to in paragraph 3 is obliged to provide the data necessary for comparison. Such an approach could benefit the Serbian legislature. If the requested data cannot be separated from other data, other data will also be provided. These other data cannot be used as evidence. If the data were provided on information carriers, they must be returned without delay after the comparison has been completed. Data that were transferred to other data carriers must be deleted without delay by the law enforcement agency, the court or the member of the Police Force who performed the comparison, if they are no longer needed for criminal proceedings. If the data comparison record is to be used as evidence, the appropriate procedure shall be followed in accordance with § 115, Paragraph 6. In a criminal matter other than the one in which the data was compared, the record may be used as evidence only if it is a criminal proceeding for the criminal offense referred to in paragraph 1. If, during the data comparison, no facts significant for the criminal proceedings were found, the law enforcement agency, the court or a member of the Police Force, who performed the comparison, must destroy the obtained records without delay in the prescribed manner.

Conclusions

Some of the solutions are very effective for practical enforcement and, as previously mentioned, provide greater operational capacity to procedural agencies—such as the police and public prosecutors. These solutions should be structured in a manner that is "bulletproof" against issues related to human rights violations and the protection of liberties, not only at the regional or global level but also nationally, including safeguards provided by the Serbian Constitution. There are potential techniques for navigating these obstacles while incorporating the safeguards outlined in the Constitution. Some of these techniques were discussed in the text, with a proposal to integrate Slovak solutions and address national legislative demands in a more efficient and elegant manner. As elaborated in the text, some proposals connected with legislative techniques and possible intelligence gathering offer enhanced operational capacities for procedural agencies. Especially if we elaborate on the pre-trial capacities of the prosecutor, in conjunction with the police, it is crucial to consider the evidentiary capacities of intelligence activities as provided by Slovak legislation and explore their implementation in Serbian laws. This would offer an extreme tool for combating organized crime and its perpetrators. Generally, this demonstrates that different perspectives are not only valuable but necessary when considering all measures and means for fighting organized crime. This system and approach provide multiple benefits, from strengthening the operational capacity of law enforcement to offering more efficient means of combat, while preserving human rights and freedoms at the European level. It incorporates

proven methods that have withstood the scrutiny of the Court of Justice of the European Union. This should ideally be a win-win situation; however, potential problems may arise, including possible incompatibilities with the Serbian justice system. These issues can be addressed through a thorough analysis of the measures and actions outlined. This article represents one step toward achieving this equilibrium in the future.

REFERENCES

Ivanović, Z., & Baić, V. (2020). Drones as a Permanent and Present Danger. *Kriminalističke teme*, 5. 43–56.

Ivanović, Z., & Zirojević, M.(2021). Functionality of the anita platform in the legal system of the Republic of Serbia. Наука и друштво, *14*(1), 1–33.

Čudan, A., & Ivanović, Z. (2019). Hate speech in migrant-related cases: Analysis of occurence in Serbian discourse. *Bezbednost*, *61*(3), 120–139.

Žarković, M., Ivanović, Z., & Žarković, I. (2016). Public Video Surveillance: A Puzzling Issue for Serbian Lawmakers. *Varstvoslovje: Journal of Criminal Justice & Security*, *18*(2), 214 –229.

Žarković, M., Lajić, O., & Ivanović, Z. (2010). Police acting when securing a crime scene as a precondition of successful forensic identifications. *Nauka, bezbednost, policija*, *15*(2), 71–86.

Vaško, A. (2019). Intelligence information within criminal proceedings. *Danube*, *10*(3), 267–283.

Vaško, A. (2022). The Legal Regulation of Special Means by the Intelligence Agency of the Slovak Republic within the Case Law of the European Court of Human Rights. *Access to Justice in Eastern Europe*, *3*(15), 57–72.

Paper received on: 10/7/2024

Paper accepted for publishing on: 20/9/2024