

SOME ASPECTS OF THE LAW ENFORCEMENT OFFICERS LEGISLATIVE PROTECTION

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Abstract: *Law enforcement officers penal-law protection, as a part of legislation protective function, has essential meaning. In all contemporary countries, police officers penal-law protection are carried out by issuing, pronouncing and executing criminal and infraction sentences to persons who are endangering life, physical and moral integrity of police officers, or obstructing them in the execution of security service, or committing all other criminal and infraction offences against police officers. Accordingly, there are some similar forms of police officers penal-law protection in several countries, but as the result of concrete social and legal-legislative system and tradition, there are some differences between them, too. Following those facts, author analyses forms of police members' criminal-law and penal-law protection, in legislation of Serbia and legislations of several foreign countries. Inadequate police officers legislative protection and permissiveness, rareness and inefficiency in assailants' penalization are general conclusion of this analysis.*

Key words: *criminal law, law enforcement officer, murder, assault, infraction.*

INTRODUCTION

It is known that, among other diverse and numerous aspects of law enforcement (police) members' protection, legislative protection takes the most significant role. As they are authorized to use some administrative ability that has constraint nature, the efficiency of police work depends on police members' legal protection and safety. In this context, there is a reasonable necessity to ensure both appropriate legal protection for uniformed police officers and other police members, as well as concrete realization of those laws and regulations, due to duties and the legal power of the police. Legislative insurance of constable protection and his strict implementation is not important only for police officers themselves, but for the police as law enforcement service as well.

Likewise, police officers penal-law protection has essential meaning in overall legislative protection. In all contemporary countries, as a part of legislation protective function, penal-law protection are carried out by issuing, pronouncing and executing

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criminal and infraction sentences to persons who are endangering life, physical and moral integrity of police officers, or obstructing them in the execution of their duty. Despite that fact, speaking about penal-law protection of constables in our country, there is a notion that laws and regulations on that matter are not the real problem, but policy and criminal prosecution. Finally, often and significant modifications of criminal offences and violations in Serbian criminal legislation guide us to conclusions about problems regarding penal and legal protection of police officers in past, and to a risk of appearances of those problems in the future.

In this context, we want to point out that contemporary conditions demand a necessary analysis of some aspects of penal-law protection of police members-both theoretically (current and comparative) and practically. Namely, the fact is that only insight into normative protection of police officers and into results of inquiries on that matter in our country and foreign practice gives us probability to point out adequate suggestions for law and regulation alterations, and for undertaking some other measures in that area.

OFFICERS CRIMINAL-LAW PROTECTION

The most important form of penal-law, and therefore, of legislative and every other protection of the police members are their criminal-law protection. All contemporary criminal legislations, including legislation of Serbia, know a number of criminal acts which, more or less (directly and indirectly), are providing this protection. Consequently, those articles which incriminates behavior directed on physical assaults, obstructions and restrain of police officers on duty, could be divided on: criminal offences, which directly protect physical and moral integrity of the constable, and their service as well, and on the criminal offences which objects of assault were any officials-including police officers as officials of internal affairs.

The other group make the acts of disobedience to state apparatus decisions, by not acting according to the decisions and the orders given by them, in what way, in wider sense the officials in internal affairs as well as the service itself is endangered. Furthermore, there are criminal offences by which the police members are protected indirectly (for example, terrorism). In any case, the most important are those offences by which are given immediate criminal-law protection to police members on duty regarding to state and public protection, i.e. tasks regarding detection and capturing persons who committed criminal offences, maintaining public order, and custody under imprisonment persons, for example a murder of police members, obstruction, and assault on police officer on duty and in liaison with that.

Analysis of criminal-law protection of police officers-both in current and in the former criminal legislations, shows, that at the first place, in this area are immanent significant variety and non equalities. Consequently, it is very difficult and uncommon to make standards, and determinate current solutions of our lawmakers.

It is natural that every police in a given social environment acts and determinates its actions itself. Furthermore, products of objective social determinants are not only the organization of the police its job and duties, and the risks of its profession, but legislative protection of police officers, as well. In that sense, physical and moral

integrity of the police officers in several countries is protected by concrete incriminations influenced by numerous and various factors (for example, divers levels of economic development, degree of democracy and respect of human rights, different history, tradition and culture, etc.).

That is why all attempts of simple mechanical transfer of concrete solutions of criminal-law protection from one society to another are unsuccessful beforehand. Likewise, this fact complicates furthermore the possibility of comparative understanding of this matter.

THE MURDER OF LOWE ENFORCEMENT OFFICERS ON DUTY

Although mentioned circumstances prompt for extreme precaution in recapitulation of analysis results, certain conclusions are imposing. Primarily, the fact that police members physical integrity represents one of those values which are maximally protected by material criminal law articles.

Murder, as capital form of assaults on police members on duty, exists in legislations of all contemporary countries as one of the harshest criminal offences for which are issued maximal sentences, regardless whether that legislation incriminates such murder as specific criminal offence of murdering (for example, Mongolian legislation), or like one form of first degree murder (for example, in Serbian criminal legislation). [1] Despite that fact, conducted discussions regarding too categories and extent of that sentence are in many countries, when, for example, rescission of death penalty is directly linked with increased number of murders of police officers doing their duty.

Such example is Great Britain, where is significant demand of professional police associations to reestablish death penalty. Most frequently they point out a fact, that from the beginning of 20th century till the extinction of death penalty (1900-1965), approximately one police officer has been killed in Great Britain per year (65 altogether), and in next 3 decades (1965-1996) that number was doubled (59 altogether). Similar situation is reported in France where is immanent public demand to partial retention of death penalty, for murders of police officers at first place. Namely, till Badinter Law about rescission of death penalty was carried out at 1981, death penalty was most often pronounced for conceited murder of police officer. From the same reasons, the members of French Parliament hesitated for a long time to accept European Council Protocol that banned any reconstitution of death penalty, which was signed by France in 1983. [2]

Accordingly, in almost all contemporary countries, including former socialist East European countries and most developed countries of western democracy, most rigid sentences are issued for murders of police officers on duty. That fact do not provoke any contradictions from both, theorists and publicity. This is a case with both, legislations which separately incriminate assault on life of police members (Belarus, Mongolia, Slovenia, Croatia, Serbia, and many other), as well as in legislations were the life of the police officers is protected in a larger sense of official (Russian Federation, France, Monaco). In any case, for a person who has committed a conceited murder of police officer on duty, or in liaison with that, most rigid sentences is assigned.

Thus, for example, murdering of constable in line of duty, or on liaison with that, in all current US criminal laws (Federal and State, both civil and military) represent criminal offence on which are pronounced most rigid issued sentences. In the United States criminal legislative exists other rigid incriminations, which purpose are also to ensure penal-law protection of police officers, but they are not controversial for both scientific theory and publicity. Such as, for example, resisting to the police officer, which is treated like violation, in order to obtain criminal prosecution optimal efficiency? Finally, when the protection of police members from any kind of violence or harassment in the United States is an issue, there is no doubt about the regularity of prosecution penal policy on those offences. The only fact that requires improvement on that issue is necessity to hasten execution of already adjudged death penalties to persons who killed police officers all over the United States. [3]

PROTECTION FROM MILDER FORMS OF PHYSICAL OR VERBAL ASSAULT

Protection of police officers from milder forms of physical and verbal assault (for example, assault, threaten by assault, violation, insult, etc) per adequate incriminations in foreign legislations, is not controversial in law doctrine and wide publicity as well. More important influence on this fact have a concrete law-technical solution of that question in particular legislation, i.e. it is irrelevant whether the police officers are directly protected from such assaults in some countries, or such protection is assured indirectly by providing conditions for realization of certain official operations in protection of public order. [4]

Otherwise, in legislations of most foreign countries the protection is provided indirectly, by endeavor to provide conditions for doing police tasks, or lawful acts of officials generally, and at the same time police officers who are directly executing those tasks, by concrete incriminations. This approach of lawmakers is not controversial in foreign law literature, too.

Namely, by simply setting up the adequate conditions for performing the police members professional tasks (for example, by incrimination of obstruction), the adequate protection for officials-police officers is provided, because those two matters are closely connected. At the other words, there is no insistence on those incriminations by which are physical and morale integrity of police officers are protected more then the authority of service they are doing.

Despite those differences, criminal-law protection of officials obviously could be effectuated (relatively) successfully in framework of currently valid incriminations in Serbian legislation, eventually extended with severed sanctions. Accordingly, the problem is in obvious dissonance between normative condition of criminal legislative (in criminal-law protection of police officers area) and his practical usage. Namely, analysis of juridical practice show dissonance between issued and pronounced sanctions for those criminal offences, because there is noticeable mellow penal policy which results in inefficiency. Likewise, results of the empiric inquiries show that inadequate penal policy in criminal-law protection of police members is not only the result of attitude of criminal court regarding this problem, but the result of relation of public and state prosecutors -jurisdiction authorities, as a whole.

Detected inadequacy of the penal-law protection is more significant for milder forms of endangering police members, i.e. for basic forms of obstruction and restrain, then for hardest offences against officials: murder, attempt of murder and qualified forms of obstruction and restrain officials to do their duty. This condition is encouraging, especially if we consider social values which are protected by this incriminations (life, physical integrity and official service which are officiate).[5] Finally, it is evident that only small number of persons indicted for offences against physical and moral integrity of police officers were convicted. Analyzing cases convicted for such offences, we can see that in majority of cases probation has been pronounced, then numerous judicial admonitions/and that pronounced imprisonment sentences have been between distinct minimum. At the same time, in most cases public prosecutors does not appeal on that decisions. According to those facts, we must conclude that problem of criminal-law protection of police officers really is not only in regulations, but primarily in prosecuting policy. Regarding the fact that the speed of actions taken by the judicial authorities determinates the success of struggle against criminality, it is obvious that their inefficiency directly results in increasing of criminality.

CONCLUSION

As the most general conclusion about criminal-law protection of police officers in current Serbian legislation and juridical practice, is imposing impression that police officers have a substantial protection in legislative sense, which could be improved by adequate legal-technical solutions. [6] Unlike, protection and safety of police members are not provided through policy of prosecution of persons who are resisting, insulting, assaulting or in any other way violating them in doing official tasks, except partly in case of inflicting injuries and other harder consequences. Accordingly, yet there is a need for proceedings that are more efficient and for leading appropriate penal policy against persons who have committed criminal acts against police officers.

Basically, penal-law protection is primarily and from the aspect of the society, the least controversial form of constable protection in the execution of his duty, therefore in many countries it has been followed by adequate prosecution policy (Austria, France, China, Greece...). Shortly, almost in all contemporary legislatives exist rigorous sanctions for various forms of resistance to the police acts, especially for physical assaults and murders of police officers in execution of their duty.

On the other hand, in Yugoslav official reports insufficient penal-law protection in order to initiate provisions and additions to the current laws and regulations that should lead to better protection of police officers, is often emphasized. Those premises are implicitly sustained in Serbian legislative theory.

Consideration of penal-law protection of police officers, especially comparative analysis of issued sanctions, show that in this case we can't accept premise of some theorists that, according to issued sanctions, our criminal legislation belong among most rigorous. Unlike, opinion that we have relatively mild penal policy is entirely acceptable. In that way, doubly wrong picture about us has been created: that we are over retributive abroad, and that we are unnecessary mild inside.[7]

REFERENCES

1. About this see more in: **Milošević M.** et al. (1998), "*Krivičnopravna, prkršajno-pravna i druga zastitapolicijaca (studija)*", Beograd : Viša škola unutrašnjih poslova.
2. For conditions in Great Britain and France, see: **Spicer M.** (1996), "*Convictions for Police Murder in Britain (1900-1965)*", The Police Journal, No.3, pp.242-248; **Coester E.** (1985), "*Terorizam i smrtna kazna*", Izbor, No.4, pp.3 35-340; **Erlich C.**(1962), "*Zum Schussnjaffengebrauch, Kriminalistik*", No.1, pp.11-13.
3. **Chapman S.G.**(1986) "*Reduciranje napada na policiju*", Izbor, No.4, pp.373-390.
4. Some results of inquiries of judicial practice regarding this matter, see: **Milošević M.** et al., *op. cit.*, pp. 182-219; **Jovašević D.** (1999), "*Krivično delo ometanja ovlašćenog službenog lica u obavljanju poslova bezbednosti-teorijski i praktični aspekt*", *Bezbednost*, No.1, pp.42-55.
5. Compare: **Jovašević D.**; **Hašimbegović T.** (2002), *Krivično pravna zaštita pripadnika policije*, Beograd : Institut za kriminološka i sociočoška istraživanja; **Srejić D.** (2006), "Ugrožavanje sigurnosti policijskih službenika", *Bezbednost*, No.5, pp. 805 – 826; **Pantelić N.** (2007), *Krivično delo ubistvo policajca*, Beograd : N. Pantelić
6. **Lazarević LJ.** (1994), "*Raskršća jugoslovenskog krivičnog zakonodavstva*", in: "Krivično zakonodavstvo i pravna država", Beograd, pp.2 5-41.