

SERBIA AND MONTENEGRO
MINISTER OF FOREIGN AFFAIRS

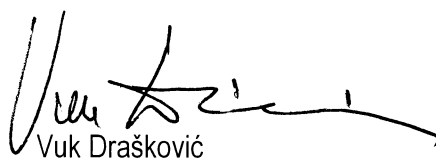
Belgrade, 5 April 2005

Dear Secretary General,

Further to your recent request, I am enclosing complementary information regarding the implementation of the European Convention on the Protection of Human Rights and Fundamental Freedoms in Serbia and Montenegro. I trust and believe that, by submitting the information, Serbia and Montenegro has fully complied with the request which it considered of paramount importance.

I take this opportunity to reiterate the readiness of my country to provide all legal means to implement not only the Convention on the Protection of Human Rights and Fundamental Freedoms, but also all other Conventions of the Council of Europe of which Serbia and Montenegro is a Party in a consistent, strict and continual way.

With best regards,



Vuk Drašković

H.E. Mr. Terry Davis
Secretary General
Council of Europe
S t r a s b o u r g

SERBIA AND MONTENEGRO

SUPPLEMENT TO THE EXPLANATION OF THE MANNER IN WHICH INTERNAL LAW ENSURES THE EFFECTIVE IMPLEMENTATION OF THE PROVISIONS OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS

In the Criminal Legislation of Republic of Serbia it is not foreseen that employees of foreign agencies have any powers in arresting of any person on the territory of Republic of Serbia. We are emphasizing that on the territory of Republic of Serbia only employees of Ministry of Interior of Republic of Serbia have authorities in arresting of persons who are under criminal investigation. In the official records (temporary data) of the Ministry of Justice of Republic of Serbia, there are no investigations against administrative staff of Republic of Serbia concerning illegal arresting based on instructions of employees of foreign agencies on the territory of Republic of Serbia.

As concerns the Security-Information Agency, it applies in its work the Universal UN Declaration on human rights (1948-1998) and the European Convention on Protection of Human Rights and Fundamental Freedoms in member countries of the Council of Europe, respecting the additional Protocols (published in the "Official Gazette of Serbia and Montenegro – International Agreements" no. 9/2003 and 5/2005) and the International Convention for the Suppression of the Financing of Terrorism ("Official Gazette of Serbia and Montenegro no.7/2002 of 03.07.2002)

The internal law of the Republic of Serbia is applied in the work of SIA according the Law on the Security-Information Agency (application of bylaws of SIA, supported by the Constitution of the Republic of Serbia, Law on Government, Penal Code, Criminal Law of the Republic of Serbia, Law on the SIA, Law on the responsibility for violation of human rights, Law on internal affairs and the Law on police) harmonised with the Charter of the State Union of Serbia and Montenegro and the Charter of Human and Minority Rights and Civil Freedoms of Serbia and Montenegro.

As a specific organisation, responsible to the Government of the Republic of Serbia, SIA in its further transformation manifests its absolute willingness to further harmonize its legal frame according to the Decision of the Council of Ministers of EU from January 30th 2006. In compliance with mentioned CM Decision we adopted the "Decision of the Council on Principles, Priorities and Terms Contained in the European Partnership with Serbia and Montenegro, Including Kosovo, in accordance with the UN Security Council Resolution 1244 from 10.06.1999 and on Suspension of the Decision 2004/520/EC (2006/56/EC)".

Since its establishment, SIA accepts in its work the Recommendation of the Council of Europe (Parliamentary Assembly) 1402 (199) 1 and the Reply of the Council

of Ministers of EU – Document 8907 from 14.12.2000, adapting its further activities and respecting these recommendations in its active transformation.

According to the Law on SIA, in the activities of the SIA the international cooperation is generally accepted as a quality, considering common security risks of both Europe and wider (terrorism, organized crime, proliferation, illegal migrations and new security challenges) as a working method with security structures (special services) of our neighboring country's, both at bilateral and multilateral level (we are full member of SEEIC and a candidate country for the membership in MEC), accepting all principles of the rule of law, internal law and the legislation of the countries we cooperate with, according to the International Conventions on Human Rights and Fundamental Freedoms. Our entire communication with special services, which we cooperate with, is regulated by the professional standards of international cooperation in this field, according to bilateral harmonisation.

Our legislation does not allow deprivation of liberty of any person on our territory to be carried out by other (foreign) agencies. The possibility exists for the assistance of registered services (judicial and executive authorities) to be obtained by the international cooperation (in criminal matters) with the formal presence of legally correct and approved requests, and any such activity of any Agency (or its member) carried out without the knowledge of competent authorities of the Republic of Serbia, is considered an ultimate violation of the sovereignty of the Republic of Serbia and is subject to sanctions, in accordance with national laws.

Quick, efficient investigations in the sense of identification of such illegal activities (of foreign agencies or their agents) are precisely the field of SIA's activity, according to the law, but are also under competence of the institutions of justice that (legally) document of mentioned activities.

Currently, there are neither initiated nor completed investigations concerning these matters.

In accordance with the commitments of the State Union of Serbia and Montenegro towards the International Tribunal in Hague, the activities of SIA are being conducted with respect to the Decisions of the National Council for Cooperation with the Tribunal in Hague and the international law.

The SIA, as the specific organisation of the Government of the Republic of Serbia, absolutely respects provisions of the Law on Acknowledgement of Roman Statute of the International Criminal Court ("Official Gazette of the FRY – International Agreements" no.5/01).

As concerns the implementation of articles 2, 3, 5 i 8 of the Convention in Republic of Serbia, as well as article 2 of the Protocole no.4 additional to the Convention, we inform of the following:

Article 2

Right to life

1. *Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.*
2. *Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:*
 - a. *in defence of any person from unlawful violence*
 - b. *in order to effect a lawful arrest or to prevent the escape of a person lawfully detained*
 - c. *in action lawfully taken for the purpose of quelling a riot or insurrection.*

Provisions of article 2 of the Convention are contained in the Penal Code of the Republic of Serbia (Official Journal of the Republic of Serbia No. 85/2005) which in its chapter XIII provides for criminal offences against life and body and in chapter III, articles 18 –21, provides for the basic requirements for excluding unlawfulness (in case of offences of minor importance, if the offence is committed in necessary defence, as a last resort or if driven by an irresistible force).

Among the other legislation of the Republic of Serbia, police officers' conduct is governed by the Law on Police (Official Journal of the Republic of Serbia No. 101/2005), Regulations on the conditions and manner of use of coercive means (Official Journal of the Republic of Serbia No. 133/04), Regulation on disciplinary liability in the Ministry of Interior (Official Journal of the Republic of Serbia No. 8/2006).

The Law on Police establishes police powers (articles 30-83) and conditions for their exercise, as well as the means of coercion and their use (articles 84-109).

Article 30 of the Law on Police provides for the following police powers:

- 1) cautioning and ordering
- 2) verifying and determining the identity of persons and identification of items
- 3) calling in
- 4) bringing in
- 5) holding persons in custody and temporary restrictions placed on freedom of movement
- 6) seeking information
- 7) temporary confiscation of items
- 8) searching of premises, facilities and documents, including anti-terrorist searches
- 9) stopping and searching persons, inspection of items and vehicles
- 10) securing and inspecting the scene of a crime or accident

- 11) using vehicles and communications belonging to others
- 12) receiving complaints about the commission of criminal offences
- 13) putting public rewards
- 14) wiretapping of public places
- 15) polygraph (lie detector) testing
- 16) police observation
- 17) tracing persons and items
- 18) protecting victims of criminal offences and other persons
- 19) gathering, processing and use of personal data
- 20) targeted search measures
- 21) using means of coercion.

Article 35 of the Law on Police specifies that police officers in exercising their police powers should act impartially, providing equal protection to everyone and treating persons without discrimination on any grounds. The exercise of police powers should be human and respect the dignity, reputation and honour of every person as well as other fundamental human rights and freedoms, while giving priority to the rights of vulnerable groups over the same rights enjoyed by persons violating these rights and taking into account the rights of third persons.

Article 84 of the Law on Police defines the following means of coercion:

- 1) physical force
- 2) official (police) baton
- 3) tying means
- 4) special vehicles
- 5) official dogs
- 6) official horses
- 7) barriers
- 8) devices for avoiding sprinkler water effect
- 9) chemical agents
- 10) special types of weapons and explosives
- 11) firearms.

Under the provisions of the Regulations governing conditions and methods of use of coercion, a law enforcement officer should immediately inform his superior officer of each use of coercion through the duty service station, but not later than 24 hours from the use of such coercion when he is bound to report to his superior. After the report on the use of coercion has been submitted, the superior officer should set in motion procedure to assess the justification and lawfulness of the use of coercion. The superior officer has the duty to carry out the procedure and make a determination on the justification and lawfulness of the use of coercion within eight days after the report is submitted. Head of the relevant Secretariat or Chief of Section or Head of Department in the Ministry, commander of riot police, special anti-terrorist unit or helicopter unit, once made aware of the case or the recommendation made by the head of the organizational unit concerned, should judge the justifiableness of the use

of coercion and the lawfulness of the proceedings carried out in cases where the use of coercion has not resulted in the death of a person, bodily harm or material damage. Against the law enforcement officer who has unlawfully or arbitrarily used coercion, his superior who has made such a determination will take measures provided by law. The law enforcement officer who is not satisfied about the determination on the lawfulness of his use of coercion is entitled to complain to the Inspector General of the Department of Public Security within eight days after the determination is made. The Inspector General will make a final decision within 15 days from the receipt of the complaint concerning the justification and lawfulness of the use of coercion, in which he will either approve or reverse the original determination.

Overstepping of police powers through excessive use of coercion will lead to the initiation of proceedings to determine disciplinary and/or criminal liability of the police officers concerned. The Regulation on disciplinary liability in the Ministry of Interior provides for two levels of the conduct of disciplinary proceedings (lower level involves disciplining by a superior responsible for discipline, whereas at the higher level decision upon complaint is taken by a three-member panel). Possible criminal liability of a police officer for whom there is responsible ground to believe that he has exceeded his official powers (through unlawful use of coercion) thus committing a criminal offence will be decided by a court in criminal proceedings instigated by the competent prosecutor (public prosecutor or by the injured party as a plaintiff).

A person believing that his legal rights have been violated by a police officer in the proceedings conducted before a police authority may file a complaint to the Inspector General. Following verification of the allegations made in the complaint, the Inspector General will make a report on action, determine the level of foundation of the allegations and finally recommend to the Office of the Interior Minister measures to be taken against the responsible police officer. The complainant will receive a written reply stating the level of foundation of the complaint.

Article 3

Prohibition of torture

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

In relation to article 3 of the Convention, the Minister of Interior established in 2005 a Commission for the review of the implementation of the European Convention for the Prevention of Torture and other Inhuman or Degrading Treatment or Punishment, which operates at the level of the Ministry of Interior and which inspected in November and December 2005 the detention premises in the area covered by twenty police secretariats (under the new Law on Police, referred to as police departments). The task with which the Commission is entrusted is to determine the state of detention premises and to ensure that the standards of the Council of Europe relative to the prevention of torture, inhuman or degrading treatment or

punishment are applied in practice, as well as all the ratified international instruments and national laws and by-laws.

The Commission has a Chairman and two members. It will make a report after it has visited all police departments and suggest measures to the Interior Minister and the Inspector General.

During the visits to field police departments, the Commission will look into the records of persons held in detention and will draw the attention of superior officers and their personnel to the observed misconduct.

Regarding the application of article 2 of the Convention, it should be noted here that the Commission has reviewed the lawfulness of action taken by Sasa Mijin, officer of the Kikinda Police, against whom a criminal complaint has been filed on reasonable suspicion that he has committed the criminal offence of inflicting grave bodily harm resulting in the death of the victim, Zdravko Trivan. Criminal proceedings are now underway against officer Mijin following disciplinary action in which he has been dismissed from his job.

The Inspectorate General filed 8 criminal complaints in 2004 and 2005 against 10 police officers for 9 criminal offences related to torture (6 offences of misuse of official capacity, 2 offences of infliction of GBH and one offence of infliction of minor injuries). According to the information entered into the database, a total of 180 complaints have been received from members of the public complaining about torture to which they have been subjected by police.

The Inspectorate General, on behalf of the Ministry of Interior, has submitted its detailed replies to the recommendations and comments made in the report submitted by the Committee for the Prevention of Torture of the Council of Europe (CPT).

Article 5 **Right to liberty and security**

1. *Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with the procedure prescribed by law:*
 - a. *the lawful detention of a person after conviction by a competent court;*
 - b. *the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfillment of any obligation prescribed by law;*
 - c. *the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;*
 - d. *the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority.*

e. *the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;*

f) *The lawful arrest or detention of a person to prevent his effecting and unauthorized entry into the country or of a person against whom action is being taken with a view of deportation or extradition.*

2. *Everyone who is arrested shall be informed promptly, in language which he understands, of the reasons for his arrest and of any charge against him.*

3. *Everyone arrested or detained in accordance with the provisions of paragraph 1.c of this article shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.*

4. *Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.*

5. *Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation.*

Provisions of article 5 of the Convention have been incorporated into the Criminal Procedure Code or CPC (Official Gazette of the FRY No. 70/01, Official Journal of the Republic of Serbia No. 85/05).

From the point of view of lawfulness of actions taken by law enforcement personnel, of particular significance are paragraphs 2 and 3 of this article, whereas the CPC provides in its article 5 that the person deprived of his liberty must immediately be informed in his language or in a language he understands, of the reasons for being deprived of his liberty and of his rights. Police procedures in pre-trial proceedings have been standardized in detail under articles 225 – 231 of the CPC, thus making possible the use of evidence gathered by police pending trial at the main hearing (which was not the case until the CPC was amended in 2001).

Article 8

Right to respect for private and family life

1. *Everyone has the right to the respect for his private and family life, his home and his correspondence.*
2. *There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-*

being of the country, for the prevention of disorder or crime, for protection of health or morals, or for the protection of the rights and freedoms of others.

In the Republic of Serbia, the right granted under Article 8 of the Convention may be restricted in specifically defined cases envisaged by the Criminal Procedure Code (Article 232). The investigative judge may, at the proposal of the public prosecutor submitted in writing and based on solid grounds, order surveying and interception of telephone and other conversations or communications by other technical means, including filming of persons for whom there are grounds for suspicion that they themselves have committed or participated in the commission of the following criminal acts:

- 1) against the constitutional order or security;
- 2) against humanity and international law;
- 3) related to organized crime (forging and “laundering” of money, illicit production and trafficking in narcotic drugs, illicit trade in arms, ammunition or explosives, trafficking in human beings), offering or taking bribe, extortion and abduction.

The investigative judge shall impose measures and issue an order on reasonable grounds. The order shall include information about the person on whom the measures will be imposed, grounds of suspicion, method of imposition, and their scope and duration. The measures may be imposed for a maximum of three months with a possibility of extension for a further three months, subject to valid reasons. The measures will cease to be imposed as soon as the underlying causes are no longer applicable.

The order of the investigative judge shall be enforced by law enforcement personnel.

The PTT and other companies, associations and individuals registered for communication of information are obligated to enable law enforcement personnel to execute the measures.

Wiring may be carried out in premises other than apartments provided an investigative judge has issued an order to that effect.

Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms

Article 2 Freedom of Movement

1. ***Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.***
2. ***Everyone shall be free to leave any country, including his own.***

- 3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interest of national security or public safety, for the maintenance of ordre public, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.*
- 4. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society.*

Articles 53-58 of the Law on Police provide for the conditions under which individuals may be held and their freedom of movement temporarily restricted.

Article 53

A law enforcement officer shall hold an individual who threatens or violates public order if there are no other ways to maintain it, or if the threat cannot be eliminated in any other way. The holding of the individual may not exceed 24 hours.

A person extradited by foreign security authorities, who needs to be transferred to the jurisdiction of the competent authorities may be held for not more than 48 hours.

Holding shall be ordered by a decision that must be taken and delivered to the person concerned within 6 hours following his bringing in into the official premises. The person held shall be entitled, as long as the holding is effective, entitled to an appeal against the decision ordering his holding. The competent district court must decide on the appeal within 48 hours.

The appeal shall not delay the enforcement of the holding decision.

The holding shall be lifted as soon as the reasons for which it was imposed have ceased to exist, that is, by the decision of the competent court.

If a military person is detained, it is necessary to promptly inform the military police about it.

Additional safeguards in case of holding of an individual

Article 54

In the case of holding of an individual under the provisions of this law or the implementation of the law on state border management or the law on transport safety, a person shall be informed in his own language or the language he understands that he has been held and of the reasons for his holding, and be instructed that he is not required to make any statements, that he is entitled to the

aid of a legal representative of his own choosing, and that, upon his request, his next of kin shall be informed accordingly.

If the person referred to in paragraph 1 of this article is a foreigner, he must be advised in his own language or in the language he understands also that, upon his request, the diplomatic or consular mission of his country of nationality will also be informed that he has been held.

The law enforcement officer concerned should postpone any further action against him until his legal representative comes, for two hours at the most after the person held has been cautioned that he has the right to inform his lawyer. The law enforcement officer concerned may hold a person or take any other action as provided by law, the delay of which could prevent or render more difficult the discharge of his duties.

Holding centre for foreigners

Article 55

A foreigner prevented from entering the country or who has been expelled or removed from the country, but who has been unable to be removed in that way may be imposed, in accordance with law, detention under enhanced police supervision in a facility designated for such purposes for a period necessary for removing him from the country.

Conditions for temporary restrictions on freedom of movement

Article 56

In accordance with law, freedom of movement of a person may be temporarily restricted in a facility or space for the purpose of: 1) preventing the commission of a criminal act or offence; 2) tracking down and arresting the perpetrator of a criminal act or offence; 3) locating and arresting wanted persons; 4) finding trails and clues, as well as items that might serve as evidence that a criminal act or offence has been committed.

Restriction placed on freedom of movement may not last longer than the achievement of the aim for which the authorization has been granted. Restrictions lasting longer than 8 hours require approval of the competent district court.

Specific conditions for restrictions placed on freedom of movement

Article 57

Law enforcement officer shall be authorized to temporarily restrict freedom of movement or hold a person in a facility or space also in cases where security has been threatened as a result of natural disasters or outbreaks of epidemic and in other cases involving endangerment of safety of persons and their property (security review) as long as such endangerment exists.

For the purpose of achieving objectives referred to in paragraph 1 of this article, the law enforcement official shall be authorized to carry out the evacuation or removal of a person.

Criminal investigative actions

Article 58

The powers related to temporary restrictions placed on freedom of movement as provided for in article 56 of this Law and the powers related to tracking persons and tracing items referred to in article 72 of this Law shall be exercised through criminal investigative action such as hot pursuit, search of premises and facilities, police roadblocks, police raids and police cordon lines on traffic routes and other surfaces.

In Republic of Montenegro, article 43 of the new Law on State Border Monitoring of the Republic of Montenegro (*Official Gazette of the Republic of Montenegro*, No. 72/2005), Section entitled *International Border Cooperation*, reads as follows:

“International border cooperation shall include the activities of foreign police services in the State territory of Montenegro, i.e. of the competent organ in the foreign State territory in cooperation with foreign security services and the exchange of liaison officers. International border police cooperation shall be pursued under an agreement concluded by the Government with another State.

“Under the agreement referred to in paragraph 2 of this Article, the Parties shall undertake to promote mutual cooperation of police border services in accordance with national legislation, aimed at preventing and uncovering criminal offences and their perpetrators.”

It transpires from the afore-mentioned provisions of the said Law that international cooperation between foreign police services and the Police of the Republic of Montenegro is carried out under an agreement signed by the Government of the Republic of Montenegro and another State, with full respect for domestic legislation and

norms of international law, aimed at preventing, suppressing and uncovering criminal offences and their perpetrators.

International border cooperation implies possible activities of foreign police forces in the territory of the Republic of Montenegro, as well as the participation of the members of the Police of the Republic of Montenegro in the territory of a foreign State Party.

Likewise, the provisions of Article 44 of the said Law specify that:

“Police officers and customs officers of other States may enter the territory of Montenegro and carry out certain actions of State border monitoring and other activities related to international police cooperation in conformity with international agreements.

“In accordance with an international agreement, the officers of the competent organ may carry out certain actions in other States referred to in paragraph 1 of this Article.

“The members of foreign services referred to in paragraph 1 of this Article may, on condition of reciprocity, use in the territory of Montenegro technical equipment and vehicles with their own signs, wear uniforms and carry side arms and other means of coercion provided they are part of their official uniform without a special permit.”

On the basis of the above, it is evident that the rights of the members of foreign services in the territory of the Republic of Montenegro are to be defined in greater detail by an agreement signed in advance, as well as by domestic legislation, with absolute respect for formal reciprocity standards.