

# Public Video Surveillance: A Puzzling Issue for Serbian Lawmakers

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## **Purpose:**

This paper examines the status of and practical problems in the use of public video surveillance for police and criminal procedural purposes.

## **Design/Methods/Approach:**

The approach in this research paper entailed a comparative legal analysis of the Serbian system with regard to public video surveillance and the use of recorded material as evidence in different procedures. Our research also examined reactions to the use of such material by various government agencies, such as the Ombudsman, the Commissioner for Information of Public Importance and Personal Data Protection, as well as the procedures and activities of the police department when dealing with criminal investigations. This paper examines this issue from the perspective of the European Convention on Human Rights (ECHR), the jurisprudence of the European Court of Human Rights, and their implementation in Serbia.

## **Findings:**

The results provide different perspectives on changes made in Serbian law. They also guided us in the interpretation of strategically important decisions and led us to construe methods and procedures for implementing different solutions and approaches in surveillance.

## **Research Implications:**

Although the findings of this paper are strictly connected with the Serbian legal system, their implications and proposed solutions are universal in their possible application.

## **Originality/Value:**

While in Serbia there have already been studies covering public video surveillance, evolutionary changes in certain crucial laws have lagged behind. This paper critically deals with such strategic imperfections.

## **UDC: 343**

**Keywords:** surveillance, public surveillance, public video surveillance, Serbia, law

## Javni video nadzor: zapleteno vprašanje za srbske zakonodajalce

### Namen prispevka:

Prispevek obravnava stanje in praktične težave pri uporabi javnega videonadzora za policijske in kazensko procesne namene.

### Metode:

Temeljni pristop v prispevku je izvedba primerjalno-pravne analize srbskega sistema javnega video nadzora in uporabe posnetega materiala kot dokaza v različnih postopkih. V raziskavi smo preučili tudi reakcije glede uporabe posnetega materiala s strani različnih državnih organov, kot sta varuh človekovih pravic in komisar za informiranje javnega pomena in varstvo osebnih podatkov. Prikazani so tudi postopki in dejavnosti policije, ki se ukvarja s preiskavo kaznivega dejanja. Problematika je obravnavana tudi z vidika Evropske konvencije o človekovih pravicah (EKČP), sodne prakse Evropskega sodišča za človekove pravice in njihovo izvajanje v Srbiji.

### Ugotovitve:

Rezultati predstavljajo različne perspektive uvajanja sprememb v srbsko zakonodajo. Vodijo tudi k razlagi strateško pomembnih odločitev in predstavljajo različne rešitve in pristope za izvajanje nadzora.

### Praktična uporabnost:

Vsebina prispevka je tesno povezana s srbskim pravnim sistemom. Obenem pa so ugotovitve in predlagane rešitve splošne in uporabne tudi v drugih državah.

### Izvirnost/pomembnost prispevka:

Čprav so v Srbiji že bile študije, ki zajemajo javni videonadzor, pa so razvojne spremembe v nekaterih ključnih zakonih zaostajale. Prispevek te strateške pomanjkljivosti kritično obravnava.

### UDK: 343

**Ključne besede:** nadzor, javni nadzor, javni video nadzor, Srbija, zakonodaja

## 1 INTRODUCTION

Even though technology is rapidly and continuously evolving, there are still more technical innovations that could improve everyday life. When it comes to protecting residential, commercial and public buildings, premises and places, video surveillance systems can play an important role in preventing adverse events, along with their use by (repressive) regulatory authorities. In Serbia, many public buildings (both commercial and residential) have installed video surveillance systems in recent years and this has become one of the main means for protection and crime prevention.

On one hand, if a video surveillance system is properly designed it may prove useful in preventing improper behaviour at sports stadiums or other public

events, as well as during traffic control and supervision. Preventive or proactive actions are possible if a police officer spots someone committing or attempting to commit a crime (e.g. theft or robbery) and responds in an appropriate way by way of prevention or detection. A suppressive effect on crime can be achieved by archiving and analysing adverse events. This may be of great importance for the further course of operational work and could later provide evidence in criminal proceedings. On the other hand, setting up the equipment for video surveillance without clear, strict and normative legal regulation may lead to the violation of basic human rights, particularly those to privacy.

Therefore, we deal with the normative regulation of public video surveillance systems in the Republic of Serbia and neighbouring countries, as well as the risks and perspectives that exist when it comes to the right to privacy.

## **2 NORMATIVE FRAMEWORK FOR IMPLEMENTING VIDEO SURVEILLANCE IN THE REPUBLIC OF SERBIA**

The primary goal of public video surveillance systems is to increase potential offenders' awareness of the risk of being caught in order to deter them from possible perpetration. Having that in mind, the prerequisite conditions for using video surveillance in the Republic of Serbia, as well as the laws and bylaws governed by international legal documents which are primarily concentrated on human rights (especially the right to privacy and more specifically Article 8 of the European Convention on Human Rights [ECHR], 1950) and the corresponding obligations of competent state authorities.

Among the many legal documents at the European level, the most significant ones are:

- Article 8 of the ECHR (1950), which states that everyone has the right to respect for his private and family life, his home, and his correspondence.
- The European Convention on the Protection of Individuals with regard to Automatic Processing of Personal Data (Council of Europe, 1981) of the Council of Europe mainly regulates the processing of personal data. Questions concerning technical protection are regulated in Chapter 2 of the Convention, which among other things determines which data cannot be processed (i.e. data related to religious and racial origins, political opinions, health status, or sexual orientation) and other data protection measures.
- Pursuant to the Data Protection Directive of the European Parliament (European Commission, 1995), member states primarily agreed to protect the fundamental rights and freedoms of individuals, in particular their right to privacy with regard to the processing of personal data.
- Article 8 of the Charter of Fundamental Human Rights in the European Union (European Commission, 2000) emphasises that everyone has the right to protection of their personal data. The second paragraph of Article 8 stresses that such data can be processed for a specific purpose but must have the consent of the person in question or some other legitimate

reason for processing the data, based on law. This paragraph also states that everyone has the right to access information gathered about him or her, as well as the right to rebut such data.

The European Charter for a Democratic Use of Video Surveillance (European Forum for Urban Security, 2010) was created as a result of a project of the European Forum for Urban Security which identified seven key principles to be adhered to when using video surveillance. These principles are as follows:

1. The principle of legality

The design and implementation of video surveillance can only be done and paid for pursuant to existing laws and regulations.

2. The principle of necessity

The installation of video surveillance systems must be justified.

3. The principle of proportionality

The design and deployment of a video surveillance system must be appropriate and proportionate to the vulnerability of the protected premises or persons. Proportionality is chiefly related to the objectives to be achieved and the means for achieving them.

4. Principle of transparency

Each legal entity must have a clear and consistent policy concerning the operation of its system.

5. The principle of responsibility

The right to supervise public places is reserved for carefully selected properties. Proprietors are responsible for the systems installed on their behalf.

6. Principle of independent control

The term "control" means a clearly established system of norms and standards. Control can be performed by an independent expert or a special body, including citizen participation.

7. The principle of citizen participation

Everything must be done to encourage citizen involvement in every stage of the development of video surveillance systems.

In addition to the above EU legal documents, when it comes to video surveillance, the legislative framework in the Republic of Serbia contains the following laws:

Article 69 of the Law on Police (2005, 2011) regulates recording in public places. This regulation specifies that recording in public places comprises the continuous acoustic and video surveillance of public places in which criminal offences are frequently committed in order to suppress them. If there is the risk of a threat to human health and life or property during a public gathering, an authorised official may permit video recording or photographing of a public event. The police are obliged to publicly disclose their intention to carry out these activities.

In order to achieve efficient protection of the state border, Article 61 of the Law on State Border Protection (2008) stipulates that border police have the right to collect personal data and to add this to the records of individuals over whom that right is exercised. For the purpose of keeping records, border police are

authorised to perform scanning and video surveillance. Devices must be placed in a prominent place and marked with a warning sign. Recordings of personal data collected in this way must be destroyed 5 years from the day they were made, unless they are required for the purpose of criminal proceedings.

On 13 December 2012, the Regulation on Installing and Using Equipment and other Technical Resources while Protecting the State Border (2012) was adopted to regulate the installation and use of such equipment and other technical means in accordance with the above protective objective. Among other things, the Regulation provides that border police may use automatic devices for imaging and recording video material during surveillance as well as other technical means to record or photograph events at border crossings. In the event of recording at a border crossing, passengers and other persons should be alerted with a warning sign about the installation of automatic devices for taking pictures, recording and video surveillance. In addition, this regulation provides that automatic devices can be used for the prevention and identification of illegal crossings of the state border and other illegal activities. In accordance with international law and regulations, the regulations and images made in this way may be copied or electronically processed for training purposes, as proof in criminal or disciplinary proceedings, in determining facts in appeal proceedings, or in determining material loss. The primary purpose is for training, but first the images must be electronically altered so that it is not possible to determine the identity of the person/s in them.

Article 23 of the Law on City Police (2009) stipulates that, while performing activities within their jurisdiction, municipal police have the power to provide video surveillance wherever needed to prevent violations in public spaces and other facilities. The space or facility must be marked clearly with a distinguishable inscription that there is video surveillance. The video monitoring devices used must be visible.

In the new Law on Road Traffic Safety (2009, 2010, 2011), video surveillance may be employed for the prevention of traffic violations and as evidence. Article 296 stipulates that if a police officer and competent inspection authority in control of traffic establish through video surveillance or photo records that a vehicle is parked or has stopped in a manner which violates the Act, they may order the removal of vehicles in a period which may be shorter than three minutes. Article 322 states that a photo or video record in which the vehicle's registration number and relevant elements of the offence are clearly visible represents an authentic document proving the perpetration of the offence.

The Law on the Protection of Personal Data (2008, 2009, 2012) prescribes conditions for the gathering and processing of personal data, together with the rights and protection of those rights of people whose data are collected and processed. It also regulates restrictions on personal data protection, the procedure before the competent authority for the protection of personal data, security data, records, data exports from the Republic of Serbia, and supervision of the application of this Act.

Article 15 of the Law on the Prevention of Violence and Misbehaviour at Sports Events (2003, 2007, 2009, 2013) states that the organiser is obliged to provide technical equipment to monitor and record the entry and behaviour of people in the sports facility.

Article 54 of the Law on Games of Chance (2011, 2012) stipulates that, by order of the Board, the organiser has to ensure continuous audio-video surveillance of tables and gaming devices, casino entrances and exits, players and visitors, as well as provide documentation of continuous recordings made over a 10-day period.

The National Strategy for the Fight against Corruption in Serbia for the period 2013 to 2018 (2013) lists video surveillance at border posts and border crossing points as an effective means for fighting corruption, as well as helping determine responsibility. This Strategy cites the lack of a legal framework, technical equipment, and incompetent staff as the greatest problems.

When it comes to privacy protection, on the basis of the aforementioned it can be concluded that in the Republic of Serbia legislative provisions have not been adopted that in a comprehensive manner could resolve the issue of video surveillance in the context of the processing and protection of personal data. Although the conditions for collecting and processing personal data, the personal rights and the protection of those persons whose data is collected and processed, and the limits to the protection of personal data, as well as the procedure before the competent authority for the protection of personal data, securing of data, keeping records, and transfer of data from the Republic of Serbia abroad are all defined by the Law on the Protection of Personal Data (2008, 2009, 2012), the Law contains no provision to regulate the processing of personal data of citizens using video surveillance.

According to proposed amendments to the above-mentioned law<sup>1</sup>, video surveillance is defined as any system used to capture particular public, official and working space acting, regardless of whether it allows control or storage of videos thereby made and their transfer via a computer network.

The proposal also contains specific provisions regarding video surveillance with access to official and business premises and video surveillance installed on official and business premises. Article 34 of the draft law states that the data controller can establish access control in official or business premises if needed for the safety of persons and property, in order to control entry or exit from official or business premises, or if due to the nature of work there are potential risks for employees. The decision on introducing video surveillance must be made in writing by the data controller. This decision must contain the reasons for the introduction of video surveillance if the introduction of video surveillance is not already prescribed by law, and the employees who work in a space under video surveillance must be informed about it. Video surveillance is not allowed in official and business premises outside the workplace, particularly in changing rooms, lifts and sanitary facilities. Particular objectives and outcomes of video surveillance are determined by the specifics of objects where video surveillance is to be implemented (e.g. in banks and exchange offices to use video surveillance to deter a potential perpetrator from making attacks on the protected object and, in the event a robbery did occur, video surveillance footage may be important evidence in the process of detecting, clarifying and proving it).

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<sup>1</sup> *Commissioner for Information of Public Importance and Personal Data protection has prepared model of Law on personal data protection and opened public dispute on it in June of 2014 Model of the law is opened publicly and posted at: <http://www.poverenik.rs/images/stories/model-zakona/modelzpl.docx> (last time accessed on 04.08.2015).*



The different bodies of legislation in countries in the region have dealt with the use of public video surveillance in a largely similar way, so we will briefly review their laws and regulations in which video surveillance is regulated differently than in Serbia.

For example, in Bosnia and Herzegovina the issue of video surveillance is regulated by Article 21a of the Bosnian Law on the Protection of Personal Data (2006, 2011) governing the issue of personal data processing by video surveillance. This Article stipulates that recordings obtained through video surveillance from a certain area on the basis of which a data carrier can be identified – represent a collection of personal data, and the controller who performs video surveillance is obliged to make a decision that will contain the processing rules with the aim of respecting the right of the data carrier's privacy and personal life. It is the obligation of the controller which does the surveillance in a publicly accessible place to prominently display a notice on monitoring and contact through which information about the video surveillance can be obtained.

In the Republic of Croatia, the field of video surveillance is regulated by the Ordinance on the manner and conditions for performing private security in public areas.

This Ordinance regulates the methods and conditions for implementing private security in public areas, as well as the method for exercising powers on public land under the Croatian Law on Private Security (2003, 2010) by authorised persons. When it comes to technical security, the Ordinance defines the basic characteristics of the video surveillance system (the minimum to be met by technical equipment and the treatment of recorded material). Authorisation to provide private security in public areas is issued by the police department that supervises the performance of security activities that are dedicated to certain security authorities on the proposal of the local government.

Video surveillance in Montenegro is regulated by the Montenegrin Law on Protection of Personal Data (2008, 2009, 2012).

The mentioned Act stipulates that a public authority, the Local Government Administration, a company or other private entity or entrepreneur can perform video surveillance and thereby access official or commercial property for the safety of persons and property, to control entry or exit in official or business premises or if due to the nature of work there is a possible risk to employees' safety. In addition to defining the conditions for setting up video surveillance in residential buildings, official or business premises, the said Act defines the rules concerning the content of video (e.g. the recording must include the date and time) as well as the handling of personal data. The provisions of the said Act apply to the use of video surveillance in public areas, unless a special law provides otherwise.

Based on the above, and in the context of protecting the right to privacy, it can be concluded that video surveillance entails obtaining and storing audio, visual or other records through a system of video cameras, and that state agencies and economic entities planning to install video surveillance in order to record and store images and videos of recorded areas must meet and adhere to certain rules. This primarily involves a clear idea of whether the setting of the system is in accordance with the law; whether it is necessary and possible to achieve certain objectives by use of another solution.

When it comes to privacy protection, given the above-mentioned it can be concluded that in the Republic of Serbia legislative provisions have not been adopted in a comprehensive manner concerning the issue of video surveillance in the context of the processing and protection of personal data. Although the conditions for collecting and processing of personal data, the rights of persons and the protection of the rights of persons whose data is collected and processed, are limited to the protection of personal data, the procedure before the competent authority for the protection of personal data, securing of data, making records, and transferring data from the Republic of Serbia are regulated by the Law on the Protection of Personal Data (2008, 2009, 2012), the Law contains no provision regulating the processing of personal data of citizens using video surveillance.

The proposed amendments in the text provide a better environment since video surveillance is defined as any system used to capture a particular public, official and working space, regardless of whether it allows only monitoring or recording and storing of video thereby captured and transmitting that data via a computer network.

The proposal also contains specific provisions regarding video surveillance with access to official and business premises and video surveillance on official and business premises. Article 34 of the proposal states that the data controller can perform access control on official or business premises if necessary for the safety of persons and property, to control entry or exit from official or business premises, or if due to the nature of work there are potential risks for employees. The decision on video surveillance must be made in writing. It must contain the reasons for introducing the video surveillance, if the introduction of video surveillance is not prescribed by law, and the employees who work in a space under video surveillance must be informed about it. Video surveillance is not allowed on official and business premises outside the workplace, particularly in changing rooms, lifts and sanitary facilities. Particular objectives and outcomes of video surveillance applications are determined by the specifics of buildings where video surveillance is implemented (e.g. in banks and exchange offices to use video surveillance in order to deter a potential perpetrator from making attacks on the protected object and, in case a robbery does occur, video surveillance footage may be important evidence).

### **3 THE USE OF PUBLIC VIDEO SURVEILLANCE IN SERBIA**

In late 2010, projects were initiated in cities across Serbia to introduce video surveillance in order to deter potential perpetrators. There are currently more than 150,000 cameras located in public places on the streets of Belgrade and Novi Sad. Video surveillance systems are also deployed and established in Subotica, Pancevo, Prokuplje and other major cities. Over the last few years, video surveillance has been massively introduced in many buildings, such as schools, restaurants, bars, business and residential areas, as well as other public places. In addition, it should be mentioned that the introduction of video surveillance in schools supports preventive measures taken by the police already in progress to improve the safety of children. For example, in May 2011 in a police station in



Novi Beograd a control room was opened where a duty officer continually (24/7) monitors all primary schools in the municipality through 36 cameras, and responds if necessary. In addition, it should be noted that this type of monitoring has been included in some schools in the Belgrade municipalities of Palilula, Vračar, Rakovica, Zemun and, from mid-October 2011, to all schools in the municipality of Stari Grad. When it comes to preventive actions for traffic safety, the project "A modern model of traffic control" was launched in early 2008. This project involves the introduction of so-called "interceptors" (vehicles without police markings) in the daily work of the traffic police to improve traffic control. These "interceptors" are cars with high-level technical ability, fitted with special equipment to detect and document offences and crimes. This equipment allows video documentation of any violation being committed, whether the vehicle in question is in motion or at rest (Figure 1 and Figure 2). This new prevention method was introduced to raise drivers' objective and subjective awareness of increased levels of detection risk, as well as possible sanctions for unlawful behaviour in traffic (Moje dete, 2011).

Figure 1



Figure 2



In the first half of 2014, the Ombudsman for information of public interest and the protection of personal data ordered the Ministry of the Interior of the Republic of Serbia to stop the unauthorised processing of personal data by police officers and citizens controlling cameras installed in patrol cars, as well as audio-recording devices installed in equipment and uniforms. This primarily relates to vehicles equipped with video surveillance that are used for recording the interventions of police officers on the move, movement behind the controlled vehicle at a distance of three to five metres, while the audio-video surveillance

is used to record the intervention of police officers stationed at a traffic control at the same distance. It is important to note that the prohibition does not apply to the use of “interceptors”, which is defined by law and provides evidence that an offence has been committed. It was further pointed out that recordings made by an unspecified number of police officers and citizens in traffic had no lawful authority, legally stipulated purpose or proper court order (MUP upozoren da ispuni nalog poverenika, 2014).

#### 4 ECHR PRACTICE IN MATTERS OF SURVEILLANCE

The focus of Article 8 of the ECHR, 1950 is the protection of an individual from arbitrary interference by public authorities. One such interference is public surveillance, whose results can be used in various ways. However, this provision does not merely compel the State to abstain from such interference; in addition to this primarily negative undertaking, there are positive obligations inherent in effective consideration of private or family life, even at public sites. These obligations may involve the adoption of measures designed to secure consideration for private life, even in the sphere of individuals’ relations between themselves (the case of *Söderman v. Sweden*, 2013<sup>2</sup>, *Airey v. Ireland*, 1979<sup>3</sup>), and especially in public locations such as squares, streets and so on.

The choice of means determined to secure compliance with Article 8 of the ECHR (1950; the Convention) in terms of the relations of individuals among themselves is in principle a matter falling within States’ margins of appreciation, whether the State’s obligations are positive or negative. There are different ways of ensuring respect for private life and the nature of the State’s obligation will depend on the particular aspect of private life at issue (see, for example, *Von Hannover v. Germany*, 2012<sup>4</sup>; *Odièvre v. France*, 2003<sup>5</sup>; *Evans v. the United Kingdom*, 2007<sup>6</sup>; and *Mosley v. the United Kingdom*, 2011<sup>7</sup>). Where a particularly important feature of an individual’s existence or identity is at stake, or where the activities in question involve a most intimate aspect of private life, the margin allowed for the State is correspondingly narrowed (*Söderman v. Sweden*, 2013<sup>8</sup>).

In terms of protecting the physical and psychological integrity of an individual from other persons, the Court has previously held that the authorities’ positive obligations (in some cases under Articles 2 or 3 of the ECHR, 1950 and in other instances under Article 8 alone or combined with Article 3 of the ECHR, 1950) may include a duty to maintain and apply in practice an adequate legal framework affording protection against acts of violence by private individuals (a

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2 *Söderman v. Sweden* (Application no. 5786/08), ECHR 100 (2013)

3 *Airey v. Ireland*, 9 October 1979, § 32, Series A no. 32

4 *Von Hannover v. Germany* (no. 2) [GC], nos. 40660/08 and 60641/08, § 104, ECHR 2012

5 *Odièvre v. France* [GC], no. 42326/98, § 46, ECHR 2003 III

6 *Evans v. the United Kingdom* [GC], no. 6339/05, § 77, ECHR 2007 I

7 *Mosley v. the United Kingdom*, no. 48009/08, § 109, 10 May 2011

8 *Söderman v. Sweden* (Application no. 5786/08), ECHR 100 (2013)

comparison could be made with *Osman v. the United Kingdom*, 1998<sup>9</sup>; *Bevacqua and S. v. Bulgaria*, 2008<sup>10</sup>; *Sandra Janković v. Croatia*, 2009<sup>11</sup>; *A v. Croatia*, 2010<sup>12</sup>; and *Dorđević v. Croatia*, 2012<sup>13</sup>).

Regarding children who are particularly vulnerable, the measures applied by the State to protect them against acts of violence fall within the scope of Articles 3 and 8, and they should be effective. They include reasonable steps to prevent any ill treatment of which the authorities had, or ought to have had, knowledge and to create an effective deterrence against such serious breaches of personal integrity (*Z and Others v. the United Kingdom*, 2001<sup>14</sup>; *M.P. and Others v. Bulgaria*, 2011<sup>15</sup>). Such measures must aim to ensure respect for human dignity and protect the best interests of the child (compare with *C.A.S. and C.S. v. Romania*, 2012<sup>16</sup>; *Pretty v. the United Kingdom*, 2002<sup>17</sup>).

Regarding serious acts, such as rape and sexual abuse of children where fundamental values and essential aspects of private life are at stake, it falls upon the member states to ensure that efficient criminal law provisions are in place (for example, *X and Y v. the Netherlands*, 1985<sup>18</sup>; *M.C. v. Bulgaria*, 2003<sup>19</sup>). This obligation also stems from other international instruments such as, *inter alia*, Articles 19 and 34 of the United Nations Convention on the Rights of the Child (United Nations, 1989) and Chapter VI, “Substantive criminal law”, of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (2007).

Concerning such serious acts, the State’s positive obligation under Articles 3 and 8 to safeguard the individual’s physical integrity may also extend to questions relating to the effectiveness of the criminal investigation (There are many authorities, but among others, similar ones are *C.A.S. and C.S. v. Romania*, 2012<sup>20</sup>; *M.P. and Others v. Bulgaria*, 2011<sup>21</sup>; and *M.C. v. Bulgaria*, 2003<sup>22</sup>) and to the possibility of obtaining reparation and redress (see, *mutatis mutandis*, *C.A.S. and C.S. v. Romania*, 2012<sup>23</sup>), although there is no absolute right to successful prosecution or conviction of any particular person where there was no culpable

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9 *Osman v. the United Kingdom*, 28 October 1998, §§ 128-30, Reports of Judgments and Decisions 1998 VIII, §§ 128-30

10 *Bevacqua and S. v. Bulgaria*, no. 71127/01, § 65, 12 June 2008

11 *Sandra Janković v. Croatia*, no. 38478/05, § 45, 5 March 2009

12 *A v. Croatia*, no. 55164/08, § 60, 14 October 2010

13 *Dorđević v. Croatia*, no. 41526/10, §§141-43, ECHR 2012

14 *Z and Others v. the United Kingdom* [GC], no. 29392/95, § 73, ECHR 2001

15 *M.P. and Others v. Bulgaria*, no. 22457/08, § 108, 15 November 2011

16 *C.A.S. and C.S. v. Romania*, no. 26692/05, § 82, 20 March 2012

17 *Pretty v. the United Kingdom*, no. 2346/02, § 65, ECHR 2002 III

18 *X and Y v. the Netherlands*, 26 March 1985, § 27, Series A no. 91

19 *M.C. v. Bulgaria* Application no. 39272/98 4 December 2003

20 *C.A.S. and C.S. v. Romania*, no. 26692/05, § 82, 20 March 2012

21 *M.P. and Others v. Bulgaria*, no. 22457/08, § 108, 15 November 2011

22 *M.C. v. Bulgaria* Application no. 39272/98 4 December 2003

23 *C.A.S. and C.S. v. Romania*, no. 26692/05, § 82, 20 March 2012

failure to seek to hold perpetrators of criminal offences accountable (compare, for example, *Brecknell v. the United Kingdom*, 2007<sup>24</sup>; *Szula v. the United Kingdom* 2007<sup>25</sup>).

As to acts that do not constitute the seriousness of those at issue in *X and Y v. the Netherlands*, 1985<sup>26</sup> and *M.C. v Bulgaria*, 2003<sup>27</sup>, the Court has examined the State's obligation to protect, for example, a minor against malicious misrepresentation under Article 8 (see *K.U. v. Finland*, 2008<sup>28</sup>). The wrongful act in that case did not involve any physical violence but could not be considered trivial as it entailed a potential threat to the minor's physical and mental welfare brought about by an difficult situation, namely that he was made the target of approaches by paedophiles. The act constituted a criminal offence under domestic law and the Court considered that practical and effective protection of the applicant required the availability of a remedy enabling the actual offender to be identified and brought to justice. The state failed to provide a legal instrument to enforce the right of the child.

More generally, however, in respect of less serious acts between individuals, which may violate psychological integrity, the State's obligation to maintain and apply in practice an adequate legal framework affording protection under Article 8 does not always require that an efficient criminal-law provision covering the specific act be in place. The legal framework could also consist of civil-law remedies capable of affording sufficient protection (compare, *mutatis mutandis*, *X and Y v. the Netherlands*, 1985<sup>29</sup>; *K.U. v. Finland*, 2008<sup>30</sup>). The Court noted, for example, that in certain previous cases concerning the protection of a person's picture from abuse by others, the remedies available among member states have been of a civil-law nature, possibly combined with procedural remedies, such as the granting of an injunction (for comparison, *inter alia*, *Von Hannover v. Germany*, 2012<sup>31</sup>; *Reklos and Davourlis v. Greece*, 2009<sup>32</sup>; and *Schüssel v. Austria*, 2002<sup>33</sup>). Hence, it is also very important to stress that guaranteeing the Convention's right to protection of one's image does require the criminalisation of covert filming and photographing of children and adults. Further, for public surveillance there should be many more safeguards in place for any individual. Signs or other types of public notices should be clearly displayed to draw the attention of members of the public, and warn them before they enter an area under surveillance. In that way, state instruments of Orwell's 1984 Big Brother-like public surveillance and prerogatives are legally covered, but with safeguards protecting individuals from

24 *Brecknell v. the United Kingdom*, no. 32457/04, 27 November 2007

25 *Szula v. the United Kingdom (dec.)*, no. 18727/06, 4 January 2007

26 *X and Y v. the Netherlands*, 26 March 1985, § 27, Series A no. 91

27 *M.C. v. Bulgaria Application no. 39272/98* 4 December 2003

28 *K.U. v. Finland*, no. 2872/02, §§ 45-49, ECHR 2008-V

29 *X and Y v. the Netherlands*, 26 March 1985, § 27, Series A no. 91

30 *K.U. v. Finland*, no. 2872/02, §§ 45-49, ECHR 2008-V

31 *Von Hannover v. Germany (no. 2) [GC]*, nos. 40660/08 and 60641/08, § 104, ECHR 2012

32 *Reklos and Davourlis v. Greece*, no. 1234/05, 15 January 2009

33 *Schüssel v. Austria (dec.)*, no. 42409/98, 21 February 2002

the misuse and abuse of such power. Those safeguards should not only cover information about present surveillance but also about their operation, recordings, storage and further use. Safeguards should even cover quality standards for technical specifications of appliances and technical or electronic safeguards for the use of any device. In the course of elaborating such standards in relation to public surveillance, it is worthwhile considering the case of *Szypusz v. the United Kingdom*, 2010<sup>34</sup>. In that case, the court accepted evidence from public surveillance cameras (CCTV) within a prison (or detention facility) near to the actual crime scene. The only safeguard the court emphasised was that the operator of the CCTV equipment in the field should not present the CCTV evidence in court as that might also be considered to be a breach of Article 6 of the ECHR: the right to a fair trial. Safeguards should also be considered in light of the case *Andrzej Krupicz v. Poland*, 2016<sup>35</sup>, in which the applicant claimed a breach of Article 3 of the ECHR on the grounds he was subjected to inhuman or degrading treatment through CCTV cameras installed in communal showers. Note that it was not a breach of Article 8 of the ECHR that was claimed here, but of Article 3. This should also be considered when elaborating this area.

In the case of *Söderman v. Sweden*, 2013<sup>36</sup> the Court examined whether, in the particular circumstances of the facts before it, Sweden had an adequate legal framework to provide the applicant with protection against the specific actions of her stepfather and would, to this end, assess whether each of the remedies allegedly available to her.

This new approach brings us to another issue we should consider. Even if all safeguards have been implemented in our internal legislation, the ECHR could find that not all safeguards have been considered, and through that we could receive a judgement referring to some legislative deficiency.

This approach, it should be emphasised, differs from that followed by the Chamber, which affirmed that “only significant flaws in legislation and practice, and their application, would amount to a breach of the State’s positive obligations under Article 8”. This referred to the terms used in *M.C. v. Bulgaria*, 2003<sup>37</sup> (§167) in relation to the scope of the State’s positive obligations under Articles 3 and 8 of the Convention to afford protection against rape and sexual abuse. However, in that judgement the Court applied the “significant flaw” test to “alleged shortcomings in the *investigation*”, pointing out that it “was not concerned with allegations of errors or isolated omissions” (§ 168) and holding that the shortcomings were “significant” (§§ 179 and 184) (also see *M. and C. v. Romania*, 2011<sup>38</sup>; compare and contrast *Siliadin v. France*, 2005<sup>39</sup> where such wording was used relative to a review of legislation and practice under Article 4 of the Convention).

It was stressed there that “The Grand Chamber considers that such a significant flaw test, while understandable in the context of investigations, has

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34 *Szypusz v. the United Kingdom* - 8400/07, 21.9.2010

35 *Andrzej Krupicz v. Poland*, Application no. 6068/12 1. March, 2016

36 *Söderman v. Sweden* (Application no. 5786/08), ECHR 100 (2013)

37 *M.C. v. Bulgaria* Application no. 39272/98 4 December 2003

38 *M. and C. v. Romania*, no. 29032/04, §§ 112 et seq., 27 September 2011

39 *Siliadin v. France*, no. 73316/01, § 130, ECHR 2005 VII

no meaningful role in an assessment as to whether the respondent State had in place an *adequate legal framework* in compliance with its positive obligations under Article 8 of the ECHR, 1950 since the issue before the Court concerns the question of whether the law afforded an acceptable level of protection to the applicant in the circumstances" (§ 91, *Söderman v. Sweden*, 2013<sup>40</sup>).

Especially in such cases it is crucial to have a very integrated, interconnected legislative system. For instance, in this work, practically all major issues and powers relating to public surveillance are covered and, even if the problem involved a criminal prosecution of a perpetrator by the public prosecutor, it could be covered by a private criminal indictment.

It is interesting to note the way in which the Supreme Court of Sweden in its judgement of 23 October 2008 dealt with this issue: "The need for a strengthened legal framework against covert filming had already been acknowledged in Swedish legislative work in the 1960s, but had not yet led to any concrete results. The Supreme Court found it highly questionable whether the fact that acts of filming of an individual in situations where such filming deeply violated the personal integrity of the person concerned was left wholly unpunished under Swedish law was compatible with the requirements of Article 8 of the Convention" (§ 105, *Söderman v. Sweden*, 2013<sup>41</sup>). We can infer from this citation that even internal courts could initiate legislative changes in relation to the ECHR especially in this case in relation to Article 8.

In this case, the court found that neither a criminal nor a civil remedy existed under Swedish law that could enable the applicant to obtain effective protection against the said violation of her personal integrity in the specific circumstances of the case. Accordingly, there was a violation of Article 8 of the ECHR. So, from this, we can infer that it is possible to have a violation of the ECHR even if a right is systematically covered legislatively because rights should be covered from the general aspect of the ECHR – in particular relating to Articles 3 and 8.

## 5 CONCLUSION

A video surveillance system is an effective preventive measure. Its effect on crime prevention is accomplished indirectly by strengthening informal social control and cohesion of the community in which the monitoring is carried out.

It should be noted that, despite the increasingly frequent use of video surveillance in the Republic of Serbia, there is still no law clearly defining the issue. Although it is not normatively regulated, the use of video surveillance in Serbia is growing (over 350,000 cameras installed). At an international level, one of the most important normative acts is definitely a charter on the democratic application of video surveillance in the European Union, which regulates all video surveillance issues from a human rights perspective. This memorandum has already been signed by a dozen cities in Europe.

From the standpoint of prevention, video surveillance has undergone a boost in its application in preventive measures taken to increase the safety of children

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40 *Söderman v. Sweden* (Application no. 5786/08), ECHR 100 (2013)

41 *Söderman v. Sweden* (Application no. 5786/08), ECHR 100 (2013)



in schools and in preventive measures regarding road safety. The system has also been applied for the security of protected areas of commercial premises such as banks, post offices, major shopping centres etc. in order to influence a potential offender's consciousness, with the overall goal of deterring a perpetrator from committing a criminal act.

In addition to prevention, video surveillance systems can lead to a reduced fear of crime and provide very important information in police investigations. Based on studies around the world, it can be concluded that CCTV has the greatest application in monitoring relatively small areas such as public parking places and transport stations, and the smallest application in large spaces such as squares, parks, residential buildings etc.

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